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Rules and Regulations

Federal Register
Vol. 64, No. 185
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–99–004]

RIN 0581–AB 54

Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees and charges for Federal voluntary egg, poultry, and rabbit grading. These fees and charges are increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Douglas C. Bailey, Chief, Standardization Branch, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

B. Regulatory Flexibility

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

There are about 400 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2000 revenues for grading services are projected at $22.0 million, costs are projected at $23.4 million, and trust fund balances would be $9.3 million. With a fee increase, FY 2000 revenues are projected at $23.1 million, costs are projected at $23.4 million, and trust fund balances would be $10.5 million.

This action would raise the fees charged to users of grading services. The AMS estimates that overall, this rule would yield an additional $1.1 million during FY 2000. The hourly resident rate for grading services will increase by approximately 4.2 percent, while the hourly rates for fee (nonresident) and appeal grading services will increase by approximately 8.0 percent. The costs to entities will be proportional to their use of service, so that costs are shared equitably by all users. The impact of these rate changes in a poultry plant would range from less than 0.003 to 0.05 cents per pound of poultry handled. In a shell egg plant, the range would be less than 0.04 to 0.4 cents per dozen eggs handled.

C. Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

Background and Proposed Changes

The Agricultural Marketing Act (AMA) of 1946 authorizes official voluntary grading and certification on a user-fee basis of eggs, poultry, and rabbits. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews these programs to determine if fees are adequate and if costs are reasonable. This rule will amend the schedule for fees and charges for grading services rendered to the egg, poultry, and rabbit industries to reflect the costs currently associated with them.

A recent review of the current fee schedule, effective October 1, 1998, revealed that anticipated revenue will not adequately cover increasing program costs. Without a fee increase, FY 2000 revenues for grading services are projected at $22.0 million, costs are projected at $23.4 million, and trust fund balances would be $9.3 million. With a fee increase, FY 2000 revenues are projected at $23.1 million, costs are projected at $23.4 million, and trust fund balances would be $10.5 million.

Employee salaries and benefits account for approximately 81 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 3.54 to 4.02 percent, depending on locality, became effective in January 1999 and has materially affected program costs. Another general and locality salary increase estimated at 4.4 percent is expected in January 2000. Also, from October 1998 through September 2000, salaries and fringe benefits of federally licensed State employees will have increased by about 6 percent.

The impact of these cost increases was separately determined for resident grading service and fee grading service. To offset projected cost increases for resident grading service, the resident

hourly rate will be increased by approximately 4.2 percent. This hourly rate covers graders' salaries and benefits. Administrative volume charges that cover the cost of supervision for this service will also be increased as shown in the table below. To offset projected cost increases for fee and appeal grading services, those rates will be increased by approximately 8.0 percent. The rate for fee service covers graders' salaries and benefits, and the cost of travel and supervision. The rate for an appeal grading or review of a grader's decision covers the time required to perform such service. Appeal gradings are only done occasionally and account for less than $5,000 revenue annually.

The following table compares current fees and charges with proposed fees and charges for egg, poultry, and rabbit grading as found in 7 CFR parts 56 and 70:

Service	Current	Proposed
Resident Service (egg, poultry, rabbit grading)		
Inauguration of service	310	310
Hourly charges:		
Regular hours	27.64	28.80
Administrative charges—Poultry grading:		
Per pound of poultry	.00034	.00035
Minimum per month	225	225
Maximum per month	2,500	2,625
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs	.040	.044
Minimum per month	225	225
Maximum per month	2,500	2,625
Administrative charges—Rabbit grading:		
Based on 25% of grader's salary, minimum per month	250	260
Nonresident Service (egg, poultry, grading)		
Hourly charges:		
Regular hours	27.64	28.80
Administrative charges:		
Based on 25 of grader's salary, Minimum per month	250	260
Fee and Appeal Service (egg, poultry, rabbit grading)		
Hourly charges:		
Regular hours	44.80	48.40
Weekend and holiday hours	51.60	55.76

Comments

Based on an analysis of costs to provide these services, a proposed rule to increase the fees for these services was published in the **Federal Register** (64 FR 37886) on July 14, 1999. Comments on the proposed rule were solicited from interested parties until August 13, 1999. No comments were received during the 30-day comment period.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of the action until 30 days after publication in the **Federal Register** because the proposed fees need to be implemented on an expedited basis in order to avoid further financial losses in the grading program and the effective date of the fee increase will be set to coincide with the next billing cycle which is October 1, 1999.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, Title 7, Code of Federal Regulations, parts 56 and 70 are amended as follows:

PART 56—GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 56.46 is revised to read as follows:

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $48.40 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $55.76 per hour. Information on legal holidays is available from the Supervisor.

3. In § 56.52, paragraph (a)(4) is revised to read as follows:

§ 56.52 Continuous grading performed on resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.044, except that the minimum charge per billing period shall be $225 and the maximum charge shall be $2,625. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

4. In § 56.54, paragraph (a)(2) is revised to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $260 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

5. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

6. Section 70.71 is revised to read as follows:

§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $48.40 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $55.76 per hour. Information on legal holidays is available from the Supervisor.

7. In § 70.76, paragraph (a)(2) is revised to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $260 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

8. In § 70.77, paragraphs (a)(4) and (a)(5) are revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00035, except that the minimum charge per billing period shall be $225 and the maximum charge shall be $2,625. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $260 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: September 20, 1999.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–24923 Filed 9–23–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket No. 99–11]

RIN 1557–AB60

FEDERAL RESERVE BOARD

12 CFR Part 212

[Docket No. R–0907]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064–ACO8

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563f

[Docket No. 99–36]

RIN 1550–AB07

Management Official Interlocks

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury.

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (the Agencies) are revising their rules regarding management interlocks. The final rule conforms the interlocks rules to recent statutory changes, modernizes and clarifies the rules, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

EFFECTIVE DATE: This joint rule is effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: OCC: Emily R. McNaughton, National Bank Examiner, Senior Policy Analyst, Core Policy Development (202) 874–5190; Jackie Durham, Senior Licensing Policy Analyst, Bank Organization and Structure (202) 874–5060; Sue E. Auerbach, Senior Attorney, Bank Activities and Structure (202) 874–5300; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities (202) 874–5090. Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Thomas M. Corsi, Senior Counsel (202) 452–3275, or Andrew Baer, Attorney (202) 452–2246, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for Deaf (TDD), Dorothea Thompson (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Curtis Vaughn, Examination Specialist, Division of Supervision, (202) 898–6759; or Mark Mellon, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–3854, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: David Bristol, Senior Attorney, Business Transactions Division, Chief Counsel's Office (202) 906–6461; or Joseph M. Casey, Supervision Policy, (202) 906–5741, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Depository Institution Management Interlocks Act (12 U.S.C. 3201–3208) (the Interlocks Act or Act) generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies (depository organizations). The scope of the prohibition depends on the size and location of the organizations involved. For instance, the Act prohibits

interlocks between unaffiliated depository organizations, regardless of size, if each organization has an office [1] in the same community (the community prohibition). Interlocks are also prohibited between unaffiliated depository organizations if each organization has total assets of $20 million or more and has an office in the same relevant metropolitan statistical area (RMSA) (the RMSA prohibition). The Interlocks Act also prohibits interlocks between unaffiliated depository organizations, regardless of location, if each organization has total assets exceeding specified thresholds (the major assets prohibition).

Summary of Statutory Changes

Section 2210 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009–409) (the EGRPR Act) amended sections 204, 206 and 209 of the Interlocks Act (12 U.S.C. 3203, 3205 and 3207). Section 2210(a) of the EGRPR Act amended the Interlocks Act by changing the thresholds for the major assets prohibition under 12 U.S.C. 3203. Prior to the EGRPR Act, management officials of depository organizations with total assets exceeding $1 billion were prohibited from serving as management officials of unaffiliated depository organizations with assets exceeding $500 million, regardless of the location of the organizations.[2] The EGRPR Act raised the thresholds to $2.5 billion and $1.5 billion, respectively. The amendment also authorized the Agencies to adjust the thresholds by regulation, as necessary to allow for inflation or market conditions.

Section 2210(b) of the EGRPR Act permanently extended the grandfather exemptions for management officials whose service began before November 10, 1978, which appear at 12 U.S.C. 3205(a) and (b) which were due to expire in 1998. The EGRPR Act repealed section 3205(c) which mandated Agency review of these grandfathered interlocks before March 1995.

The EGRPR Act also amended 12 U.S.C. 3207 to provide that the Agencies may adopt regulations that permit service by a management official that would otherwise be prohibited by the Interlocks Act, if such service would not result in a monopoly or substantial lessening of competition. This change repealed the specific ''regulatory standards'' and ''management consignment'' exemptions added by the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act),[3] and restored the Agencies' broad authority to create regulatory exemptions to the statutory prohibitions on interlocks.

II. The Proposal

On August 11, 1998, the Agencies published a joint notice of proposed rulemaking (the Proposal) (63 FR 43052) to implement the statutory changes made by the EGRPR Act. In addition, the Proposal renewed an earlier proposal for a small market share exemption that the Board, OCC, and FDIC had advanced before enactment of the CDRI Act.

III. The Final Rule and Comments Received

The Agencies received a total of seven comments,[4] some of which were sent to more than one agency. Commenters generally supported the Proposal. A few commenters, while supporting the Proposal, suggested that the Agencies make additional changes as discussed later in this preamble. Most of the proposed changes received either no comments or uniformly favorable comments. Accordingly, except where noted in the text that follows, the Agencies have adopted the Proposal without change. The following discussion summarizes the amendments to the Agencies' management interlocks rules and the comments received.

A. Definitions

The Agencies' regulations define key terms implementing the Interlocks Act. The Agencies added or revised a number of these definitions in 1996 to implement the CDRI Act.[5] With the repeal of the specific exemptive standards in the CDRI Act, two of these definitions became unnecessary, specifically, ''anticompetitive effect'' and ''critical''. The Agencies therefore proposed that they be removed.

The Agencies received only one comment on the proposed elimination of these terms. The commenter agreed that these definitions should be removed. The Agencies therefore adopt this provision without any changes.

B. Major Assets Prohibition

Prior to the EGRPR Act, if a depository institution or depository holding company had total assets exceeding $1 billion, a management official of the institution or any of its affiliates could not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding $500 million or as a management official of any affiliates of the other institution, regardless of location. The EGRPR Act revised the asset thresholds for the major assets prohibition from $1 billion and $500 million to $2.5 billion and $1.5 billion, respectively. The legislation also authorized the Agencies to adjust the threshold from time to time to reflect inflation or market changes.

The Agencies proposed to amend the regulations to reflect the new threshold amounts, and to add a mechanism providing for periodic adjustments of the thresholds. The adjustment would be based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (the Consumer Price Index). In those years when changes in the Consumer Price Index would change the thresholds by more than $100 million, the Agencies will adjust the threshold and announce the change by a final rule without notice and opportunity for comment published in the **Federal Register**. For those years in which changes in the Consumer Price Index would not change the thresholds by more than $100 million, the Agencies will not adjust the threshold. The Agencies invited comment on other types of market changes that may warrant subsequent adjustments to the major assets prohibition. The Agencies, however, wish to clarify that if they do not adjust the threshold to reflect a Consumer Price Index change in any given year, they will consider the change for that year in computing adjustments to the threshold in subsequent years.

Two commenters supported the proposed adjustment of the major asset thresholds based on the Consumer Price Index. One commenter, however, suggested that the Agencies notify financial institutions of threshold amounts at least annually even if they are not adjusted.

The Agencies believe that the $100 million benchmark will make it easy for the banking industry to keep track of the thresholds while preserving the flexibility to reflect changes in the economy that are significant enough to

[1] Each of the Agencies' regulations generally define ''office'' as a home or branch office. *See* 12 CFR 26.2 (OCC), 212.2 (Board), 348.2 (FDIC), and 563f.2 (OTS).

[2] The Agencies define ''total assets'' of diversified savings and loan holding companies and bank holding companies exempt from section 4 of the Bank Holding Company Act (12 U.S.C. 1843) to include only the assets of their depository institution affiliates. *See* 12 CFR 26.2(r) (OCC), 212.2(q) (Board), 348.2(q) (FDIC), and 563f.2(r) (OTS).

[3] The Agencies adopted final regulations implementing the management interlocks provisions of the CDRI Act, effective October 1, 1996. *See* 61 FR 40293 (August 2, 1996).

[4] The Board received 4 comments from the public, while the OCC, FDIC, and OTS received 4, 6, and 5 respectively.

[5] See 61 FR 40293 (August 2, 1996).

warrant changing the asset thresholds. Accordingly, the Agencies adopt the mechanism providing for periodic adjustments of the thresholds set forth in the Proposal without any changes.

C. Regulatory Standards and Management Consignment Exemptions

The current regulations contain Regulatory Standards and Management Consignment exemptions which were predicated on section 3207 of the Interlocks Act. The EGRPR Act removed the specific exemptions from the Interlocks Act and substituted a general authority for the Agencies to create exemptions by regulation. Accordingly, the Proposal recommended removal of these regulatory exemptions.

The Agencies received only one comment on this provision. The commenter supported removal of the Regulatory Standards and Management Consignment exemptions. The Agencies find the removal of the exemptions appropriate in light of their statutory repeal and therefore adopt this provision as set forth in the Proposal without any changes.

D. General Exemptive Authority

Section 2210(c) of the EGRPR Act authorizes the Agencies to adopt regulations permitting service by a management official that would otherwise be prohibited by the Interlocks Act, if that official's service would not result in ''a monopoly or substantial lessening of competition.'' To implement this authority, the Agencies proposed to exempt otherwise prohibited management interlocks where the dual service would not result in a monopoly or substantial lessening of competition, and would not otherwise threaten safety and soundness. As noted in the preamble to the Proposal, the process for obtaining such exemptions will be set out in each Agency's procedural regulations or, in the case of the OCC, in the Management Interlocks booklet of the Comptroller's Corporate Manual.

The Agencies also proposed to create a rebuttable presumption that an interlock would not result in a monopoly or substantial lessening of competition, if: (1) The depository organization primarily serves low-or moderate-income areas; (2) the depository organization is controlled or managed by members of a minority group or women; (3) the depository institution has been chartered for less than two years; or (4) the depository organization is deemed to be in a troubled condition'' under regulations implementing section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1831i).

Under the proposal, interlocks granted in reliance on one of these presumptions may continue for three years unless the Agency granting the interlock provides otherwise in writing.

Three commenters supported the general exemption. One commenter suggested that the rebuttable presumption be extended to depository institutions that have been chartered for less than five years rather than the two-year limit suggested in the Proposal. The commenter argued that the time period should be extended to take into consideration the challenges facing a *de novo* depository institution in its first or second market cycle. Another commenter, however, cautioned against allowing an interlock to continue when the original reason for granting the interlock in the first place no longer applies. For example, the commenter noted that if an interlock is granted to strengthen an institution in a troubled condition and the bank is still in that status at the end of the three-year time period, the appropriate supervisory agency should consider other courses of action instead of allowing the interlock to continue.

A fourth commenter stated that the justification offered by the Agencies was insufficient to establish a rebuttable presumption for a depository organization controlled or managed by members of a minority group or women or for a newly chartered depository institution. The commenter further questioned the reason for presuming that interlocks in these conditions automatically would not result in a monopoly or reduction of competition. The commenter argued that proper management should be addressed in the chartering process and that the burden of management oversight rests there. The commenter therefore recommended that these two categories be dropped from the list of those eligible for the rebuttable presumption.

In response, the Agencies note that when the regulatory exceptions for these two categories of interlocks were created in 1979, the Agencies found the exceptions were appropriate for the promotion of competition over the long term and to encourage the development and preservation of these depository organizations, thereby contributing to the convenience and needs of the public and the well-being of the financial community. The Agencies continue to believe that the exception for a depository organization controlled or managed by members of a minority group or women does not create an unfair advantage but instead recognizes that it has historically been more difficult for institutions controlled by women and minorities to recruit seasoned management and that, accordingly, competition to serve traditionally underserved markets may have suffered. By permitting interlocks that improve the quality of management in minority and women-owned institutions, the Agencies believe that these institutions are better able to compete with other institutions in the relevant market to serve traditionally underserved customers and markets. Similarly, because *de novo* entrants into a market are presumed to enhance competition in that market, the Agencies believe that an interlock that improves the management of newly chartered institutions also enhances competition.

For these reasons, the Agencies have retained the two categories of rebuttable presumptions. As noted by the Agencies in the Proposal, however, a claim that factors exist giving rise to a presumption does not preclude an Agency from denying a request for an exemption if the Agency finds that the interlock nevertheless would result in a monopoly or substantial lessening of competition. *See* 63 FR 43054.

The Proposal stated that these presumptions would be applied in a manner consistent with the Agencies' past analysis of the factors to meet the legitimate needs of the institutions and organizations involved for qualified and skilled management. The Proposal further stated that the definitions of ''area median income'' and ''low-and moderate-income areas'' added to the regulations in 1996 to implement the CDRI Act amendments would be retained to provide guidance as to when an organization would qualify for one of the presumptions. Under the Proposal, interlocks based on a rebuttable presumption would be allowed to continue for three years, unless otherwise provided in the approval order. The Proposal would not prevent an organization from applying for an extension of an interlock exemption if the factors continued to apply. The organization would also be free under the Proposal to utilize any other exemption that may be available. The Agencies proposed that any interlock approved under this section may continue so long as it would not result in a monopoly or a substantial lessening of competition, becomes unsafe or unsound, or is subject to a condition requiring termination at a specific time. The Agencies are adopting the proposed section without any changes.

The Agencies also decline to extend the eligibility period for the rebuttable

presumption to depository institutions that have been chartered for less than five years rather than the two-year limit as suggested by another commenter. The Agencies believe that extending the rebuttable presumption to depository institutions that have been chartered for less than five years would cause *de novo* depository organizations to rely on interlocking service, rather than to obtain independent management from other more appropriate sources. Once a *de novo* depository institution is granted a general exemption, the exemption would continue for a period of three years.

E. Small Market Share Exemption

The Proposal sought comment on an exemption for interlocks involving institutions that, on a combined basis, control less than 20 percent of the deposits in a community or relevant MSA. The Agencies proposed the small market share exemption to enlarge the pool of management talent upon which depository institutions may draw, thereby resulting in more competitive, better managed institutions without causing significant anticompetitive effects. As stated in the Proposal, financial institutions seeking to form an interlock pursuant to the small market share exemption must determine their eligibility by using deposit share data published by the FDIC in its Summary of Deposits.

All seven commenters supported the small market share exemption. In addition, five commenters found the FDIC Summary of Deposits to be the best available database for determining eligibility for the exception (with the other two commenters expressing no opinion on this question). Four commenters did not believe that institutions would abuse this exception by developing webs of interlocking relationships (hub and spoke interlocks). One of these four commenters urged the Agencies to approach such interlocks on a case-by-case basis.

Four commenters stated that 20 percent of deposits was an appropriate threshold to determine eligibility for the exception. One commenter in this group recommended, however, that the Agencies periodically reexamine the appropriateness of the 20 percent limit in light of the declining market shares of banks generally. Another commenter argued that the Agencies should increase the threshold to 30 percent due to a shortage of talent in some small towns. A second commenter suggested that the Agencies adopt a higher percentage for depository organizations in small communities. This commenter noted that depository organizations in sparsely populated areas often control a large share of deposits and that there would be no benefit in depriving small or rural banks of eligibility for this exemption. Two commenters suggested that credit union deposits should be taken into account when ascertaining the total amount of deposits in a particular community.

The Agencies agree with the majority of commenters that 20 percent of deposits within the relevant community is the appropriate threshold to determine eligibility for the small market share exemption. While there will be highly concentrated markets where this threshold will not affect institutions' ability to form interlocks, the Agencies believe that interlocks between unaffiliated institutions that together control more than 20 percent of the deposits in a market create the risk that the interlocked institutions will be able to adversely affect the availability or terms of credit in that market. The Agencies note, however, that the rule permits institutions that do not qualify for the small market share exemption to apply for a general exemption. The general exemption is available even to institutions that control more than 20 percent of the deposits in the relevant market if the institutions are able to demonstrate that the interlock will not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

The Agencies do not agree with the commenters' suggestion of including data on credit union deposits along with depository institution deposits when determining the total amount of deposits in a given market. The Agencies continue to believe [6] that the deposit data maintained in the FDIC's Summary of Deposits, which does not include credit union data, provides a reliable approximation of the market for a given location. To the extent that credit unions hold a significant amount of the total deposits in a given market, this information may be used to demonstrate that an interlock will not result in a monopoly or substantial lessening of competition under the general exemption. This approach is consistent with the Agencies' treatment of credit union deposits in the merger context, where the Agencies consider credit union deposits as one of many mitigating factors if a merger transaction exceeds a specified threshold.[7]

The small market share exemption criteria remain as outlined in the Proposal. Organizations claiming the exemption must determine the market share in each RMSA and community in which both depository organizations (or their depository institution affiliates) have offices. The relevant market used for the small market share exception (that is, the RMSAs or communities in which both depository organizations or their depository institution affiliates have offices) are the same markets described in the community and RMSA prohibitions. The small market share exemption is not available for interlocks subject to the major assets prohibition.

The exemptions continue to apply as long as the organizations meet the applicable conditions. Any event, such as an expansion or merger, that causes the level of deposits controlled to exceed 20 percent of deposits in any RMSA or community is considered a change in circumstances. Accordingly, the depository organizations have 15 months (or such shorter period as directed by the appropriate Agency) to address the prohibited interlock. Conforming changes relating to termination have been made to the Agencies' change of circumstances provisions.

No prior Agency approval is required in order to claim the proposed small market share exemption. Management is responsible for complying with the terms of a small market share exemption and for maintaining sufficient supporting documentation. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption and must reconfirm that determination on an annual basis.

IV. Effective Date of Final Rule

Subject to certain exceptions, 12 U.S.C. 4802(b) provides that new regulations and amendments to regulations prescribed by a federal banking agency which impose additional reporting, disclosures, or other new requirements on an insured depository institution shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. In addition, the Administrative Procedure Act generally provides that rules will become effective 30 days after publication. 5 U.S.C. 553. Accordingly, compliance with the final rule is not mandatory until the effective

[6] The Agencies' small market share exemption proposal in 1994 also did not include credit union deposit data in the determination of the market.

[7] The National Credit Union Administration in its proposed rulemaking to revise its management interlocks regulation, however, considers credit union deposits when determining the total amount of deposits in a given market. *See* 63 FR 57947 (October 29, 1998).

date provided earlier in this document. Section 4802(b), however, also permits any person subject to the regulation to comply with the regulation voluntarily, prior to the effective date. Consequently, affected insured depository institutions may elect to comply voluntarily with the final rule immediately. If an insured depository institution or foreign bank elects to comply voluntarily with any section of the management interlocks rules, the institution or bank must comply with the entire part.

V. Paperwork Reduction Act

The Agencies may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control numbers are listed below.

OCC: 1557–0196
Board: 7100–0134
FDIC: 3604–0118
OTS: 1550–0051

The Agencies sought comment on the burden estimates for the information collections listed below and received no comments that specifically addressed the burden stemming from these information collections.

OCC: The collection of information requirements contained in this final rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Persons interested in commenting on these requirements should send comments to the Office of Management and Budget, Paperwork Reduction Project (1557–0196), Washington, D.C. 20503, with copies to the Communications Division, Third Floor, Attention: 1557–0196, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this final rule are found in 12 CFR 26.4(h)(1)(i), 26.6(b), and 26.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act by national banks and District banks.

Estimated average annual burden hours per respondent: 4 hours.

Estimated number of respondents: 7.

Estimated total annual reporting burden: 29 hours.

Start-up costs to correspondents: None.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in the final rule are found in 12 CFR 212.4(h)(1)(i), 212.5(a)(2), 212.6(b), and 212.6(c). This information is required to evidence compliance with the Interlocks Act. The respondents are state member banks and subsidiary depository institutions of bank holding companies (for-profit financial institutions, including small businesses).

Estimated number of respondents: 6 applicants per year.

Estimated average annual burden per respondent: 4 hours.

Estimated annual frequency of reporting: One-time application.

Estimated total annual reporting burden: 24 hours.

Start-up costs to respondents: None.

The Board has a continued interest in the public's opinions of Federal Reserve collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0134), Washington, DC 20503.

FDIC: The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget under control number 3604–0118 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604–0118), Washington, D.C. 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: The collection of information requirements in this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB control number 1550–0051.

Persons interested in commenting on these requirements should send comments to the Office of Management and Budget, Paperwork Reduction Project (1550–0051), Washington, DC 20503, with copies to the Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G St., NW., Washington, DC 20552.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at 12 CFR 506.1.

The collection of information requirements are found in 12 CFR 563f.4(h)(1)(i), 563f.6(b) and 563f.6(c). OTS requires this information to evidence compliance with the Management Interlocks Act by savings associations. The likely respondents are savings associations and their holding companies.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a statement explaining the factual basis for such certification in the **Federal Register** along with its final rule.

Pursuant to section 605(b) of the RFA, the Agencies hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The Agencies expect that this rule will not create any additional burden on small entities. The rule relaxes the criteria for obtaining an exemption from the interlocks prohibitions, and specifically addresses the needs of small entities by creating the small market share exemption. Accordingly, a regulatory flexibility analysis is not required.

VII. Small Business Regulatory Enforcement Fairness Act

Title II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)[8] provides generally for agencies to report rules to Congress and the General Accounting Office for review. The reporting requirement is triggered when a Federal agency issues a final rule. The Agencies will file the appropriate reports with Congress and the GAO as required by SBREFA. The Office of Management and Budget has determined that the rules promulgated by the Agencies do not constitute ''major rules'' as defined by SBREFA.

[8] Pub. L. 104–121, 110 Stat. 857.

VIII. Executive Order 12866

The OCC and OTS have determined that this Proposal is not a significant regulatory action under Executive Order 12866.

IX. Unfunded Mandates Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule likely to result in a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating the rule.

The OCC and OTS have determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

X. Assessment of Impact of Federal Regulation on Families

The Agencies have determined that this amendment will not affect family well-being within the meaning of section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects

12 CFR Part 26

Antitrust, Banks, banking, Holding companies, Management official interlocks, National banks, Reporting and recordkeeping requirements.

12 CFR Part 212

Antitrust, Banks, banking, Holding companies, Management official interlocks, Reporting and recordkeeping requirements.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 563f

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as follows:

PART 26—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 93a and 3201–3208.

§ 26.2 [Amended]

2. Section 26.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

3. Section 26.3 is amended by revising paragraph (c) to read as follows:

§ 26.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The OCC will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The OCC will announce the revised thresholds by publishing a final rule without notice and comment in the **Federal Register**.

4. Section 26.5 is revised to read as follows:

§ 26.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 26.3 is permissible, if:

(1) The interlock is not prohibited by § 26.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 26.6 is revised to read as follows:

§ 26.6 General exemption.

(a) *Exemption.* The OCC may by order issued following receipt of an application, exempt an interlock from the prohibitions in § 26.3 if the OCC finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

(b) *Presumptions.* In reviewing an application for an exemption under this section, the OCC will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low-and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ''troubled condition'' as defined in 12 CFR 5.51(c)(6).

(c) *Duration.* Unless a specific expiration period is provided in the OCC approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the OCC grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the OCC in writing.

6. Section 26.7 is amended by revising paragraph (a) to read as follows:

§ 26.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or any reorganization of the ownership structure of a depository organization

that causes a previously permissible interlock to become prohibited.

* * * * *

Dated: July 12, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, the Board amends chapter II of title 12 of the Code of Federal Regulations as follows:

PART 212—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 212 continues to read as follows:

Authority: 12 U.S.C. and 3201–3208; 15 U.S.C. 19.

§ 212.2 [Amended]

2. Section 212.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (r) as paragraphs (b) through (p), respectively.

3. Section 212.3 is amended by revising paragraphs (b) and (c) to read as follows:

§ 212.3 Prohibitions.

* * * * *

(b) *RMSA.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and, in the case of depository institutions, each depository organization has total assets of $20 million or more.

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The Board will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The Board will announce the revised thresholds by publishing a final rule without notice and comment in the **Federal Register**.

4. Section 212.5 is revised to read as follows:

§ 212.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 212.3 is permissible, if:

(1) The interlock is not prohibited by § 212.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 212.6 is revised to read as follows:

§ 212.6 General exemption.

(a) *Exemption.* The Board may, by agency order, exempt an interlock from the prohibitions in § 212.3, if the Board finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns.

(b) *Presumptions.* In reviewing an application for an exemption under this section, the Board will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ''troubled condition'' as defined in 12 CFR 225.71.

(c) *Duration.* Unless a shorter expiration period is provided in the Board approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the Board grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the Board in writing.

6. Section 212.7 is amended by revising paragraph (a) to read as follows:

§ 212.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated at Washington, DC, this 13th day of September, 1999.

Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 348 continues to read as follows:

Authority: 12 U.S.C. 1823(k), 3207.

§ 348.2 [Amended]

2. Section 348.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (r) as paragraphs (b) through (p), respectively.

3. Section 348.3 is amended by revising paragraph (c) to read as follows:

§ 348.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The FDIC will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban

Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The FDIC will announce the revised thresholds by publishing a final rule without notice and comment in the **Federal Register**.

4. Section 348.5 is revised to read as follows:

§ 348.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 348.3 is permissible, if:

(1) The interlock is not prohibited by § 348.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 348.6 is revised to read as follows:

§ 348.6 General exemption.

(a) *Exemption.* The FDIC may by agency order exempt an interlock from the prohibitions in § 348.3 if the FDIC finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

(b) *Presumptions.* In reviewing an application for an exemption under this section, the FDIC will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low-and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ''troubled condition'' as defined in § 303.101(c).

(c) *Duration.* Unless a shorter expiration period is provided in the FDIC approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the FDIC grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the FDIC in writing.

(d) *Procedures.* Procedures for applying for an exemption under this section are set forth in 12 CFR 303.250.

6. Section 348.7 is amended by revising paragraph (a) to read as follows:

§ 348.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 31st day of August, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, the OTS amends chapter V of title 12 of the Code of Federal Regulations as follows:

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

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

Authority: 12 U.S.C. 3201–3208.

§ 563f.2 [Amended]

2. Section 563f.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

3. Section 563f.3 is amended by revising paragraph (c) to read as follows:

§ 563f.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The OTS will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The OTS will announce the revised thresholds by publishing a final rule without notice and comment in the **Federal Register**.

4. Section 563f.5 is revised to read as follows:

§ 563f.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 563f.3 is permissible, if:

(1) The interlock is not prohibited by § 563f.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 563f.6 is revised to read as follows:

§ 563f.6 General exemption.

(a) *Exemption.* The OTS may by agency order exempt an interlock from the prohibitions in § 563f.3 if the OTS finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns. A depository organization may apply to the OTS for an exemption as provided by § 516.2 of this chapter.

(b) *Presumptions.* In reviewing an application for an exemption under this section, the OTS will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that or has been chartered for less than two years; or

(4) Is deemed to be in ''troubled condition'' as defined in § 563.555 of this chapter.

(c) *Duration.* Unless a shorter expiration period is provided in the OTS approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the OTS grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the OTS in writing.

6. Section 563f.7 is amended by revising paragraph (a) to read as follows:

§ 563f.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

Dated: June 30, 1999.

Ellen Seidman,

Director.

[FR Doc. 99–24881 Filed 9–23–99; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–02–AD; Amendment 39–11333; AD 99–20–03]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) PW2000 series turbofan engines, that requires initial and repetitive inspections of certain High Pressure Turbine (HPT) stage 1 and stage 2 disks utilizing an improved ultrasonic inspection method performed at an approved facility when the disk is exposed during a shop visit, and if a crack indicating a subsurface anomaly is found, removal from service and replacement with a serviceable part. This amendment is prompted by the results of a stage 1 HPT disk fracture investigation, which has identified a population of HPT stage 1 and 2 disks that may have subsurface anomalies formed during a forging process. The actions specified by this AD are intended to prevent HPT disk fracture, which could result in an uncontained engine failure, and damage to the aircraft.

DATES: Effective November 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 23, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) PW2037, PW2040, PW2037M, PW2240, and PW2337 series turbofan engines was published in the **Federal Register** on March 23, 1999 (64 FR 13932). That action proposed to require initial and repetitive inspections of certain stage 1 and stage 2 high pressure turbine (HPT) disks using an improved ultrasonic method whenever the disk is exposed during a shop visit. The inspection must be performed at an approved facility listed in PW Service Bulletin (SB) PW2000 72–628, dated January 4, 1999. If a crack indicating a subsurface anomaly is found, the disk must be removed from service and replaced with a serviceable part.

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

Two commenters note that the proposed rule is more restrictive than the PW SB, which addresses the same issue. The PW SB is a Category 6 SB (perform upon piece-part exposure). The proposed rule requires inspection upon disk separation from the module. One of the commenters estimates that 25% of the HPT modules entering its shop that get separated do not have the disks debladed. That commenter does not perform a ''heavy'' maintenance on HPTs upon each exposure. Approximately 25% of its HPT shop visits are for repair only. Due to the additional labor cost to perform the increased requirements of the proposed rule and the potential for increased scrap, that commenter suggests that the rule be modified to the requirements of the PW SB.

The FAA does not concur. The change from the PW SB compliance requirements to the requirements of the proposed rule were intentional, and were predicated by the fact that the risk factor for this problem was relatively high at 0.485 disk fractures predicted over the remaining life of the program. The affected engines generally contain two suspect disks each. The FAA therefore determined to increase the compliance requirements over the PW SB. Furthermore, the FAA has determined that only four additional engines would likely require inspection upon disk separation from the module as opposed to the SB's compliance time of piece-part exposure. The impact of this change is predicted to be a small burden economically on operators, and increases operational safety.

One commenter expresses concern that only one inspection source is available for the requirements of the proposed rule, and that this one source would limit shop timing and capacity. The commenter recommends that the issuance of the AD be no sooner than 90 days after the end of the comment period or July 20, 1999. The FAA does not concur. Discussions with PW indicate that shop capacity and timing will not be a factor with the vendors and the timing in the proposed rule. The manufacturer believes that adequate shop capacity to handle the inspection requirements exists now. A second inspection source is being developed at this time, however, which should ease shop capacity concerns.

One commenter states that the impact to their operation will be minor. They have 20 disks affected by the proposed rule, and most are approaching their life limits and will be scrapped at the next shop visit. The commenter has no objections to the rule as proposed.

One commenter concurs with the rule as proposed.

The AD was edited to clarify the shipping requirements discussed in the financial assessment in the compliance section. Due to the complexity of the ultrasonic inspection, the compliance plan requires that the disks be inspected at an approved facility to ensure that the inspections meet the intent. As the inspection requires using a complex process and unique equipment, the AD requires that only approved facilities perform the inspection. This is not a change from the original proposed rule, but paragraph (a) of the compliance section has been edited to make this requirement more clear.

In addition, to simplify the AD, the definition of HPT disk piece part accessibility of paragraph (c) was deleted and incorporated into paragraph (a).

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 332 affected disks installed in engines in the worldwide fleet. The FAA estimates that 166 engines installed on aircraft of US registry would be affected by this proposed AD, that the shipping cost per disk to the facility which will inspect the disk and its return will be approximately $210 per disk, that no engines will require an unplanned HPT module disassembly/assembly, that the inspection will take approximately 12 work hours per disk to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Some disks will require multiple inspections during their service life. Based on these figures, the total cost impact of the AD on US operators is estimated to be $450,000. The manufacturer has advised the FAA that the all costs relative to the inspection will be reimbursed to the operator.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–20–03 Pratt & Whitney: Amendment 39–11333. Docket 99–NE–02–AD.

Applicability: Pratt & Whitney PW2037, PW2040, PW2037M, PW2240, and PW2337 series turbofan engines, installed on but not limited to Boeing 757 and Ilyushin IL–96T series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure turbine (HPT) disk fracture, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For engines with a HPT stage 1 or stage 2 disk installed that has a serial number listed in the Accomplishment Instructions section of PW Service Bulletin (SB) PW2000 72–628, dated January 4, 1999, perform initial and repetitive ultrasonic inspections in accordance with PW SB PW2000 72–628, dated January 4, 1999 at each separation of the HPT disk from the HPT module after the effective date of this AD. The disk must be sent to an approved facility listed in the Vendor Services or Special Components/Materials section of PW SB PW2000 72–628, dated January 4, 1999, for ultrasonic inspection.

(b) Remove from service those HPT disks found with a crack indicating a subsurface anomaly and replace with a serviceable part.

(c) For engines that do not have a HPT stage 1 or stage 2 disk installed that has a serial number listed in the Accomplishment Instructions section of PW SB PW2000 72–628, dated January 4, 1999, no inspections are required.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(f) The actions required by this AD shall be done in accordance with the following PW SB:

Document No.	Pages	Date
PW2000 72–628 ..	1–13	January 4, 1999.

Total Pages: 13.

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 Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800

North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on November 23, 1999.

Issued in Burlington, Massachusetts, on September 16, 1999.

Donald E. Plouffe,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–24699 Filed 9–23–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–06–AD; Amendment 39–11334; AD 99–20–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JT9D–7R4 series turbofan engines, that requires an initial and repetitive inspections of certain High Pressure Turbine (HPT) stage 1 and stage 2 disks utilizing an improved ultrasonic inspection method performed at an approved facility when the disks are exposed during a shop visit, and if a crack indicating a subsurface anomaly is found, removal from service and replacement with a serviceable part. This amendment is prompted by the results of a stage 1 HPT disk fracture investigation which has identified a population of HPT stage 1 and 2 disks that may have subsurface anomalies formed during the forging process. The actions specified by this AD are intended to prevent an HPC disk fracture, which could result in an uncontained engine failure, damage to the airplane, and an in-flight engine shutdown.

DATES: Effective date October 29, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 29, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines was published in the **Federal Register** on June 4, 1999 (64 FR 29965). That action proposed to require initial and repetitive inspections of certain stage 1 and stage 2 high pressure turbine (HPT) disks using an improved ultrasonic method whenever the disk is exposed during a shop visit. The inspection must be performed at an approved facility listed in PW Service Bulletin (SB) JT9D–7R4–72–553, Revision 1, dated February 17, 1999. If a crack indicating a subsurface anomaly is found, the disk must be removed from service and replaced with a serviceable part.

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

Request To Shorten the Inspection Intervals

One commenter requests that the initial and repetitive inspection intervals be shortened to six to nine months. The commenter maintains that the proposed interval for inspections (exposure during a shop visit) could permit flawed disks to remain on an airplane for a year or more before detection. The FAA does not agree. The compliance interval selected yields an extremely low risk level. The corrected risk is extremely low and a small fraction of the risk allowed by FAA guidelines. Shortening the compliance interval to the recommended level will place an unnecessary burden on the airline industry with little impact on fleet safety. The FAA feels that the current compliance plan is sufficient to maintain flight safety.

The AD was edited to clarify the shipping requirements discussed in the financial assessment in the compliance section. Due to the complexity of the ultrasonic inspection, the compliance plan requires that the disks be inspected at an approved facility to ensure that the inspections meet the intent. As the inspection requires using a complex process and unique equipment, the AD requires that only approved facilities perform the inspection. This is not a change from the original proposed rule, but paragraph (a) of the compliance section has been edited to make this requirement more clear.

In addition, to simplify the AD, the definition of HPT disk piece part accessibility of paragraph (c) was deleted and incorporated into paragraph (a).

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 131 Pratt & Whitney JT9D–7R4 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 25 engines installed on airplanes of U.S. registry will be affected by this AD. The FAA estimates that the shipping cost per disk to the facility which will inspect the disk and its return will be approximately $250 per disk, that no engines will require an unplanned HPT module disassembly/assembly, that the inspection would take approximately 8 work hours per disk to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Some disks will require multiple inspections during their service life. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $88,000. The manufacturer has advised the FAA that the all costs relative to the inspection may be reimbursed to the operator.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–20–04: Amendment 39–11334; Docket 99–NE–06–AD.

Applicability: Pratt & Whitney JT9D–7R4 series turbofan engines, installed on but not limited to Boeing 747, Airbus A300 and Airbus A310 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously. To prevent a high pressure compressor (HPC) disk fracture, which could result in an uncontained engine failure, damage to the airplane, and an in-flight engine shutdown, accomplish the following:

(a) For engines with a HPT stage 1 or stage 2 disk installed that has a serial number listed in the Accomplishment Instructions section of PW Service Bulletin (SB) JT9D–7R4–72–553, Revision 1, dated February 17, 1999, perform initial and repetitive ultrasonic inspections in accordance with PW SB JT9D–7R4–72–552, Revision 1, dated February 17, 1999 at each separation of the HPT disk from the HPT module after the effective date of this AD. The disk must be sent to an approved facility listed in the Vendor Services or Special Components/ Materials section of PW SB JT9D–7R4–72–553, dated February 17, 1999, for ultrasonic inspection.

(b) Remove from service those HPT disks found with a crack indicating a subsurface anomaly and replace with a serviceable part.

(c) For engines that do not have a HPT stage 1 or Stage 2 disk installed that has a serial number listed in the Accomplishment Instructions section of PW SB JT9D–7R4–72–553, Revision 1, dated February 17, 1999, no inspections are required.

Alternate Method of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Special Flight Permits

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

Incorporation by Reference

(f) The inspection shall be done in accordance with of PW SB JT9D–7R4–72–553, Revision 1, dated February 17, 1999. 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 Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on October 29, 1999.

Issued in Burlington, Massachusetts, on September 16, 1999.

Donald E. Plouffe,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–24786 Filed 9–23–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–270–AD; Amendment 39–11335; AD 99–20–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires modification of the 90VU electronics rack umbrellas, the 91VU upper shelf assembly, the cockpit drain circuit, and the electrical wire routing above the 90VU electronics rack. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent damage to computer electrical connectors due to ingress of water into the avionics bay, which could result in malfunctioning of the avionics computers.

DATES: Effective October 29, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 29, 1999.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on June 2, 1999 (64 FR 29607).

That action proposed to require modification of the 90VU electronics rack umbrellas, the 91VU upper shelf assembly, the cockpit drain circuit, and the electrical wire routing above the 90VU electronics rack.

Comments

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

One commenter supports the proposal. Another commenter states that it has no objection to the requirements of the proposed rule or the compliance period.

Later Revision of Service Bulletin

One commenter, an operator, states that it plans to accomplish removal of shelves to improve access to the area in accordance with Airbus Service Bulletin A320–25–1186, Revision 02, dated April 27, 1999. Revision 01 of this service bulletin, dated September 23, 1998, was cited in the proposed AD as the appropriate source of service information. The FAA has reviewed Revision 02 of the service bulletin and has determined that it is essentially the same as the previous revision except in allowing for removal of certain shelves to allow easier access to the area. The FAA has revised paragraph (a) of the AD to require accomplishment of the modification in accordance with Revision 02 of the service bulletin, and has revised NOTE 2 to give credit to operators who may have previously accomplished the modification in accordance with Revision 01.

Request To Revise Compliance Time

One commenter, an operator, requests that the compliance time for modification of the moisture shroud (umbrella) in accordance with Airbus Service Bulletin A320–25–1186, which is ''two years after the effective date of this AD,'' be revised to have the same compliance deadline as that specified in FAA AD 99–02–03, amendment 39–10992 (64 FR 2552, January 15, 1999). Accomplishment of A320–24–1054 is required by AD 99–02–03 within three years after the effective date of that AD, resulting in a compliance date of February 19, 2002. The commenter notes that it is necessary to install the moisture shroud as described in Airbus Service Bulletin A320–24–1054, on airplanes delivered without the shroud, prior to accomplishing the modification of the shroud described in A320–25–1186.

The FAA concurs. The FAA has determined that the compliance time in this AD for modification of the moisture shroud as described in Airbus Service Bulletin A320–25–1186, Revision 02, dated April 27, 1999, should be revised to allow for prior or concurrent accomplishment of the actions specified in Airbus Service Bulletin A320–24–1054, Revision 02, dated September 22, 1993. The FAA has extended the compliance time for modification of the shroud as required by this AD by 6 months, which will provide operators with adequate time to schedule and accomplish the requirements of AD 99–02–03 prior to or concurrent with the requirements of this AD. The FAA has determined that such an extension will have no adverse effect on safety. Paragraph (a) of this AD has been revised to specify the extended compliance time of 30 months.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 140 airplanes of U.S. registry will be affected by this AD, that it will take approximately 19 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $159,600, or $1,140 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–20–05 Airbus Industrie: Amendment 39–11335. Docket 98–NM–270–AD.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category, on which Airbus Modification 25995 has not been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to computer electrical connectors due to ingress of water into the avionics bay, which could result in malfunctioning of the avionics computers, accomplish the following:

Modification

(a) Within 30 months after the effective date of this AD, modify the 90VU electronics rack umbrellas, the 91VU upper shelf assembly, the cockpit drain circuit, and the electrical wire routing above the 90VU electronics rack; in accordance with Airbus Service Bulletin A320–25–1186, Revision 02, dated April 27, 1999.

Note 2: Accomplishment of the modification required by paragraph (a) of this AD in accordance with Airbus Service Bulletin A320–25–1186, dated December 1, 1997, or Revision 01, dated September 23, 1998, prior to the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin

A320–25–1186, Revision 02, dated April 27, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–178–115(B), dated May 6, 1998.

(e) This amendment becomes effective on October 29, 1999.

Issued in Renton, Washington, on September 17, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–24847 Filed 9–23–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–48–AD; Amendment 39–11336; AD 99–20–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, that requires replacement of the disc valve and spring in the low pressure non-return valve of the airborne ground check module (AGCM) of the ram air turbine (RAT). This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent malfunction of the low pressure non-return valve in the AGCM. If the RAT is being used due to the loss of other systems, a malfunction of the valve could result in loss of the blue hydraulic system, and consequent loss of certain flight control and electrical systems of the airplane.

DATES: Effective October 29, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 29, 1999.

ADDRESSES: The Airbus Industrie service bulletin referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. The Sundstrand service bulletin referenced in this AD may be obtained from Sundstrand Aerospace, 4747 Harrison Avenue, P.O. Box 7002, Rockford, Illinois 61125–7002. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes was published in the **Federal Register** on June 28, 1999 (64 FR 34588). That action proposed to require replacement of the disc valve and spring in the low pressure non-return valve of the airborne ground check module (AGCM) of the ram air turbine (RAT).

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

Support for the Proposal

Three commenters support the proposed rule.

Request To Revise Cost Impact Information

One commenter states that the FAA has underestimated the cost impact of the proposed AD. The commenter indicates that the proposed service bulletins will require a total of 4.25 work hours per airplane to accomplish, and requests that the cost estimate of the proposed rule be revised to reflect that work-hour total.

The FAA does not concur with the request to revise the cost impact information of this final rule, which describes only the ''direct'' costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions (1 work hour) was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

Request for Revision of Applicability

One commenter does not agree that the proposed AD should be applicable to its fleet since its airplanes were equipped with Airbus Modification 27189 at production, which allows installation of a new Sundstrand RAT, and deletes the requirement for an airborne ground check module (AGCM).

The commenter adds that Airbus Service Bulletin A320–29–1086 (which was cited as the appropriate source of service information for accomplishment of the actions in the proposed AD) erroneously lists its airplanes as being affected.

The FAA concurs with the request to revise the applicability of the final rule. The discrepancy involving those misidentified airplanes has been clarified with Airbus Industrie as a typographical error and will be corrected in the next revision to the service bulletin. The FAA notes that the applicability of the proposed rule does not specifically reference airplanes listed in the effectivity of the service bulletin. However, the applicability of the final rule has been revised to exclude those airplanes on which Airbus Modification 27189 was installed in production.

Request To Allow Later Revisions of Service Bulletins

This same commenter requests that later revision levels of Airbus Service Bulletin A320–29–1086 be reflected in the applicability of the proposed AD. As support, the commenter indicates that, if its airplanes are removed from the effectivity in subsequent revisions of the service bulletin, those airplanes would not be included in the applicability of the proposed AD.

Although the FAA agrees that the service bulletin revision proposed by Airbus would in effect remove those certain airplanes from the applicability of the final rule, the FAA does not concur with the request to revise the AD to reflect later service bulletin revisions. Where a specific service bulletin is referenced in an AD, the use of the phrase, ''or later FAA-appproved revisions,'' violates Office of the Federal Register regulations regarding approval of materials that are incorporated by reference. However, as stated previously, the FAA has revised the applicability of the final rule to exclude airplanes on which Airbus Modification 27189 has been accomplished; therefore, further revision of the applicability will not be necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 165 Model A320 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,900, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–20–06 Airbus Industrie: Amendment 39–11336. Docket 99–NM–48–AD.

Applicability: Model A320 series airplanes, certificated in any category; except those airplanes on which Airbus Industrie Modification 27728 or 27189 has been installed in production, or on which Airbus Industrie Service Bulletin A320–29–1086 has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the low pressure non-return valve in the airborne ground check module (AGCM) of the ram air turbine (RAT), which could result in loss of the blue hydraulic system, and consequent loss of certain flight control and electrical systems, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace the disc valve and spring in the low pressure non-return valve in the AGCM with a new poppet, and re-identify the AGCM name plate, in accordance with Airbus Industrie Service Bulletin A320–29–1086, dated October 19, 1998, or Revision 01, dated March 9, 1999; and Sundstrand Service Bulletin ERPS13GCM–29–3, dated June 24, 1998.

Alternative Methods of Compliance

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

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

obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Industrie Service Bulletin A320–29–1086, dated October 19, 1998, or Airbus Industrie Service Bulletin A320–29–1086, Revision 01, dated March 9, 1999; and Sundstrand Service Bulletin ERPS13GCM–29–3, dated June 24, 1998. 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 of the Airbus Industrie service bulletin may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies of the Sundstrand service bulletin may be obtained from Sundstrand Aerospace, 4747 Harrison Avenue, P.O. Box 7002, Rockford, Illinois 61125–7002. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 98–537–124(B), dated December 30, 1998.

(e) This amendment becomes effective on October 29, 1999.

Issued in Renton, Washington, on September 17, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–24846 Filed 9–23–99; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA201–169a; FRL–6436–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District; Kern County Air Pollution Control District; and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern, Santa Barbara County Air Pollution Control District (SBCAPCD), Rule 342; Kern County Air Pollution Control District (KCAPCD), Rule 425.2; and Ventura County Air Pollution District (VCAPCD), Rule 74.11. The rules control emissions of oxides of nitrogen (NO_X) from boilers, steam generators, process heaters and natural gas-fired residential water heaters.

This approval action will incorporate the rules into the Federally approved SIP. The intended effect of approving of the rules is to regulate NO_X emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

DATES: The rule is effective on November 23, 1999 without further notice, unless EPA receives adverse comments by October 25, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

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

Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

Santa Barbara County Air Pollution Control District 26 Castilian Drive, Suite B–23, Goleta, CA 93117–3027

Kern County Air Pollution Control District 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301–2370

Ventura County Air Pollution Control District 669 County Square Drive, 2nd Floor, Ventura, CA 93003–5417

FOR FURTHER INFORMATION CONTACT: Sam Agpawa, Air Planning Office, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1228.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP are: (1) SBCAPCD Rule 342; (2) KCAPCD Rule 425.2 and (3) VCAPCD Rule 74.11. Rule 342 and 425.2 apply to boilers, steam generators, process heaters, and, Rule 74.11 applies to natural gas-fired residential water heaters. The rules were submitted by the State of California to EPA on: (1) SBCAPCD Rule 342—March 10, 1998; (2) KCAPCD Rule 425.2—September 8, 1997; and (3) VCAPCD Rule 74.11—October 16, 1985.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA.

On November 25, 1992, EPA published a proposed rule entitled, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. SBCAPCD and KCAPCD are designated and classified as non-attainment-serious for ozone; VCAPCD is designated and classified as nonatttainment-severe; [1] therefore, the jurisdictional areas of SBCAPCD; KCAPCD and VCAPCD are subject to the RACT requirements of section 182(b)(2) cited below and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control

[1] Santa Barbara, Kern and Ventura Counties retained their designation(s) of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There are no major stationary sources covered by VCAPCD's rule and RACT requirements do not apply; however, this rule is expected to achieve substantial reductions of NO_X because it applies to a large number of small sources.

This document addresses EPA's direct final action for SBCAPCD Rule 342; KCAPCD Rule 425.2; and VCAPCD Rule 74.11 applying to boilers, steam generators and process heaters and natural gas-fired residential water heaters. The rules were adopted on: (1) SBCAPCD Rule 342—April 17, 1997; (2) KCAPCD Rule 425.2—July 10, 1997 and (3) VCAPCD Rule 74.11—April 9, 1985.

The State of California submitted the rules to EPA for incorporation into its SIP on: (1) SBCAPCD Rule 342—March 10, 1998; (2) KCAPCD Rule 425.2—September 8, 1997; and (3) VCAPCD Rule 74.11—October 16, 1985. SBCAPCD Rule 342 was found complete on May 21, 1998; KCAPCD Rule 425.2 was found complete on October 20, 1997 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[2] and are being finalized for approval into the SIP. VCAPCD Rule 74.11 was submitted prior to the implementation of the completeness criteria and its requirements. Therefore, the criteria as set forth in 40 CFR part 51 does not apply to VCAPCD Rule 74.11. This rule is also being finalized for approval into the SIP.

NO_X emissions contribute to the production of ground level ozone and smog. All the rules specify exhaust emission standards for NO_X from various combustion devices. The rules were originally adopted as part of each applicable district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The submitted SBCAPCD Rule 342 corrects a minor discrepancy in the version of the rule approved into the SIP by EPA on December 13, 1994. The submitted KCAPCD Rule 425.2 deleted superfluous language (e.g., ''the'') from various sections of the version of the rule approved into the SIP by EPA on July 24, 1995. Both of these rules establish emission limits and monitoring, reporting and record keeping requirements for boilers, steam generators and process heaters. VCAPCD Rule 74.11 prohibits the sale and installation of residential water heaters within Ventura County that exceed the Rules's specified emission rates. There is currently no version in the SIP of VCAPCD Rule 74.11. Similar rules, however, from South Coast and other areas have been approved into the SIP and are being successfully implemented locally.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, SBCAPCD Rule 342 and KCAPCD Rule 425.2, Control of Oxides of Nitrogen (NO_X) From Boilers, Steam Generators and Process Heater; and VCAPCD Rule 74.11, Natural Gas-fired Residential Water Heaters; are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 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 rules do not create a mandate on State, local or tribal governments. The rules do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to these rules.

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

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

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 Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. These rules are not subject to Executive Order 13045 because they do 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 rules do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these rules.

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. These final rules will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These rules are not ''major'' rules 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 November 23, 1999. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these rules 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 rules or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 1, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(164)(i)(C)(*4*), (c)(249)(i)(B), and (c)(254)(i)(C)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(164) * * *

(i) * * *

(C) * * *

(*4*) Rule 74.11 adopted on April 9, 1985.

* * * * *

(249) * * *

(i) * * *

(B) Kern County Air Pollution Control District.

(*1*) Rule 425.2 adopted on October 13, 1994 and amended on July 10, 1997.

* * * * *

(254) * * *

(i) * * *

(C) * * *

(*4*) Rule 342 amended on April 17, 1997.

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[FR Doc. 99–24449 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–35–1–7428; FRL–6441–3]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The EPA is updating the materials submitted by New Mexico that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the Regional Office.

EFFECTIVE DATE: This action is effective September 24, 1999.

ADDRESSES: The SIP materials, which are incorporated by reference into 40 CFR part 52, are available for inspection at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733;

Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins at the above Region 6 address or at (214)–665–7354.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On July 13, 1998, EPA published a document in the **Federal Register** (63 FR 37493) beginning the new IBR procedure for New Mexico. In this document EPA is doing the first update to the material being IBRed. On September 9, 1998, (63 FR 48106), EPA published a final rule conditionally approving a revision to the New Mexico SIP that contained regulations for implementing and enforcing the general conformity rules which the EPA promulgated on November 30, 1993 (58 FR 63214). On June 1, 1999 (64 FR 29235), EPA published a direct final approval document approving revisions to the New Mexico SIP of Board composition and conflict of interest disclosure requirements for the State of New Mexico and for Albuquerque/Bernalillo County, NM. The rule became effective August 2, 1999. In both documents EPA also updated the Identification of plan section for the Code of Federal Regulations.

In this document EPA is updating the SIP compilation that is incorporated by reference. Table (d) is being added to identify permitted sources in the SIP and table (e) is being revised to include more identification of plan information that was not included in the original July 13, 1998, **Federal Register** document.

The 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 codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 12875

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

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This action is not subject to E.O. 13045 because it approves a state rule implementing a previously promulgated health or safety-based Federal standard, and preserves the existing level of pollution control for the affected areas.

D. Executive Order 13084

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

E. Regulatory Flexibility Act

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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**. A major rule cannot take effect until 60 days after it is published 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

The EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the New Mexico SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review.

List of Subjects in 40 CFR Part 52

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

Dated: September 2, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

2. Section 52.1620 is amended by:

A. Revising paragraph (b);

B. Adding paragraph (d); and

C. Adding a new table at the end of paragraph (e).

The revisions and additions read as follows:

§ 52.1620 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 1999, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1

CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 1999, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of July 1, 1999.

(3) Copies of the materials incorporated by reference may be inspected at the Region 6 EPA Office at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2733; the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460; or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

* * * * *

(d) EPA-approved State Source-specific requirements.

EPA-APPROVED NEW MEXICO SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State approval/effective date	EPA approval date	Explanation
None	.....	.....	.....	.....

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Explanation
State Attorney Generals Opinion.	Statewide	09/04/72	04/09/79, 44 FR 21020	Ref 52.1640(c)(4).
Revisions to New Source Review and Source Surveillance.	Statewide	01/03/73	04/09/79, 44 FR 21020	Ref 52.1640(c)(5).
Clarification of State permit and Source Surveillance.	Statewide	01/18/73	04/09/79, 44 FR 21020	Ref 52.1640(c)(6).
Revision for Attainment of Standards.	PM in Albuquerque, Grant, Eddy and Lea counties; Ozone in Albuquerque; SO2 in San Juan and Grant counties; and CO in Las Cruces, Farmington, and Santa Fe counties.	01/23/79	04/10/80, 45 FR 24468 and 03/26/81, 46 FR 18694.	Ref 52.1640(c)(11).
Ordinance for Motor Vehicle Emission I/M program.	Albuquerque	07/02/79	04/10/80, 45 FR 24468	Ref 52.1640(c)(12).
TSP Plan, RFP, and Transportation Commitments.	Albuquerque	08/02/79	04/10/80, 45 FR 24468	Ref 52.1640(c)(13).
Schedule for Albuquerque TSP plan, revising permit regulations, and extension request.	Albuquerque and Grant county.	09/25/79	04/10/80, 45 FR 24468	Ref 52.1640(c)(14).
CO Strategies	Farmington and Santa Fe counties.	01/23/79	04/10/80, 45 FR 24468	Ref 52.1640(c)(15).
Compliance schedules for several industries.	Eddy, Lea, and Grant counties.	07/25/79	12/24/80, 45 FR 85006	Ref 52.1640(c)(16).
Revision for attainment of CO standard.	Bernalillo county	03/17/80	03/26/81, 46 FR 18694	Ref 52.1640(c)(17).
Commitment to not issue permits to stationary sources.	Nonattainment areas	05/20/80	03/26/81, 46 FR 18694	Ref 52.1640(c)(18).
Commitment to submit I/M enforcement plan.	Albuquerque, Bernalillo county.	10/10/80	03/26/81, 46 FR 18694	Ref 52.1640(c)(19).
Revision to ambient monitoring plan.	Statewide	12/12/79	08/06/81, 46 FR 40006	Ref 52.1640(c)(20).
Variance to regulation 506 for Phelps Dodge Corp.	Hidalgo Smelter in Playas, NM.	02/04/80	08/19/81, 46 FR 42065	Ref 52.1640(c)(21).
Revised SO2 control strategy.	San Juan county	02/12/81	08/27/81, 46 FR 43153	Ref 52.1640(c)(22).
Memorandum of understanding between the State and Arizona Public Service Company.	Statewide	04/16/81	08/27/81, 46 FR 43153	Ref 52.1640(c)(22).
Compliance schedule for units 4 and 5 of the Arizona Public Service.	Four Corners Power plant	03/31/80	03/30/82, 47 FR 13339	Ref 52.1640(c)(23).

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Explanation
Variance to regulation 603 for units 3, 4, and 5 of the Arizona Public Service.	Four Corners Power plant	07/31/80	03/30/82, 47 FR 13339	Ref 52.1640(c)(25).
New Mexico plan for Lead	Statewide	05/19/80	05/05/82, 47 FR 19334 and 08/14/84, 49 FR 32184.	Ref 52.1640(c)(27).
Revision to SO2 control strategy.	Grant county	05/12/81 and 08/13/81	05/05/82, 47 FR 19333	Ref 52.1640(c)(28).
Intergovernmental Consultation program.	N/A	03/28/80	03/08/84, 49 FR 08610	Ref 52.1640(c)(31).
Public Information and Participation program.	Statewide	12/20/79	08/24/83, 48 FR 38467	Ref 52.1640(c)(33).
Revision for attainment of CO standard.	Bernalillo county	06/28/82 and 01/26/83	07/01/83, 48 FR 30366	Ref 52.1640(c)(34).
Variance to regulation 603.B for units 3, 4, and 5 of the Arizona Public Service.	Four Corners Power Plant	02/04/87, 10/26/87, and 02/16/88.	10/27/89, 54 FR 43814	Ref 52.1640(c)(38).
Revision to SIP for moderate PM10 nonattainment areas.	Anthony area; Dona Ana county.	11/08/91	09/09/93, 58 FR 47383	Ref 52.1640(c)(50).
Narrative plan addressing CO nonattainment areas.	Albuquerque, Bernalillo county.	11/05/92	11/29/93, 58 FR 62535	Ref 52.1640(c)(52).
CO continency measures and proposed Clean Fuel Vehicle fleet demonstration.	Albuquerque, Bernalillo county.	11/12/93	05/05/94, 59 FR 23167	Ref 52.1640(c)(57).
Update to supplement to control air pollution.	Bernalillo county	11/09/94	06/24/96, 61 FR 32339	Ref 52.1640(c)(61).
Revision approving request for redesignation, a vehicle I/M program, and required maintenance plan.	Albuquerque, Bernalillo nonattainment area.	05/11/95	06/13/96, 61 FR 29970	Ref 52.1640(c)(63).

[FR Doc. 99–24688 Filed 9–23–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0034a; FRL–6441–6]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Longmont Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 19, 1998, the Governor of Colorado submitted a request to redesignate the Longmont ''moderate'' carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. In this action, EPA is approving the Longmont CO redesignation request and the maintenance plan.

DATES: This direct final rule is effective on November 23, 1999 without further notice, unless EPA receives adverse comments by October 25, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

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

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and,

United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

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

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

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' are used, we mean the Environmental Protection Agency.

I. What Is the Purpose of This Action?

In this action, we are approving a change in the legal designation of the Longmont area from nonattainment for CO to attainment, and we're approving the maintenance plan that is designed to keep the area in attainment for CO for the next 16 years.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(4)(A)(i)–(ii) of the Clean Air Act (CAA), we designated the Longmont area as nonattainment for CO because quality-assured ambient air quality data for 1988–1989 indicated that the Longmont area was violating the CO NAAQS. Longmont was classified as a ''moderate'' CO nonattainment area with a design value of less than or equal to 12.7 parts per million (ppm). See 56 FR 56694, November 6, 1991. Further information regarding this classification and the accompanying requirements are described in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.'' See 57 FR 13498, April 16, 1992, and sections 186 and 187 of the CAA.

Under the CAA, we can change area designations if acceptable data are available and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) The State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

II. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA also requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur before the State submits the revision to us.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the Carbon Monoxide (CO) Redesignation Request and Maintenance Plan for Longmont, on December 18, 1997. The AQCC adopted the redesignation request and maintenance plan directly after the hearing. The SIP revision became State effective March 2, 1998, and the Governor submitted the redesignation request and maintenance plan to us on August 19, 1998.

We have evaluated the Governor's submittal and have determined that the State met the procedural requirements of section 110(a)(2) of the CAA. The Governor's August 19, 1998, submittal became complete on February 19, 1999, by operation of law under section 110(k)(1)(B) of the CAA.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's redesignation request and maintenance plan and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements have been met.

(a) Redesignation Criterion: The Area Must Have Attained the Carbon Monoxide (CO) NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR § 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR § 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C, and designated in accordance with 40 CFR part 53, or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standard is not a momentary phenomenon based on short-term data. Instead, we consider an area to be in attainment if each of the CO ambient air quality monitors in the area doesn't have more than one exceedance of the CO standard over a one-year period. 40 CFR § 50.8 and 40 CFR part 50, Appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, our interpretation of the CAA and EPA national policy [1] has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least a continuous two-year calendar period. In addition, the area must continue to show attainment through the date that we promulgate the redesignation in the **Federal Register**.

Colorado's CO redesignation request for the Longmont area is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the redesignation request. As presented in Section III of the State's maintenance plan, ambient air quality monitoring data for consecutive calendar years 1989 through 1996 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Longmont nonattainment area. Data are also available for calendar years 1997 and 1998 that show no exceedances of the CO NAAQS. All of these data were collected and analyzed as required by EPA (see 40 CFR § 50.8 and 40 CFR part 50, Appendix C) and have been archived by the State in our Aerometric Information and Retrieval System (AIRS) national database. Further information on CO monitoring is presented in Section III of the maintenance plan and in the State's TSD.

We have evaluated the ambient air quality data and have determined that the Longmont area has not violated the CO standard and continues to demonstrate attainment. Therefore, the Longmont area has met the first component for redesignation: demonstration of attainment of the CO NAAQS. We note too that the State of Colorado has committed, in the maintenance plan, to continue the necessary operation of the CO monitors in compliance with all applicable federal regulations and guidelines.

(b) Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D of the CAA

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that

[1] Refer to EPA's September 4, 1992, John Calcagni policy memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment.''

applied to the subject area prior to or at the time of the submission of a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the submission of a complete redesignation request.

1. CAA Section 110 Requirements

The Longmont CO element of the Colorado SIP was adopted by the AQCC on June 16, 1994, submitted by the Governor on July 13, 1994 and was approved by the EPA on March 10, 1997 (62 FR 10690). The 1994 SIP element's emission control plan was based on emission reductions from the Federal Motor Vehicle Control Program (FMVCP), the Colorado Enhanced Inspection and Maintenance (EI/M) program for vehicles model year 1982 and newer (Colorado Regulation No. 11), an oxygenated fuels program (Colorado Regulation No. 13), and emission standards for wood-burning stoves and fireplace inserts (Colorado Regulation No. 4).

By virtue of our March 10, 1997, approval of the Longmont CO SIP, the State has met the applicable requirements of section 110 of the CAA.

2. Part D Requirements

Before the Longmont CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether the area was classified or nonclassifiable for CO.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. Our General Preamble (see 57 FR 13498, April 16, 1992) provides EPA's interpretations of the CAA requirements for moderate CO areas with design values of less than 12.7 ppm.

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due November 15, 1992, for the Longmont nonattainment area. As the Longmont CO redesignation request and maintenance plan were not submitted by the Governor until well after November 15, 1992, (actually, August 19, 1998), the General Preamble (see 57 FR 13529) provides that the applicable requirements of CAA section 172 were 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), 172(c)(7)(the section 110(a)(2) air quality monitoring requirements)), and contingency measures (CAA section 172(c)(9)). It is also worth noting that we interpret the requirements of sections 172(c)(1) (reasonable available control measures—RACM), 172(c)(2) (reasonable further progress—RFP), and 172(c)(6)(other measures), as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, John Calcagni memorandum entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment'', and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4)(identification of certain emissions increases) and 172(c)(8)(equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR § 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

The applicable requirements of CAA section 172 are discussed below.

A. Section 172(c)(3)—Emissions Inventory. Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Longmont nonattainment area. The Governor submitted a 1990 base year emissions inventory for Longmont on December 31, 1992, with subsequent revisions being submitted on July 11, 1994, and October 21, 1994. We approved this 1990 base year CO emissions inventory on December 23, 1996 (see 61 FR 67466). In addition to meeting the requirements of section 172(c)(3) of the CAA, this inventory also fulfilled the CAA section 187(a)(1) requirement noted below.

B. Section 172(c)(5) New Source Review (NSR). The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Colorado has a fully-approved NSR program (59 FR 42500, August 18, 1994) that meets the requirements of CAA section 172(c)(5). The State also has a fully approved Prevention of Significant Deterioration (PSD) program (59 FR 42500, August 18, 1994) that will apply after the redesignation to attainment is approved by us.

C. Section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements. According to our interpretations presented in the General Preamble (57 FR 13498), CO nonattainment areas are to meet the ''applicable'' air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly referenced by sections 172(b) and (c) of the CAA. With respect to this requirement, the State indicates in Section III. (''Air Quality'') of the maintenance plan, that ambient CO monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) for the Longmont area. Air quality data through 1996 are included in Section III. of the maintenance plan and in the State's TSD. We recently polled the AIRS database and verified that the State has uploaded additional ambient CO data through 1998. The data in AIRS indicate that the Longmont area has shown, and continues to show, attainment of the CO NAAQS. Information concerning CO monitoring in Colorado is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. Our personnel have concurred with Colorado's annual network reviews and have agreed that the Longmont network remains adequate. Finally, in Section VI. B. of the maintenance plan, the State commits to the continued operation of the existing CO monitoring network, according to all applicable Federal regulations and guidelines, even after the Longmont area is redesignated to attainment for CO.

D. Section 172(c)(9) Contingency Measures. According to our interpretations presented in the General Preamble (see 56 FR 13532), moderate CO nonattainment areas, such as Longmont, were required to submit contingency measures to address the requirements of section 172(c)(9) of the CAA. These contingency measures were to become effective, without further action by the State or us, upon a determination by us that an area had failed to achieve reasonable further progress (RFP) or to attain the CO NAAQS by December 31, 1995. To address this CAA requirement, the Governor submitted a contingency measure to EPA on July 13, 1994. We approved this submittal on March 10, 1997 (see 62 FR 10690).

In addition to the above, subpart 3 of the November 15, 1990, CAA amendments required the Longmont CO SIP to include a 1990 base year emissions inventory (CAA section 187(a)(1)), corrections to existing motor vehicle inspection and maintenance(I/M) programs (CAA section 187(a)(4)), periodic emission inventories (CAA section 187(a)(5)), and an oxygenated fuels program (CAA section 211(m)(1)). How the State met these additional requirements and our approvals, are described as follows:

E. 1990 base year emissions inventory (CAA section 187(a)(1)). The Governor submitted a 1990 base year emissions inventory for Longmont on December 31, 1992, with subsequent revisions being submitted on July 11, 1994, and October 21, 1994. We approved this 1990 base year CO emissions inventory on December 23, 1996 (see 61 FR 67466).

F. Corrections to the Longmont basic I/M program (CAA section 187(a)(4)). A July 14, 1994, Governor's submittal for Longmont provided that the area was included in the metro-Denver nonattainment area's motor vehicle enhanced inspection and maintenance (EI/M) program. We approved Colorado's EI/M program March 10, 1997 (see 62 FR 10690).

G. Periodic emissions inventories (CAA section 187(a)(5)). A periodic emission inventory (for calendar year 1993) was required for Longmont because the Governor did not submit a complete redesignation request and maintenance plan before September 30, 1995. On September 16, 1997, the Governor submitted a SIP revision for a 1993 periodic emission inventory for Longmont. We approved this revision on July 15, 1998 (see 63 FR 38087).

H. Oxygenated fuels program (CAA section 211(m)). Section 211(m) of the CAA requires any CO nonattainment area with a design value of 9.5 ppm CO or greater to implement an oxygenated fuels program. The Governor submitted a revision to Colorado's Regulation No. 13, on November 27, 1992, to address the oxygenated fuels requirement of the CAA for all applicable areas in Colorado, including Longmont. We approved this revision on July 24, 1994 (see 59 FR 37698). Regulation No. 13 was revised, to shorten the oxygenated fuels program season (first shortening) by deleting the last two weeks of February from the program. The Governor submitted this revision to Regulation No. 13 on September 29, 1995, and December 22, 1995. We approved this revision on March 10, 1997 (see 62 FR 10690). Regulation No. 13 was further revised, to again shorten the oxygenated fuels program season (second shortening) by deleting the second week of February and to reduce the fuel oxygen content for the first week of November. The Governor submitted these revisions on October 1, 1998, and we published a direct final approval of them on August 25, 1999 (64 FR 46279).

(c) Redesignation Criterion: The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA provides that for an area to be redesignated to attainment, we must have fully approved the applicable implementation plan for the area under section 110(k).

As noted above, we previously approved the Longmont CO nonattainment area SIP revisions. In this action, we are approving the State's commitment to maintain an adequate monitoring network (contained in the maintenance plan). Thus, we have fully approved the Longmont CO SIP under section 110(k) of the CAA.

(d) Redesignation Criterion: The Area Must Show That The Improvement In Air Quality Is Due To Permanent And Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions for Longmont, that are further described in Section IV. of the August 19, 1998, Longmont maintenance plan, were achieved primarily through the Federal Motor Vehicle Control Program (FMVCP), Colorado's Regulation No. 11, which defines a decentralized basic motor vehicle inspection and maintenance program (for vehicles model year 1981 and older) and an enhanced motor vehicle inspection and maintenance (EI/M) program (for vehicles model year 1982 and newer), the oxygenated fuels program (Colorado Regulation No. 13), and emission standards for wood-burning stoves and fireplace inserts (Colorado Regulation No. 4).

In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles (''fleet turnover''), emission reductions are realized for a particular area such as Longmont. For example, EPA promulgated lower hydrocarbon (HC) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-duty vehicles and light-duty trucks) in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet.

In addition, significant emission reductions were realized for Longmont due to the implementation of both the basic I/M program and, beginning in January of 1995, Colorado's enhanced I/M program. Colorado's Regulation No. 11, ''Motor Vehicle Emissions Inspection Program'', contains a full description of the I/M requirements applicable for Longmont.

Oxygenated fuels are gasolines that are blended with additives that increase the level of oxygen in the fuel and, consequently, reduce CO tailpipe emissions. Colorado's Regulation 13, ''Oxygenated Fuels Program'', contains the oxygenated fuels provisions for the Longmont nonattainment area. Regulation 13 specifies the minimum oxygen content (by weight) that all Longmont-area gas stations' fuels must comply with during the wintertime CO high pollution season. The use of oxygenated fuels has significantly reduced CO emissions and contributed to the area's attainment of the CO NAAQS.

Colorado's Regulation No. 4 contains emission standards (which comply with Federal standards) for all new woodburning stoves and fireplace inserts sold in Colorado. These emission standards have reduced, and will continue to reduce, the growth in CO emissions and other pollutants from woodburning devices. Regulation No. 4, with its most recent revisions, was approved by us into the Colorado SIP on April 17, 1997 (62 FR 18716).

We have evaluated the various State and Federal control measures, the original 1990 base year emission inventory (see 61 FR 67466, December 23, 1996), and the 1993 attainment year emission inventory, and have concluded that the improvement in air quality in the Longmont nonattainment area has resulted from emission reductions that are permanent and enforceable.

(e) Redesignation Criterion: The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992), ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'' (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992. In this **Federal Register** action, EPA is approving the maintenance plan for the Longmont nonattainment area because we have determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's August 19, 1998, submittal, is provided as follows:

1. Emissions Inventories—Attainment Year and Projections

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble and the September 4, 1992, policy memorandum referenced above. Under our interpretations, areas seeking to redesignate to attainment for CO may demonstrate future maintenance of the CO NAAQS either by showing that future CO emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. For the Longmont area, the State selected the emissions inventory approach for demonstrating maintenance of the CO NAAQS.

The maintenance plan that the Governor submitted on August 19, 1998, included comprehensive inventories of CO emissions for the Longmont area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The State selected 1993 as the year from which to develop the attainment year inventory and included interim-year projections out to 2015. More detailed descriptions of the 1993 attainment year inventory and the projected inventories are documented in the maintenance plan in Section V. and in the State's TSD. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1993 attainment year and the interim projected years are provided in Table III.—1 below.

TABLE III.–1.—SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR LONGMONT

	1993	2000	2005	2010	2015
Point Sources	0.18	0.21	0.23	0.25	0.27
Area Sources	2.35	2.02	1.79	1.60	1.42
Non-Road Mobile Sources	5.63	6.49	7.11	7.72	8.33
On-Road Mobile Sources	26.59	15.49	14.66	16.11	16.76
Total	34.76	24.21	23.79	25.68	26.78

2. Demonstration of Maintenance—Projected Inventories

As noted above, the State projected total CO emissions for the years 2000, 2005, 2010, and 2015. The State prepared these projected inventories in accordance with our guidance (further information is provided in Section V. of the maintenance plan). The projected inventories show that CO emissions are not estimated to exceed the 1993 attainment level during the time period 1993 through 2015 and, therefore, the Longmont area has satisfactorily demonstrated maintenance.

3. Monitoring Network and Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Longmont area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in Section VI.B. of the maintenance plan. In Section VI.B., the State commits to continue the operation of the CO monitors in the Longmont area and to annually review this monitoring network and make changes as appropriate. Also, in Section VI.B., the State commits to prepare a periodic emission inventory of CO emissions every three years after the maintenance plan is approved by EPA. The above commitments by the State, which will be enforceable by us following the final approval of the Longmont maintenance plan SIP revision, are deemed adequate by EPA.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. As stated in Section VI. of the maintenance plan, the contingency measures for the Longmont area will be initially triggered by an exceedance of the CO NAAQS. Upon an exceedance of the CO NAAQS, the State and Longmont will convene a committee to recommend for adoption appropriate local contingency measures to correct a potential violation of the CO NAAQS (i.e., a second non-overlapping 8-hour average ambient CO measurement that

exceeds 9.4 ppm at a single monitoring site during a calendar year is a violation of the 8-hour CO NAAQS). This process will take approximately six months. The Colorado AQCC will review the local contingency measures and if the AQCC concurs, the AQCC may endorse or approve the local measures without adopting State requirements. If, however, the AQCC finds that locally adopted contingency measures are inadequate, the AQCC will adopt State enforceable measures as deemed necessary to prevent additional exceedances or a violation. The maintenance plan further states that contingency measures will be adopted and fully implemented within one year of a CO NAAQS violation. The potential contingency measures that are identified in Section VI.D. of the Longmont maintenance plan include increasing the required 2.7 percent minimum oxygen content of gasoline to a level above the actual oxygen content of gasolines at the time of the violation, improvements to Longmont's basic I/M program, increase enforcement of the woodburning curtailment program, establish a two for one buy-down program for installation of woodburning devices and/or pellet stoves in new homes and/or buildings in excess of one device, prohibit the installation of any woodburning device and/or pellet stove in new housing and/or building construction projects, establish voluntary no-drive days on high pollution days, and other measures that may be considered appropriate. A more complete description of the triggering mechanism and these contingency measures can be found in Section VI of the maintenance plan.

Based on the above, we find that the contingency measures provided in the State's maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

5. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Colorado has committed to submit a revised maintenance plan SIP revision eight years after the approval of the redesignation. This provision for revising the maintenance plan is contained in Section VI.E. of the Longmont maintenance plan.

IV. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budgets in the SIP (40 CFR sections 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above.

Section IV.C.3.c.1 of the Longmont maintenance plan describes an emissions budget for on-road mobile sources for the years 1998 and beyond as being 27 tons per day (TPD) of CO. The Denver Regional Council of Governments (DRCOG), which is the area's Metropolitan Planning Organization (MPO), and the State derived the 27 TPD number for 1998 and beyond from the 2015 maintenance year inventory value for on-road mobile sources along with a safety margin calculated based on a 1995 inventory. We cannot approve this 27 TPD value as a budget for conformity purposes because the budget is not consistent with maintenance of the CO NAAQS.[2] See 40 CFR 93.118(e)(4)(iv). The attainment year's mobile source budget of 27 TPD does not provide for maintenance of the CO NAAQS when combined with the increasing emissions levels from non-mobile sources during the 1998–2014 period (i.e., use of the 27 TPD budget for any year after 1998 would push total emissions over the maintenance plan's attainment year level of 34.76 TPD)[3]. Thus, we are taking no action on language in section IV.C.3.c. of the maintenance plan in which the State established an emissions budget for 1998 and beyond of 27 TPD of CO. The effect of this is that DRCOG and the State may not use 27 TPD as the budget for conformity purposes.

Instead, consistent with our conformity regulations and the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96), we are approving the 2015 mobile source emissions inventory value of 16.76 TPD of CO as the emissions budget. This 16.76 TPD budget will apply for 2015 and beyond. See 40 CFR 93.118(b)(2)(ii). For the years prior to 2015, conformity determinations must be conducted in accordance with 40 CFR 93.118(b)(2)(i).

Finally, based on the discussion above, the emissions budget definition in the Colorado Ambient Air Quality Standards regulation (5 CCR 1001–14) is incorrect as it applies the 27 TPD figure to 1998 and beyond. As indicated above, we cannot approve the 27 TPD budget and it cannot be used for conformity determinations.

V. Final Action

In this action, EPA is approving the Longmont carbon monoxide redesignation request and the maintenance plan.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 23, 1999 without further notice unless the Agency receives adverse comments by October 25, 1999.

If EPA receives such comments, then we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 23, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

(a) Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866,

[2] Pursuant to Section 93.118(e)(4) of the Transportation Conformity Rule (40 CFR Part 93, Subpart A), we previously reviewed the adequacy of the maintenance plan's carbon monoxide emissions budgets for purposes of coformity. In a May 14, 1999 letter, from Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, to Margie Perkins, Director, Air Pollution Control Divison, Colorado Department of Public Health and Environment, we determined that the emissions budget for 1998 and beyond (27 tons per day) was inadequate for conformity purposes. Although this action is consistent with our prior adequacy determination, it should be noted that, in taking final action on the maintenance plan, we are not bound by our pror adequacy determination. See 62 FR 43782, August 15, 1997.

[3] The State used a 1995 inventory to determine the amount of the safety margin for establishing an emissions budget. The maintenance demonstration is based on a 1993 inventory. It is not appropriate to use one inventory for purposes of demonstrating maintenance and another inventory for purposes of calculating the safety margin for a motor vehicle emissions budget.

entitled ''Regulatory Planning and Review.''

(b) Executive Orders on Federalism

(1) Executive Order 12875: Enhancing the Intergovernmental Partnership

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

(2) Executive Order 12612: Executive Order on Federalism

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, Executive Order 12612 (52 FR 41685, October 30, 1987) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

(c) Executive Order 13045

Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

(d) Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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

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

(e) Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation to attainment is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Therefore, I certify that the approval of the redesignation request will not affect a substantial number of small entities.

(f) Unfunded Mandates

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

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

additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

(g) Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

(h) National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conductive to the use of VCS.

(i) 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 November 23, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Nothing in this action should be construed as making any determination or expressing any position regarding Colorado's audit privilege and penalty immunity law, sections 13–25–126.5, 13–90–107, and 25–1–114.5, Colorado Revised Statutes (Colorado Senate Bill 94–139, effective June 1, 1994), or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Colorado's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211, or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 10, 1999.

William P. Yellowtail,

Regional Administrator Region VIII.

Chapter I, title 40, parts 52 and 81 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart G—COLORADO

2. Section 52.349 is amended by adding paragraph (d) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(d) Revisions to the Colorado State Implementation Plan, Carbon Monoxide Redesignation Request and Maintenance Plan for Longmont, as adopted by the Colorado Air Quality Control Commission on December 18, 1997, State effective March 2, 1998, and submitted by the Governor on August 19, 1998.

PART 81—[AMENDED]

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

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

2. In § 81.306, the table entitled ''Colorado-Carbon Monoxide'' is amended by revising the entry for ''Longmont Area'' to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	*		*
Longmont Area	November 23, 1999 ..	Attainment.		
Hwy 52 west from the Boulder/Weld County line to 95th Street/Hoover Road, then north on 95th Street/Hoover Road to the intersection of Plateau Road and SH 119, then west on Plateau Road to the intersection of Hygiene Road, then due north to the Boulder/Larimer County line, then due east to the intersection of the Boulder/Larimer/Weld County lines, then south along the Boulder/Weld County line to Hwy 52, plus the portion of the City of Longmont east of the Boulder/Weld County line in Weld County.				
Boulder County (part):				
Weld County (part):				

COLORADO—CARBON MONOXIDE—Continued

Designated Area				Designation		Classification	
				Date [1]	Type	Date [1]	Type
*	*	*	*	*	*	*	

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 99–24906 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL 6443–5]

Vermont: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Vermont has applied to EPA for Final authorization for changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Vermont's changes to their hazardous waste program will take effect as provided below. If we get comments that oppose this action, EPA will withdraw this immediate final rule and it will not take effect. EPA will then address public comments in a later final rule. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action, must do so at this time.

DATES: This final authorization will become effective on November 23, 1999, without further notice, unless EPA receives adverse comments by October 25, 1999. Should EPA receive such comments, the Agency will publish a timely document in the **Federal Register** withdrawing this rule.

ADDRESSES: Send written comments to Geri Mannion, EPA Region I, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; Phone Number: (617) 918–1648. You can view and copy Vermont's application at the following addresses: The Agency of Natural Resources, Vermont Department of Environmental Conservation, Waste Management Division, 103 South Main Street—West Office Building, Waterbury, VT 05671–0404; Phone number: (802) 241–3888; Business Hours: 7:45 A.M. to 4:30 P.M., Monday through Friday and EPA Region I Library, One Congress Street, Suite 1100 (LIB), Boston, MA, 02114–2023; Phone number: (617) 918–1990; Business Hours: 8:30 A.M. to 5:00 P.M., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Geri Mannion, EPA Region I, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; Phone Number: (617) 918–1648.

SUPPLEMENTARY INFORMATION:

Technical Corrections

In addition to authorizing the changes to Vermont's hazardous waste program, EPA is making technical corrections to provisions referenced in its immediate final rule published in the **Federal Register** on May 3, 1993 (58 FR 26242) and effective August 6, 1993 (58 FR 31911) which authorized the State for other earlier revisions to its hazardous waste program.

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) Parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Vermont's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Vermont Final authorization to operate its hazardous waste program with the changes described in the authorization application. Vermont has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. However, when today's approval takes effect, Vermont will be authorized to administer almost all of these HSWA requirements, as well as being authorized for almost all the pre-HSWA requirements.

C. What is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Vermont subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Vermont has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Full authority to enforce RCRA requirements and suspend or revoke permits

This action does not impose additional requirements on the regulated community because the regulations for which Vermont is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. Vermont has already addressed any comments raised during the State rulemaking public comment period, prior to adopting these rules on September 30, 1998. We are providing an opportunity for public comment now. In the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the state program changes. If we receive comments which oppose this authorization, that document will serve as a proposal to authorize the changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register**. We then will address all public comments in a **Federal Register** notice. You may not have another opportunity to comment. If you want to comment on this action, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we may withdraw only that part of today's authorization rule. The authorization of the program changes that are not opposed by any comments may become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Vermont Previously Been Authorized For?

Vermont initially received final authorization on January 7, 1985, effective January 21, 1985 (50 FR 775) to implement its base hazardous waste management program. The Region published an immediate final rule for Vermont's revisions to its program on May 3, 1993 (58 FR 26242) and reopened the comment period for those revisions June 7, 1993 (58 FR 31911). The authorization became effective August 6, 1993 (58 FR 31911).

G. What Changes Are We Authorizing With Today's Action?

On September 15, 1999 Vermont submitted a final complete program revision application, seeking authorization for their changes in accordance with 40 CFR 271.21. These revisions address federal regulatory provisions promulgated in the following rule clusters (''cluster'' is the term used to designate a time frame, usually a year, during which multiple federal regulatory changes occurred): Non-HSWA Cluster V and VI, HSWA Cluster II, RCRA Clusters I through VIII. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Vermont's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Vermont final authorization for the following program:

Description of Federal requirement	Analogous State authority [1]
Non-HSWA V	
(58) Standards for Generators of Hazardous Waste: 53 FR 45089–45093, 11/8/88.	7–109, Vermont Uniform Hazardous Waste Manifest.
Non-HSWA VI	
(64) Delay of Closure Period for Hazardous Waste Management Facilities: 54 FR 33376–33398, 8/14/89.	7–504, 7–510, 7–507.
(67) Testing and Monitoring Activities: 54 FR 40260–40269, 9/29/89	7–219, 7–210.
(70) Changes to Part 124 Not Accounted for by Present Checklists: 48 FR 14146–14295, 4/1/83, 48 FR 30113–30115, 6/30/83, 53 FR 28118–28157, 7/26/88, 53 FR 37396–37414, 9/26/88, 54 FR 246–258, 1/4/89.	7–504, 7–505, 7–507, 7–508, 7–509, 7–506, 7–506.
(72) Modification of F019 Listing: 55 FR 5340–5342, 2/14/90	7–210
(73) Testing and Monitoring Activities; Technical Corrections: 55 FR 8948–8950, 3/9/90.	7–219.
(76) Criteria for Listing Toxic Wastes; Technical Amendment: 55 FR 18726, 5/4/90.	7–213, 7–216.
(78N) Land Disposal Restrictions for Third Third Scheduled Wastes: 55 FR 22520–22720, 6/1/90.	See Table IV, Special Consolidated Checklist for Land Disposal Restrictions.
HSWA II	
(42) Exception Reporting for Small Quantity Generators of Hazardous Waste: 52 FR 35894–35899, 9/23/87.	7–707.
(44A–G) HSWA Codification Rule 2: 52 FR 45788–45799, 12/1/87:	
44A—Permit Application Requirements Regarding Corrective Action.	7–505.
44B—Corrective Action Beyond Facility Boundary	7–504.
44C—Corrective Action for Injection Wells	13.UIC.23(c).
44D—Permit Modification	Checklist eliminated by Revision Checklist 54.
44E—Permit as a Shield Provision	No State Analog, more stringent.
44F—Permit Conditions to Protect Human Health and the Environment.	10 VSA § 6606(b)(9).
44G—Post Closure Permits	7–504.
(47) Identification and Listing of Hazardous Waste; Technical Correction: 53 FR 27162–27163, 7/19/88.	7–306.
(48) Farmer Exemptions; Technical Corrections: 53 FR 27164–27165, 7/19/88.	7–203, 7–502.
(68) Reportable Quantity Adjustment Methyl Bromide Production Wastes: 54 FR 41402–41408, 10/6/89.	7–212, 7–219, Appendix I, Appendix IX.
(69) Reportable Quantity Adjustment: 54 FR 50968–50979, 12/11/89 ...	7–210, Appendix IX, Appendix II.
(75) Listing of 1,1-Dimethylhydrazine Production Wastes: 55 FR 18496–18506, 5/2/90.	7–212, 7–219, Appendix I, Appendix IX.

Description of Federal requirement	Analogous State authority [1]
(77) HSWA Codification Rule, Double Liners, Correction: 55 FR 19262–19264, 5/9/90.	Superceded by Checklist 100 listed below.
(79) Organic Air Emission Standards for Process Vents and Equipment Leaks: 55 FR 25454–25519, 6/21/90.	7–219, 7–502, 7–504, 7–505, 7–510, 7–604, 7–604, 6–605, 6–606, 6–606.
RCRA I	
(81) Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038): 55 FR 46354–46397 11/2/90, as amended on 12/17/90, at 55 FR 51707.	7–210, Appendix IX.
(87) Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment: 56 FR 19290, 4/26/91.	7–504, 7–504, 7–504, 7–510, 7–505.
(88) Administrative Stay for K069 Listing: 56 FR 19951, 5/1/91	7–212, Appendix I.
(89) Revision to the Petroleum Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038): 56 FR 21955–21960, 5/13/91.	7–210.
RCRA II	
(97) Exports of Hazardous Waste; Technical Correction: 56 FR 43704–43705, 9/4/91.	7–705, 7–708.
(99) Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations: 56 FR 66365–66369, 12/23/91.	7–103, 7–504, 7–510, 7–504.
(100) Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units: 57 FR 3462–3497, 1/29/92.	7–103, 7–504, 7–505, 7–507, 7–510.
(104) Used Oil Filter Exclusion: 57 FR 21524–21534, 5/20/92	7–203.
RCRA III	
(107) Used Oil Filter Exclusion; Technical Correction: 57 FR 29220, 7/1/92.	7–203.
(113) Consolidated Liability Requirements: 53 FR 33938–33960, 9/1/88; 56 FR 30200, 7/1/91; 57 FR 42832–42844, 9/16/92.	7–504, 7–510.
(115) Chlorinated Toluenes Production Waste Listing: 57 FR 47376–47386, 10/15/92.	7–212, Appendix I, Appendix IX.
(118) Liquids in Landfills II: 57 FR 54452–54461, 11/18/92	7–103, 7–504, 7–504, 7–504, 7–510.
(121) Corrective Action Management Units and Temporary Units: 58 FR 8658–8685, 2/16/93.	7–103, 7–510, 7–504, 7–504, 7–504, 7–510, 7–106, 7–507.
RCRA IV	
(126) Testing and Monitoring Activities: 58 FR 46040–46050, 8/31/93, as amended at 59 FR 47980–47982, 9/19/94.	7–219, 7–217, 7–206, 7–219, 7–206, 7–208, 7–504, 7–504, 7–504, 7–510, 7–106, 7–505, 7–511, 7–511.
(128) Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection: 59 FR 458–469, 1/4/94.	7–219, Appendix II.
(129) Revision of Conditional Exemption for Small Scale Treatability Studies: 59 FR 8362–8366, 2/18/94.	7–203.
(131) Recordkeeping Instructions; Technical Amendment: 59 FR 13891–13893, 3/24/94.	7–504, 7–504, 7–504, 7–510, 7–504.
(132) Wood Surface Protection; Correction: 59 FR 28484, 6/2/94	7–219.
(133) Letter of Credit Revision: 59 FR 29958–29960, 6/10/94	7–504, 7–504.
(134) Correction of Beryllium Powder (P015) Listing: 59 FR 31551–31552, 6/20/94.	7–215, Appendix IV, Appendix II, 7–106.
RCRA V	
(135) Recovered Oil Exclusion: 59 FR 38536–38545, 7/28/94	7–512.
(139) Testing and Monitoring Activities Amendment I: 60 FR 3089–3095, 1/13/95.	7–219.
(141) Testing and Monitoring Activities Amendment II: 60 FR 17001–17004, 4/4/95.	7–219.
(142A) Universal Waste; General Provisions: 60 FR 25492–25551, 5/11/95.	7–103, 7–911, 7–305, 7–204, 7–306, 7–203, 7–202, 7–502, 7–106, 7–901, 7–910, 7–910, 7–305, 7–912, 7–912, 7–912, 7–912, 7–913, 7–914, 7–915, 7–915.
(142B) Universal Waste Rule; Specific Provisions for Batteries: 60 FR 25492–25551, 5/11/95.	7–911, 7–203, 7–502, 7–204, 7–106, 7–901, 7–902.
(142C) Universal Waste Rule; Specific Provisions for Pesticides: 60 FR 25492–25551, 5/11/95.	7–911, 7–203, 7–502, 7–106, 7–901, 7–903, 7–912.
(142D) Universal Waste Rule; Specific Provisions for Thermostats: 60 FR 25492–25551, 5/11/95.	7–911, 7–2030, 7–502, 7–106, 7–901, 7–904, 7–912.
(142E) Universal Waste Rule; Petition Provisions to Add a New Universal Waste: 60 FR 25492–25551, 5/11/95.	7–916.
(144) Removal of Legally Obsolete Rules: 60 FR 33912–33915, 6/29/95.	7–210, 7–512, 7–109, 7–103, 7–510, 7–504, 7–505.
RCRA VI	
(145) Liquids in Landfills III: 60 FR 35703–35706, 7/11/95	7–504, 7–510.
(150) Amendments to the Definition of Solid Waste: 61 FR 13103–13106, 3/26/96.	No State Analog, more stringent.

Description of Federal requirement	Analogous State authority [1]
(151) Land Disposal Restriction Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners: 61 FR 15566–15660, 4/8/96 as amended 4/8/96 at 61 FR 15660–15668; as amended 4/30/96 at 61 FR 19117; as amended 6/28/96 at 61 FR 33680–33690; as amended 7/10/96 at 61 FR 36419–36421; as amended 8/26/96 at 61 FR 43924–43931; as amended 2/19/97 at 62 FR 7502–7600.	7–106.
RCRA VII	
(153) Conditionally Exempt Small Quantity Generator Disposal Options under Subtitle D: 61 FR 34252–34278, 7/1/96.	7–306.
(154) Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: 59 FR 62896–62953, 12/6/94, as amended by 60 FR 26828–26829, 5/19/95, 60 FR 50426–50430, 9/29/95, 60 FR 56952–56954, 11/13/95, 61 FR 4903–4916, 2/9/96, 61 FR 28508–28511, 6/5/96, 61 FR 59932–59997, 11/25/96.	7–1090, 7–219, 7–604, 7–307, 7–308, 7–504, 7–504, 7–504, 7–510, 7–505(b).
(155) Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance: 62 FR 1992–1997, 1/14/97.	7–106.
(157) Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions: 62 FR 25998–26040, 5/12/97.	7–106, 7–204.
(158) Testing and Monitoring Activities Amendment III: 62 FR 32452–32463, 6/13/97.	7–219, 7–504, 7–510, 7–512.
RCRA VIII	
(163) Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment: 62 FR 64636–64671, 12/8/97.	7–109, 7–505, 7–604. VT did not submit a checklist for this because the rules listed therein have been incorporated by reference at 7–505 and 7–604.
Special Consolidated Checklists	
Consolidated Checklist for the Burning of Hazardous Waste in Boilers and Industrial Furnaces as of 6/30/97:	
(85) Burning of Hazardous Wastes in Boilers and Industrial Furnaces: 56 FR 7134, 2/21/91;	7–103, 7–219, 3 Vermont Statutes Annotated (VSA) 801 *et seq.*, 7–106, 7–216, 7–217, 7–203, 7–204, 7–212, Appendix I, Appendix IX, 7–504, 7–510, 7–512, 7–504, 7–510, 7–505, 7–507, 7–511.
(94) Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Corrections and Technical Amendments: 56 FR 32688, 7/17/91;	
(96) Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendments II: 56 FR 42504 8/27/91;	
(98) Coke Ovens Administrative Stay: 56 FR 43874 9/5/91;	
(105) Recycled Coke By-Product Exclusion: 57 FR 27880 6/22/92;	
(110) Coke By-Products Listing: 57 FR 37284 8/18/92;	
(111) Boilers and Industrial Furnaces; Technical Amendment III: 57 FR 38558, 8/25/92;	
(114) Boilers and Industrial Furnaces: Technical Amendment IV: 57 FR 44999, 9/30/92;	
(125) Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations: 58 FR 38816, 7/20/93 and	
(127) Boilers and Industrial Furnaces: Administrative Stay and Interim Standards for Bevill Residues: 58 FR 59598, 11/9/93.	
Consolidated Checklist for the Land Disposal Restrictions as of 6/30/95:	
(34) Land Disposal Restrictions: 51 FR 40572, 11/7/86 as amended on 6/4/87 at 52 FR 21010 (authorized 1993);	1 VSA Ch. 5, Subchapter 3, 7–109, 7–103, 7–106, 3 VSA 801 *et seq.*, 7–217, 7–218, 1 VSA 316(3), 7–109, 7–219, 7–608, Recycle and Reuse Form/Oct. '97, , 7–201, 7–203, 7–204, 7–306, 7–306, 7–305, 7–202, 7–205, 7–206, 7–207, 7–208, 7–202, 7–210, 7–214, 7–202, Appendix IX, 7–303, 7–204, 7–307, 7–307, 7–311, 7–311, 7–308, 7–308, 7–307, 7–203, 7–404, 7–502, 7–501, 7–504, 7–510, 7–607, 7–512, 7–510.
(39) California List Waste Restrictions: 52 FR 25760, 7/8/87 as amended on 10/27/87 at 52 FR 41295;	
(50) Land Disposal Restrictions for First Third Scheduled Wastes: 53 FR 31138, 8/17/88 as amended on 2/27/89 at 54 FR 8264;	
(62) Land Disposal Restriction Amendments to First Third Scheduled Wastes: 54 FR 18836, 5/2/89);	
(63) Land Disposal Restrictions for Second Third Schedules Wastes: 54 FR 26594, 6/23/89;	
(66) Land Disposal Restrictions: Correction to the First Third Scheduled Wastes: 54 FR 36967, 9/6/89 as amended on 6/13/90 at 55 FR 23935;	
(78H) Land Disposal Restrictions for Third Third Scheduled Wastes: 55 FR 22520, 6/1/90;	
(83) Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment: 56 FR 3864, 1/31/91;	
(95) Land Disposal Restrictions for Electric Arc Furnace Dust (K061): 56 FR 41164, 8/19/91;	
(102) Second Correction to the Third Third Land Disposal Restrictions: 57 FR 8086, 3/6/92	
(103) Hazardous Debris Case-by-Case Capacity Variance: 57 FR 20766, 5/15/92;	

Description of Federal requirement	Analogous State authority [1]
(106) Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance: 57 FR 28628, 6/26/92; (109) Land Disposal Restrictions for Newly Listed Waste and Hazardous Debris: 57 FR 37194, 8/18/92; (116) Hazardous Soil Case-by-Case Capacity Variance: 57 FR 47772, 10/20/92; (123) Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance: 58 FR 28506, 5/14/93; (124) Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated; 58 FR 29860, 5/24/93; (136) Removal of the Conditional Exemption for Certain Slag Residues: 59 FR 43496, 8/24/94.	
Consolidated Checklist for the Bevill Exclusion for Mining Wastes as of 6/30/97: (53) Identification and Listing of Hazardous Waste: and Designation, Reportable Quantities, and Notification: 53 FR 35412, 9/13/88 (authorized 1993); (65) Mining Waste Exclusion I: 54 FR 36592, 9/1/89; (71) Mining Waste Exclusion II: 55 FR 2322, 1/23/90; and (90) Mining Exclusion III: 56 FR 27300, 6/13/91.	7–103, 7–202, 7–203, 7–203, 7–212, Appendix I, Appendix IX, 7–202.
Consolidated Checklist for the Toxicity Characteristics Revisions as of 6/30/97: (74) Toxicity Characteristic Revisions: 55 FR 11748, 3/29/90 as amended on 6/29/90 at 55 FR 26986 (authorized 1993); (80) Toxicity characteristic; Hydrocarbon: 55 FR 40834 10/5/90, 56 *FR* 3978 as amended on 2/1/91 at 56 FR 13406, 4/2/91; (84) Toxicity Characteristic; Chlorofluorocarbon Refrigerants: 56 FR 5910, 2/13/91; (108) Toxicity Characteristic Revisions: 57 FR 30657, 7/10/92; (117 B) Toxicity Characteristic Amendment: 57 FR 23062, 6/1/92; and (119) Toxicity Characteristic Revision; TCLP Correction: 57 FR 55114, 11/24/92.	7–202, 7–203, 7–204, 7–208, 7–209, 7–208, 7–219, 7–504, 7–510, 7–106.
Consolidated Checklist for Recycled Used Oil Management Standards as of 6/30/97: (112) Recycled Used Oil Management Standards: 57 FR 41566, 9/10/92; (122) Recycled Used Oil Management Standards; Technical Amendments and Corrections: 58 FR 26420, 5/3/93 as amended on 6/17/93 at 58 FR 33341; and (130) Recycled Used Oil Management Standards; Technical Amendments and Corrections II: 59 FR 10550, 3/4/94.	7–103, 7–802, 7–805, 7–203, 7–204, 7–502, 7–512, 7–801, 7–803, 7–805, 7–804, 7–812, 7–807, 7–806, 7–810, 7–808, 7–809, 7–811, 7–813, 7–812.
Consolidated Checklist for the Wood Preserving Listings as of 6/30/97: (82) Wood Preserving Listings: 55 FR 50450, 12/6/90; (91) Wood Preserving Listings: 56 FR 27332, 6/13/91; (92) Wood Preserving Listings; Technical Corrections: 56 FR 30192, 7/1/91; (101) Administrative Stay for the Requirement that Existing Drip Pads Be Impermeable: 57 FR 5859, 2/18/92; (120) Wood Preserving; Revisions to Listings and Technical Requirements: 57 FR 61492, 12/24/92.	7–103, 7–204, 7–210, 7–219, Appendix IX, Appendix II, 7–307, 7–308, 7–311, 7–504, 7–510, 7–505.

[1] Hazardous Waste Management Regulations, effective 9/30/98; Water Pollution Control Regulations, Subchapter 13, effective 6/21/84; Vermont Statutes Annotated 1998.

EPA cannot delegate the Federal requirements at 40 CFR 268.5, 268.6, and 268.42(b). At 7–106 Vermont's rules stipulate that these sections are not incorporated by reference and that authority for implementing these requirements remains with EPA.

In addition to updating its program, Vermont has reformatted and renumbered its Waste Management Regulations and, therefore, some rule numbers for previously authorized rules have been changed. As part of this application, Vermont submitted updated base program checklists and revision checklists for which the State received authorization in 1993. These checklists list the current state analogs to federal base program requirements and are available for inspection and copying at the locations listed above.

H. Where Are the Revised State Rules Different From the Federal Rules?

The State rules are more stringent than the minimum requirements set forth in the federal regulations in various respects including those discussed below. Vermont also has some requirements which are different from the federal requirements, but which we have determined are equally stringent.

We consider the following updated State requirements to be more stringent than the Federal requirements: Vermont does not permit disposal in underground injection wells, therefore it does not have analogous provisions to 40 CFR144.1(h), 144.31(g)(1), (2), and (3); 40 CFR 265.2(c)(2) and 40 CFR 270.60(b)(3)(i) and (ii) which are the

requirements for Corrective Action for Injection Wells listed in Revision checklist 44C. Vermont does not permit the use of a permit as shield, therefore it does not have an analog for 40 CFR 260.4(a) listed in Revision Checklist 44E. Vermont does not grant the exclusion at 40 CFR 261.4(a)(12) for recovered used oil listed on revision checklist 150. Vermont used Checklist 153 to restate that it does not allow the wastes generated by conditionally exempt small quantity generators to be disposed of in Subtitle D landfills. These requirements are part of Vermont's authorized program and are federally enforceable.

In this revision Vermont modified its regulations for satellite accumulation and for storage prior to the recycling of recyclable materials. EPA's Satellite Accumulation rule promulgated on December 20, 1984 (40 FR 49571) allows generators to accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste in a satellite area at or near the point of generation, so long as specified requirements are met. The Vermont program allows one 55-gallon drum or one quart of acutely hazardous waste per waste stream to be accumulated in central storage areas subject to full hazardous waste requirements, or at the point of generation. Although this is not identical to the EPA regulation, EPA has determined that these rules for managing wastes are protective of human health and the environment and are equivalent to the federal regulation.

Vermont modified its recycling regulations in Subchapter 6. Specifically, their rule will allow recyclers to temporarily place incoming recyclable materials in a staging area for up to three days without a storage permit. In case-by-case instances EPA has previously agreed that States administering the RCRA program have some discretion to determine that short periods of accumulation by recyclers of incoming material do not constitute storage and thus would not trigger the RCRA storage permitting requirements. Following these precedents, the Region has determined that Vermont's staging regulation is equivalent to the federal program and thus federally approvable.

I. Who Handles Permits After This Authorization Takes Effect?

Vermont will issue permits for all the provisions for which it is authorized and will administer the permits it issues. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for any HSWA requirements for which Vermont is not yet authorized.

J. What Technical Corrections Is EPA Making Today?

At 58 FR 26243, May 3, 1993, Region 1 noted in the preamble that Vermont was not seeking to delist federally listed wastes since Section 7–216(3) (now at 7–217(c)) provides that any delisting of a hazardous waste which is listed as hazardous under 40 CFR Part 261 shall be conducted by EPA. However, the crosswalk at 58 FR 26250 (May 3, 1993) incorrectly listed this rule on checklist 17B as authorized. The Region is correcting this error today to note that Vermont did not seek authorization for this rule. Also, on that crosswalk in the **Federal Register** the titles for the rules addressed by checklists 19 and 34 were incomplete. These omissions are being corrected today and the complete titles are as listed below. The title information for Checklist 19 is: Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, 50 *FR* 49164–49211, November 29, 1985 as amended on April 13, 1987, at 52 FR 11819–11822. The title information for Checklist 34 is: Land Disposal Restrictions, 51 FR 40572–40654, November 7, 1986 as amended on June 4, 1987, at 52 FR 21010–21018. Finally, in 1993 Vermont sought authorization for four rules for which EPA does not use checklists. Inadvertently, these rules were omitted from the May 3, 1993 (58 FR 2642) crosswalk. The rules SR1, concerning existing and newly regulated surface impoundments regulated under HSWA § 3005(j)(1) & (6); SR2, concerning variances under § 3005(j)(2)–(9) and (13) regulated under HSWA § 3005(j)(2)–(9); CP, concerning hazardous and used oil fuel criminal penalties regulated under HSWA § 3006(h), 3008(d), and 3014 and SI, concerning sharing of information with the Agency for Toxic Substances and Disease Registry were addressed in Vermont's Attorney General Statement dated October 4, 1990. These omissions are being corrected today to state that Vermont is authorized for these rules.

K. What Is Codification and Is EPA Codifying Vermont's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations, as federal regulations. We do this by referencing the authorized State rules in 40 CFR Part 272. EPA is authorizing but not codifying Vermont's updated program at this time. We reserve the amendment of 40 CFR Part 272, Subpart UU for this authorization of Vermont's program until a later date.

L. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Vermont program, and today's action does not impose any additional obligations on regulated entities. In fact,

EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA.

The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

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. The 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 today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with 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.''

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612 because this rule affects only one State. In addition, this rule simply approves the State's proposal to be authorized for updated requirements in the hazardous waste program that the state has voluntarily chosen to operate. Finally, as a result of this action, for provisions enacted pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), those newly authorized provisions of the State's program now apply in Vermont in lieu of the equivalent Federal program provisions. Affected parties are subject only to those authorized state program provisions, as opposed to being subject both to the Federal and State program provisions.

Compliance With Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) The Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve federal decisions based on environmental health or safety risks, but rather involves approval of a state program.

Compliance With Executive Order 13084

Under Executive Order 13084, 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 with 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.''

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments as there are no Federally recognized Indian Tribes in Vermont.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any additional information requirements upon the regulated community, as the State regulations being approved already are in effect under State law.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve adopting new federal technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: September 17, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–24908 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6442–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Munisport Landfill Superfund site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces the deletion of the Munisport Landfill Superfund (Site) in North Miami, Dade County, Florida, from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that all appropriate response actions under CERCLA have been implemented by the Potentially Responsible Party, the City of North Miami, and that no further response actions under CERCLA are needed. Moreover, EPA and the FDEP have determined that the remedial actions conducted at the Site to date are protective of human health and the environment, such that further federal response under CERCLA is not warranted.

EFFECTIVE DATE: September 24, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin Misenheimer, Remedial Project Manager, EPA Region IV, 61 Forsyth St. SW, Atlanta, Georgia, 30303, (404) 562–8922. Comprehensive information on this Site is available through the EPA Region IV public docket located at two locations. Locations and phone numbers are: USEPA Region IV Record Center, 61 Forsyth St. SW, Atlanta, Georgia, 30303, (404) 562–8862 and Florida International University, North Campus Library, 3000 NE 151st St., North Miami, Florida, 33181–3601, (305) 919–5726.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Munisport Landfill, North Miami, Dade County, Florida.

A Notice of Intent to Delete for this site was published on June 25, 1999 (64 FR 34180). The closing date for comments on the Notice of Intent to Delete was July 27, 1999. EPA addressed significant comments in a Responsiveness Summary which is included in the public docket.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-financed) remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 8, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region IV.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site ''Munisport Landfill, North Miami, Florida.''

[FR Doc. 99–24689 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 24, and 64

[CC Docket No. 97–213, FCC 99–230]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts technical requirements for wireline, cellular, and broadband Personal Communications Services (PCS) carriers to comply with the assistance capability requirements prescribed by the Communications Assistance for Law Enforcement Act of 1994 (CALEA, or the Act). Specifically, the Commission requires that all capabilities of J–STD–025 (interim standard) and six of nine ''punch list'' capabilities requested by the Department of Justice (DoJ)/Federal Bureau of Investigation (FBI) be implemented by wireline, cellular, and broadband PCS carriers.

DATES: Effective December 23, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452; internet: rsmall@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order* (Third R&O) adopted August 26, 1999, and released August 31, 1999. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Summary of Third R&O

1. CALEA, enacted in October 1994, was intended to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently in the face of rapid advances in telecommunications technology. In enacting this statute, however, Congress recognized the need to protect privacy interests within the context of court-authorized electronic surveillance. Thus, in defining the terms and requirements of the Act, Congress sought to balance three important policies: (1) To preserve a narrowly focused capability for law enforcement agencies to carry out properly authorized intercepts; (2) to protect privacy in the face of increasingly powerful and personally revealing technologies; and (3) to avoid impeding the development of new communications services and technologies.

2. Section 103 of CALEA establishes four general ''assistance capability requirements'' that carriers must meet to achieve compliance with CALEA. Specifically, section 103 requires a telecommunications carrier to ensure that its equipment, facilities, and services are capable of:

(1) Isolating and enabling the government, pursuant to a lawful authorization, to intercept all wire and electronic communications;

(2) Providing to the government access to call-identifying information that is ''reasonably available'' to the carrier;

(3) Delivering to the government call content and call-identifying information in an acceptable form and at a remote location; and,

(4) Facilitating government access unobtrusively and in a manner that protects privacy and security.

3. CALEA does not specify how these four requirements are to be met, but section 107(a) specifies a ''safe harbor'' provision, whereby carriers and manufacturers are deemed CALEA-compliant if they meet publicly available standards adopted by industry. Between 1995 and 1997, Subcommittee TR45.2 of the Telecommunications Industry Association (TIA) developed an interim standard, J–STD–025, to serve as a safe harbor for wireline, cellular, and broadband PCS carriers and manufacturers under section 107(a). That standard defines services and features required by wireline, cellular, and broadband PCS carriers to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a law enforcement agency (LEA). However, two parties filed petitions for rulemaking with the Commission, pursuant to section 107(b) of CALEA, contending that the interim standard was either overinclusive or underinclusive. Specifically, DoJ/FBI argue that the interim standard does not satisfy CALEA requirements because it fails to include the nine essential punch list capabilities, and the Center for Democracy and Technology argues that the standard is overinclusive because it includes packet-mode communications and location information.

4. The *Further Notice of Proposed Rule Making* (Further NPRM), 63 FR 63639, November 16, 1998, in this proceeding addressed these alleged deficiencies in the interim standard. In the *Further NPRM,* the Commission stated that it did not intend to reexamine any of the uncontested technical requirements of the interim standard, but would make determinations only regarding whether the 11 disputed capabilities met the assistance capability requirements specified in section 103 of CALEA.

5. The *Further NPRM* tentatively concluded that the provision by carriers to LEAs of location information and five punch list capabilities is necessary to meet the assistance capability requirements under section 103(a). Those five punch list capabilities are subject-initiated conference calls; party hold, join, drop on conference calls; subject-initiated dialing and signaling information; timing information; and dialed digit extraction (post-cut-through digits). The *Further NPRM* also tentatively concluded that the provision by carriers to LEAs of three punch list capabilities is not necessary to meet the assistance capability requirements under section 103(a). Those capabilities are surveillance status messages, continuity check tones, and feature status messages. Finally, the *Further NPRM* requested comment on the remaining punch list item—in-band and out-of-band signaling—and packet-mode communications issues.

6. The Commission emphasized in the *Further NPRM* that it was directed by the Act to take into account five factors that must be considered under section 107(b) of CALEA. Those factors are: (1) Meeting the assistance capability requirements of section 103 by cost-effective methods; (2) protecting the privacy and security of communications

not authorized to be intercepted; (3) minimizing the cost of CALEA compliance on residential ratepayers; (4) serving the policy of the United States to encourage the provision of new technologies and services to the public; and, (5) providing a reasonable time and conditions for CALEA compliance.

7. The Commission also tentatively concluded in the *Further NPRM* that, if any additional technical requirements were adopted, they could be most efficiently implemented by permitting TIA to modify J–STD–025 in accord with the Commission's determinations. The Commission stated that although TIA may have to undertake additional work to implement those additional requirements, TIA has the experience and resources to develop technical specifications and implement CALEA's requirements most rapidly. Finally, with respect to those additional requirements, the *Further NPRM* stated that the Commission would set a deadline for carrier compliance later than the June 30, 2000 CALEA compliance deadline specified in the *Memorandum Opinion and Order* in this proceeding.

8. In the *Third R&O,* the Commission found no need to reexamine the entire interim standard. The Commission stated that no deficiencies in the interim standard were identified other than with respect to location information, packet-mode communications, and the punch list. Since section 107(b) requires the Commission to resolve specific disputes raised by petition regarding alleged deficiencies in the industry standard, the Commission declined to consider other aspects of that standard not challenged in this proceeding. Moreover, by focusing only on those specific technical issues properly raised before it, the Commission stated that it will achieve greater efficiency and will permit telecommunications manufacturers and carriers to deploy CALEA solutions on a more expedited basis. Accordingly, the Commission found that wireline, cellular, and broadband PCS carriers must comply with all uncontested requirements of the interim standard by June 30, 2000.

9. In the *Third R&O,* the Commission decided that location information must be provided to law enforcement under CALEA's assistance capability requirements for ''call-identifying information.'' CALEA defines call-identifying information as ''dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier.'' The *Third R&O* concluded that location information identifies the ''origin'' or ''destination'' of a communication and thus is covered by CALEA. The *Third R&O,* however, did not adopt a location tracking capability. Rather, it permitted LEAs that have the proper legal authorization to receive from wireline, cellular, and broadband PCS carriers only the location of a cell site at the beginning and termination of a mobile call.

10. With respect to a packet-mode capability, the *Third R&O* decided that no specific technical requirement should be adopted because the approach taken to packet-switching technology in J–STD–025 raises significant privacy concerns, and the record is not sufficiently developed to support proposing any particular technical requirement for packet-mode communications. Under J–STD–025, LEAs would be provided with both call-identifying information and call content even in cases where a LEA is authorized only to receive call-identifying information (*i.e.,* under a pen register). Accordingly, the *Third R&O* invited TIA to study CALEA solutions for packet-mode technology and report to the Commission by September 30, 2000 on steps that can be taken, including amendments to J–STD–025, that will better address privacy concerns. In the interim, the *Third R&O* permitted packet-mode communications, including call-identifying information and call content, to be delivered to LEAs under the interim standard. Further, the *Third R&O* required that packet-mode communications be delivered to LEAs under the interim standard no later than September 30, 2001.

11. With respect to the nine punch list items, the *Third R&O* added to J–STD–025 the five items that were proposed in the *Further NPRM* as capabilities mandated by CALEA, and excluded from the final industry standard the three items that the *Further NPRM* tentatively found were not capabilities mandated by CALEA. The *Further NPRM* also added to J–STD–025 the item on which the Commission requested comment.

12. Specifically, the following punch list items were included in the final industry standard:

(1) Content of subject-initiated conference calls—Would enable law enforcement to access the content of conference calls supported by the subject's service (including the call content of parties on hold).

13. The *Third R&O* found that CALEA permits law enforcement to access the content of subject-initiated conference calls. With appropriate lawful authorization, the LEA is entitled to ''all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber.'' When a subject is a participant in a conference call using facilities that have been placed under surveillance pursuant to a court order, the *Third R&O* concluded that CALEA requires delivery to law enforcement of all portions of a call to the extent the carrier's system architecture permits. However, as the Commission noted in the *Further NPRM,* different carriers provide conference calling features in various ways and not all carriers' system architecture is the same. Conference calling features include various types of multi-party calls, such as three-way calling where a bridge is established in the subscriber's serving switch, as well as ''meet me'' or conference bridge services where a bridge is established at a remote switch of another carrier. In the case of the latter type of bridge calls, when the subject terminates his circuit connection to the conference call, the communication between other participants no longer is to or from the subscriber's equipment, facilities, and services, and may no longer even be carried by the carrier within a service area to or from the subscriber of the carrier. The *Third R&O* concluded that it is not reasonable in such circumstances to require the carrier to provide the communications of other parties continuing on the conference call because to do so would not be a cost-effective method of implementing the conference call intercept and may not protect the privacy and security of communications not authorized to be intercepted.

Finally, the *Third R&O* concluded that the anticipated costs to carriers of adding a conference call capability are not so exorbitant as to require automatic exclusion of the capability. In percentage terms, based on revenue data submitted by five manufacturers, these costs would be 4% of the core J–STD–025 and 9% of the total punch list.

(2) Party hold, join, drop on conference calls—Messages would be sent to law enforcement that identify the active parties of a call. Specifically, on a conference call, these messages would indicate whether a party is on hold, has joined or has been dropped from the conference call.

14. The *Third R&O* concluded that party hold/join/drop information falls within CALEA's definition of ''call-

identifying information'' because it is ''signaling information that identifies the origin, direction, destination, or termination of each communication generated or received'' by the subscriber. Party join information appears to identify the origin of a communication; party drop, the termination of a communication; and party hold, the temporary origin, temporary termination, or re-direction of a communication. This capability also appears to be necessary to enable law enforcement to isolate call-identifying and content information because, without it, a LEA would be unable to determine who is talking to whom, and, more accurately, to focus on the subject's role in the conversation. Further, the important privacy objectives set forth by CALEA are enhanced if law enforcement can better ascertain and isolate communications involving the subject from those involving only innocent third parties.

15. Finally, the *Third R&O* concluded that party hold/join/drop information is reasonably available to the carrier in those cases where the carrier's facilities, equipment or services are involved in providing the service, and that the anticipated costs to carriers of adding this capability are not so exorbitant as to require automatic exclusion of the capability. In percentage terms, based on the manufacturers' aggregate revenue estimates, these costs would be 7% of the core J–STD–025 and 15% of the total punch list. To the extent that customer premises equipment (CPE) is used to provide party hold/join/drop information, the *Third R&O* concluded that such information is not reasonably available to the LEA since no network signal would be generated.

(3) Subject-initiated dialing and signaling information—Access to all dialing and signaling information available from the subject would inform law enforcement of a subject's use of features (such as the use of flash-hook and other feature keys).

16. The *Third R&O* concluded that subject-initiated dialing and signaling information fits within the definition of call-identifying information contained in section 102(2) of CALEA. Call-forwarding signaling information identifies the direction and destination of a call, and call-waiting signaling information identifies the origin and termination of each communication. The *Third R&O* also concluded that access to subject-initiated dialing and signaling information may be necessary in order for the LEA to isolate and correlate call-identifying and call content information. Knowing what features a subject is using will ensure that the LEA receives information ''in a manner that allows it to be associated with the communication to which it pertains.'' For example, without knowing that a subject has switched over to a call on call-waiting, the LEA may not be able to associate the call-identifying information with the call content to which it pertains and thus could be more likely to mistake one call for another. Finally, the *Third R&O* concluded that the anticipated costs to carriers of adding this capability are not so exorbitant as to require automatic exclusion of the capability. In percentage terms, based on the manufacturers' aggregate revenue estimates, these costs would be 4% of the core J/STD–025 and 8% of the total punch list. To the extent CPE is used to perform the signaling and no network signal is generated, that information is not reasonably available to a carrier, and thus, is not required to be provided.

(4) In-band and out-of-band signaling (notification message)—A message would be sent to law enforcement whenever a subject's *service* sends a tone or other network message to the subject or associate (*e.g.*, notification that a line is ringing or busy, call waiting signal).

17. The *Third R&O* stated that modern networks are capable of using many types of in-band and out-of band signals. Certain types of signals, such as ringing and busy signals, clearly fall within the scope of call-identifying information because they indicate information about the termination of a call. Other types of signals, however, may simply be used by carriers for supervision or control of certain functions and features of the network and do not trigger any audible or visual message to the subscriber and, thus, would not be call-identifying information. The *Third R&O* thus concluded that in-band and out-of-band signals that are generated at the intercept access point (IAP) toward the subscriber (*e.g.*, call waiting or stutter dial tone) and that are being used for call processing purposes are call identifying information that is reasonably available to the carrier. Other signals that provide call identifying information (*e.g.*, busy, fast busy, audible ringing tone), although generated elsewhere in the carrier's network, pass through the IAP on their way to the subject even if they are not used for call processing and can be made available without excessive modifications to the network and thus are reasonably available to the carrier. Finally, the *Third R&O* concluded that the anticipated costs to carriers of adding this capability are not so exorbitant as to require automatic exclusion of the capability. In percentage terms, based on the manufacturers' aggregate revenue estimates, these costs would be 6% of the core J–STD–025 and 14% of the total punch list. To the extent CPE is used to perform the signaling and no network signal is generated, that information is not reasonably available to a carrier, and thus, is not required to be provided.

(5) Timing information—Information would be sent to a LEA permitting it to correlate call-identifying information with the call content of a communications interception.

18. The *Third R&O* concluded that a timing information requirement is an assistance capability requirement of section 103 of CALEA. First, the *Third R&O* found that time stamping is call-identifying information as defined in section 102(2) of CALEA. This information is needed to distinguish among several calls occurring at approximately the same time. In other words, time stamp information is needed to identify ''the origin, direction, destination, or termination'' of any given call and, thus, fits within the statutory definition of section 102(2). Second, the *Third R&O* found that delivery of time stamp information to the LEA must, pursuant to section 103(a)(2), be provided in such a timely manner to allow that information ''to be associated with the communication to which it pertains.'' Finally, the *Third R&O* found that the anticipated costs to carriers of adding this capability are not so exorbitant as to require automatic exclusion of the capability. In percentage terms, based on the manufacturers' aggregate revenue estimates, these costs would be 2% of the core J–STD–025 and 5% of the total punch list.

(6) Dialed digit extraction—A carrier would provide to a LEA on the call data channel any digits dialed by the subject after connecting to another carrier's service.

19. The *Third R&O* found that some digits dialed by a subject after connecting to a carrier other than the originating carrier are call-identifying information. While a subject may dial digits after the initial call set-up that are not call-identifying—*e.g.*, a bank account number to access his/her bank statement—some digits dialed after connecting to an interexchange carrier identify the ''origin, direction, destination or termination'' of communications. With respect to

whether this call-identifying information is ''reasonably available'' to the originating carrier, under the interim standard's definition of ''reasonably available call-identifying information'' it would not be, because call-identifying information is ''reasonably available'' only if it is present at an IAP for call processing purposes. However, the *Third R&O* found that this definition should be modified. Specifically, the *Third R&O* found that if call-identifying information is present at an IAP and can be made available without the carrier being unduly burdened with network modifications, that information should be deemed ''reasonably available.'' The record indicates that digits dialed by a subject after connecting to another carrier can be obtained from the originating carrier without that carrier being unduly burdened with network modifications.

20. Additionally, the *Third R&O* noted that there appears to be a consensus that LEAs should be permitted to obtain in some fashion digits dialed by the subject after connecting to another carrier's service. The Personal Communications Industry Association, Ameritech, and BellSouth have proposed alternative methods of extracting such digits, and these methods would minimize the expense to originating carriers. However, each alternative method would shift the cost burden to LEAs, and each would also raise significant privacy concerns.

21. Accordingly, the *Third R&O* found that adopting the *Further NPRM* proposal rather than one of the three alternatives suggested in the comments will best balance the directives of section 107(b) of CALEA that the capability requirements of section 103 be met by cost-effective methods and that the privacy and security of communications not authorized to be intercepted be protected. The *Third R&O* noted that the manufacturers' revenue data indicate that the cost of a dialed digit extraction capability would exceed the cost of any other punch list capability. In percentage terms, based on the manufacturers' aggregate revenue estimates, this cost would be 13% of the core interim standard and 29% of the total punch list. Based on the manufacturers' wireless revenue estimates, this cost would be 17% of the core J–STD–025 and 26% of the total punch list. However, in balancing these costs against other statutory requirements, the *Third R&O* found them not to be so exorbitant as to require automatic exclusion of the capability. Further, it is unclear whether any of the alternative methods proposed would be significantly less expensive; rather, they would simply shift the cost burden from carriers to LEAs.

22. The following punch list items were excluded from the final industry standard:

(1) Surveillance status—This capability would require the carrier to send a message to law enforcement to verify that a wiretap has been established and is still functioning correctly.

23. The *Third R&O* concluded that providing surveillance status information does not constitute a technical requirement necessary for meeting CALEA's assistance capability requirements. Although CALEA requires carriers to ensure that authorized wiretaps can be performed in an expeditious manner—and the *Third R&O* found that a surveillance status message could assist carriers and law enforcement in determining the status of such wiretaps—the *Third R&O* also found that this feature does not fall within any of the assistance capability requirements expressly set forth in CALEA. This feature does not appear to be call-identifying information as defined by CALEA, since the information that such a feature would provide would not identify ''the origin, direction, destination, or termination of each communication.'' The FBI's contrary interpretation is that this feature fits within CALEA's requirement that a carrier ''shall ensure'' that its system is capable of meeting the section 103(a) requirements. The *Third R&O* noted, however, that the plain language of the Act—''a telecommunications carrier shall ensure that its equipment, facilities, or services * * * are capable of'' intercepting communications and allowing law enforcement access to call identifying information—appears to mandate compliance with the assistance capability requirements but not to require that such capability be proven or verified on a continual basis.

(2) Continuity check tone (C-tone)—Electronic signal that would alert law enforcement if the facility used for delivery of call content interception has failed or lost continuity.

24. The *Third R&O* concluded that providing a C-tone does not constitute a CALEA technical requirement. As with the case of surveillance status, above, the *Third R&O* found that this feature could assist law enforcement to determine the status of a wiretap, but it does not fit within the assistance capability requirements expressly set forth in CALEA because the information such a feature would provide would not identify ''the origin, direction, destination, or termination of each communication.'' Nor does it appear to be required under section 103(a)(1), since it is not a wire or electronic communications carried on a carrier's system. The plain language of the statute mandates compliance with the capability requirements of section 103(a), but does not require that such capability be proven or verified on a continual basis. Ensuring that a wiretap is operational can be done in either a technical or non-technical manner, and section 103(a) does not include ''ensurance'' itself as a capability. Thus, the *Third R&O* concluded that the continuity tone punch list item is not an assistance capability requirement under section 103.

(3) Feature status—Would affirmatively notify law enforcement when, for the facilities under surveillance, specific subscription-based calling services are added or deleted, even when the subject modifies capabilities remotely through another phone or through an operator.

25. The *Third R&O* concluded that provision of feature status messages does not constitute a CALEA technical requirement. As with the cases of surveillance status messages and continuity tones, the *Third R&O* found that feature status messages could be useful to an LEA, but that provision of these messages from a carrier to an LEA does not fit within the assistance capability requirements expressly set forth in CALEA. First, *Third R&O* stated that it is clear that feature status messages do not constitute call-identifying information because they do not pertain to the actual placement or receipt of calls. Further, feature status messages do not appear to be necessary to intercept either wire or electronic communications carried on a carrier's system. Rather, they would simply aid an LEA in determining how much capacity is required to implement and maintain effective electronic surveillance of a target facility, information that could be useful in assuring that an interception is fully effectuated and the intercepted material delivered as authorized. However, the information that would be provided by feature status messages can be provided by other means, such as a subpoena to the carrier. In any event, the plain language of the Act appears to mandate compliance with the assistance capability requirements, but does not appear to require carriers to implement any specific quality control capabilities to assist law enforcement.

26. Finally, the *Third R&O* found that the new required capabilities can be most efficiently implemented by permitting TIA Subcommittee 45.2 to make the modifications. LEAs, carriers, and manufacturers are voting members of the Subcommittee, and the Subcommittee has the experience and resources in place to resolve these issues quickly. Regarding the specific timing requirements, *Third R&O* found that seven months; *i.e.*, by March 30, 2000, is a reasonable period of time for TIA to complete the necessary changes to J–STD–025. Commission staff will closely monitor the development of the revised standard, but will not participate directly so that the Commission can maintain its impartiality in the event of disputes relative to the revised standard.

27. The *Third R&O* specified that wireline, cellular, and broadband PCS carriers make the six punch list capabilities available to LEAs in the same timeframe as packet-mode communications; *i.e.*, by September 30, 2001. Relative to implementation of the core J–STD–025, this will provide carriers an additional 15 months to implement these capabilities. Because manufacturers have had development of these capabilities under consideration for several years, the *Third R&O* found that this additional time will prove sufficient for the development process to be completed and for carriers to implement these capabilities.

Ordering Clauses

28. Accordingly, *it is ordered* that, pursuant to sections 1, 4, 229, 301, 303, and 332 of the Communications Act of 1934, as amended, and 107(b) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 151, 154, 229, 301, 303, 332, and 1006(b), the *Third Report and Order* and the rules specified herein *are adopted*.

Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further NPRM*.[2] The Commission sought written public comments on the proposals in the *Further NPRM*, including the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

(A) Need for and Purpose of This Action

30. The *Third Report and Order* responds to the legislative mandate contained in the Communications Assistance for Law Enforcement Act, Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.). The Commission, in compliance with 47 U.S.C. 229, promulgates rules in the *Third Report and Order* to ensure the prompt implementation of section 103 of CALEA. In enacting CALEA, Congress sought to balance three key policies with CALEA: ''(1) To preserve a narrowly focused capability for law enforcement agencies to carry out properly authorized intercepts; (2) to protect privacy in the face of increasingly powerful and personally revealing technologies; and (3) to avoid impeding the development of new communications services and technologies.''

31. The rules adopted in this *Third Report and Order* implement Congress's goal to balance the three key policies enumerated above. The objective of the rules is to implement as quickly and effectively as possible the national telecommunications policy for wireline, cellular, and broadband PCS telecommunications carriers to support the lawful electronic surveillance needs of law enforcement agencies.

(B) Summary of the Issues Raised by Public Comments Made in Response to the IRFA

32. Summary of Initial Regulatory Flexibility Analysis (IRFA). In the *Further NPRM*, the Commission performed an IRFA and asked for comments that specifically addressed issues raised in the IRFA. No parties filed comments directly in response to the IRFA. In response to non-IFRA comments to the *Further NPRM*, we have modified several of the Commission's proposals, particularly regarding packet switching, conference call content, in-band and out-of-band signaling, and timing information, as discussed above.

(C) Description and Estimates of the Number of Entities Affected by This Third Report and Order

33. 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 action taken.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[6] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[8] Nationwide, as of 1992, there were approximately 275,801 small organizations.[9] And finally, ''small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''[10] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[11] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[12] The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. We further describe and estimate the number of small business concerns that may be affected by the actions taken in the *Third Report and Order*.

34. As noted, under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[13] The SBA has defined a small business for Standard Industrial

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

[2] 63 FR 63639, November 16, 1998, 13 FCC Rcd 22632 (1998).

[3] See 5 U.S.C. 604.

[4] 5 U.S.C. 603(b)(3).

[5] *Id.* 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[7] Small Business Act, 15 U.S.C. 632.

[8] 5 U.S.C. 601(4).

[9] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[10] 5 U.S.C. 601(5).

[11] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[12] *Id.*

[13] 15 U.S.C. 632. See, *e.g., Brown Transport Truckload, Inc.* v. *Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[14] We first discuss the number of small telecommunications entities falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

35. Total Number of Telecommunications Entities Affected. The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[15] This number contains a variety of different categories of entities, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' [16] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the actions taken in this Third Report and Order.

36. The most reliable source of current information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[17] According to data in the most recent report, there are 3,604 interstate carriers.[18] These include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

37. We have included small incumbent local exchange carriers (LECs) in this RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [19] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[20] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

38. Wireline Carriers and Service Providers (SIC 4813). The Census Bureau reports that there were 2,321 telephone communications companies other than radiotelephone companies in operation for at least one year at the end of 1992.[21] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the actions taken in this Third Report and Order.

39. Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, and Resellers. Neither the Commission nor SBA has developed a definition of small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[22] The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS.[23] According to our most recent data, there are 1,410 LECs, 151 IXCs, 129 CAPs, and 351 resellers.[24] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs, 151 IXCs, 129 CAPs, and 351 resellers that may be affected by the actions taken in the *Third Report and Order*.

40. Wireless Carriers (SIC 4812). The Census Bureau reports that there were 1,176 radiotelephone (wireless) companies in operation for at least one year at the end of 1992, of which 1,164 had fewer than 1,000 employees.[25] Even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small

[14] 13 CFR 121.201.

[15] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) (''1992 Census'').

[16] 15 U.S.C. 632(a)(1).

[17] FCC, Carrier Locator: Interstate Service Providers, Figure 1 (Jan. 1999) (Carrier Locator). See also 47 CFR 64.601–.608.

[18] Carrier Locator at Fig. 1.

[19] 5 U.S.C. 601(3).

[20] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499 (1996), 61 FR 45476, August 29, 1996.

[21] 1992 Census, *supra*, at Firm Size 1–123.

[22] 13 CFR 121.210, SIC Code 4813.

[23] See 47 CFR 64.601 *et seq.*; Carrier Locator at Fig. 1.

[24] Carrier Locator at Fig. 1. The total for resellers includes both toll resellers and local resellers. The TRS category for CAPs also includes competitive local exchange carriers (CLECs) (total of 129 for both).

[25] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) (''1992 Census'').

entity radiotelephone companies that may be affected by the actions taken in this Third Report and Order.

41. Cellular, PCS, SMR and Other Mobile Service Providers. In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the actions taken in this Second Report and Order, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes PCS, Cellular, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules, which is for radiotelephone communications companies.[26] According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services.[27] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the actions taken in this Second Report and Order.

42. Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small business'' for Blocks C and F as an entity that has average gross revenues of not more than $40 million in the three previous calendar years.[28] These regulations defining ''small business'' in the context of broadband PCS auctions have been approved by SBA.[29] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There have been 237 winning bidders that qualified as small entities in the four auctions that have been held for licenses in Blocks C, D, E and F, all of which may be affected by the actions taken in this Second Report and Order.

43. Cellular Licensees. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Carrier Locator data, 732 carriers reported that they were engaged in the provision of either cellular service or PCS services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the actions taken in this Second Report and Order.

(D) Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

44. No reporting and recordkeeping requirements are imposed on telecommunications carriers, thus burdens on carriers, including small carriers, are not increased as a result of actions taken herein. Telecommunications carriers, including small carriers, will have to upgrade their network facilities to provide to law enforcement the assistance capability requirements adopted herein. Although compliance with the technical requirements will impose costs on carriers, the record was not sufficient to analyze thoroughly the costs to carriers, including small carriers.

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

45. The need for the regulations adopted herein is mandated by Federal legislation. In the final regulations, we affirm our proposals in the *Further NPRM* to establish regulations for wireline, cellular, and broadband PCS telecommunications carriers. Costs to telecommunications carriers will be mitigated in several ways. For example, the final regulations will require telecommunications carrier's to make available to law enforcement call identifying information when it can be done without unduly burdening the carrier with network modifications, thus allowing cost to be a consideration in determining whether the information is reasonably available to the carrier and can be provided to law enforcement . Thus, compliance with the assistance capability requirements of CALEA will be reasonable for all carriers, including small carriers. Also, under CALEA some carriers will be able to request reimbursement from the Department of Justice for network upgrades to comply with the technical requirements adopted herein, and others may be able to defer network upgrades to their normal business cycle under a plan being developed by the Department of Justice.

Report to Congress

46. The Commission will send a copy of this FRFA, along with this *Third Report and Order,* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this *Third Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 22

Public mobile services.

47 CFR Part 24

Personal communications services.

47 CFR Part 64

Miscellaneous rules relating to common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble parts 22, 24 and 64 of the Code of Federal Regulations is revised as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Part 22 is amended to add subpart J to read as follows:

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[26] *Id.* To the extent that the Commission has adopted definitions for small entities in connection with the auction of particular wireless licenses, we discuss those definitions below.

[27] Carrier Locator at Fig. 1.

[28] 47 CFR 24.720(b)(1).

[29] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532 (1994), 59 FR 37566, July 22, 1994.

Subpart J—Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

Sec.
22.1100 Purpose.
22.1101 Scope.
22.1102 Definitions.
22.1103 Capabilities that must be provided by a cellular telecommunications carrier.

§ 22.1100 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act (CALEA), Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains rules that require a cellular telecommunications carrier to implement certain capabilities to ensure law enforcement access to authorized communications or call-identifying information.

§ 22.1101 Scope.

The definitions included in this subpart shall be used solely for the purpose of implementing CALEA requirements.

§ 22.1102 Definitions.

Call identifying information. Call identifying information means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier. Call identifying information is ''reasonably available'' to a carrier if it is present at an intercept access point and can be made available without the carrier being unduly burdened with network modifications.

Collection function. The location where lawfully authorized intercepted communications and call-identifying information is collected by a law enforcement agency (LEA).

Content of subject-initiated conference calls. Capability that permits a LEA to monitor the content of conversations by all parties connected via a conference call when the facilities under surveillance maintain a circuit connection to the call.

Dialed digit extraction. Capability that permits a LEA to receive on the call data channel digits dialed by a subject when a call is connected to another carrier's service for processing and routing.

In-band and out-of-band signaling. Capability that permits a LEA to be informed when a network message that provides call identifying information (*e.g.*, ringing, busy, call waiting signal, message light) is generated or sent by the IAP switch to a subject using the facilities under surveillance. Excludes signals generated by customer premises equipment when no network signal is generated.

Intercept Access Point (IAP). Intercept access point is a point within a carrier's system where some of the communications or call-identifying information of an intercept subject's equipment, facilities, and services are accessed.

J–STD–025. The interim standard developed by the Telecommunications Industry Association and the Alliance for Telecommunications Industry Solutions for wireline, cellular, and broadband PCS carriers. This standard defines services and features to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a LEA.

LEA. Law enforcement agency; *e.g.,* the Federal Bureau of Investigation or a local police department.

Party hold, join, drop on conference calls. Capability that permits a LEA to identify the parties to a conference call conversation at all times.

Subject-initiated dialing and signaling information. Capability that permits a LEA to be informed when a subject using the facilities under surveillance uses services that provide call identifying information, such as call forwarding, call waiting, call hold, and three-way calling. Excludes signals generated by customer premises equipment when no network signal is generated.

Timing information. Capability that permits a LEA to associate call-identifying information with the content of a call. A call-identifying message must be sent from the carrier's IAP to the LEA's Collection Function within eight seconds of receipt of that message by the IAP at least 95% of the time, and with the call event time-stamped to an accuracy of at least 200 milliseconds.

§ 22.1103 Capabilities that must be provided by a cellular telecommunications carrier.

(a) Except as provided under paragraph (b) of this section, as of June 30, 2000, a cellular telecommunications carrier shall provide to a LEA the assistance capability requirements of CALEA, *see* 47 U.S.C. 1002. A carrier may satisfy these requirements by complying with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, such as J–STD–025.

(b) As of September 30, 2001, a cellular telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications and the following capabilities:

(1) Content of subject-initiated conference calls;
(2) Party hold, join, drop on conference calls;
(3) Subject-initiated dialing and signaling information ;
(4) In-band and out-of-band signaling;
(5) Timing information;
(6) Dialed digit extraction.

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

4. Part 24 is amended to add subpart J to read as follows:

Subpart J—Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

Sec.
24.900 Purpose.
24.901 Scope.
24.902 Definitions.
24.903 Capabilities that must be provided by a broadcast PCS telecommunications carrier.

§ 24.900 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act (CALEA), Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains rules that require a broadband PCS telecommunications carrier to implement certain capabilities to ensure law enforcement access to authorized communications or call-identifying information.

§ 24.901 Scope.

The definitions included in this subpart shall be used solely for the purpose of implementing CALEA requirements.

§ 24.902 Definitions.

Call identifying information. Call identifying information means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier. Call identifying information is ''reasonably available'' to a carrier if it is present at an intercept access point and can be made available without the

carrier being unduly burdened with network modifications.

Collection function. The location where lawfully authorized intercepted communications and call-identifying information is collected by a law enforcement agency (LEA).

Content of subject-initiated conference calls. Capability that permits a LEA to monitor the content of conversations by all parties connected via a conference call when the facilities under surveillance maintain a circuit connection to the call.

Dialed digit extraction. Capability that permits a LEA to receive on the call data channel a digits dialed by a subject after a call is connected to another carrier's service for processing and routing.

IAP. Intercept access point is a point within a carrier's system where some of the communications or call-identifying information of an intercept subject's equipment, facilities, and services are accessed.

In-band and out-of-band signaling. Capability that permits a LEA to be informed when a network message that provides call identifying information (*e.g.*, ringing, busy, call waiting signal, message light) is generated or sent by the IAP switch to a subject using the facilities under surveillance. Excludes signals generated by customer premises equipment when no network signal is generated.

J–STD–025. The interim standard developed by the Telecommunications Industry Association and the Alliance for Telecommunications Industry Solutions for wireline, cellular, and broadband PCS carriers. This standard defines services and features to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a LEA.

LEA. Law enforcement agency; *e.g.*, the Federal Bureau of Investigation or a local police department.

Party hold, join, drop on conference calls. Capability that permits a LEA to identify the parties to a conference call conversation at all times.

Subject-initiated dialing and signaling information. Capability that permits a LEA to be informed when a subject using the facilities under surveillance uses services that provide call identifying information, such as call forwarding, call waiting, call hold, and three-way calling. Excludes signals generated by customer premises equipment when no network signal is generated.

Timing information. Capability that permits a LEA to associate call-identifying information with the content of a call. A call-identifying message must be sent from the carrier's IAP to the LEA's Collection Function within eight seconds of receipt of that message by the IAP at least 95% of the time, and with the call event time-stamped to an accuracy of at least 200 milliseconds.

§ 24.903 Capabilities that must be provided by a broadband PCS telecommunications carrier.

(a) Except as provided under paragraph (b) of this section, as of June 30, 2000, a cellular telecommunications carrier shall provide to a LEA the assistance capability requirements of CALEA, *see* 47 U.S.C. 1002. A carrier may satisfy these requirements by complying with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, such as J–STD–025.

(b) As of September 30, 2001, a cellular telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications and the following capabilities:

(1) Content of subject-initiated conference calls;
(2) Party hold, join, drop on conference calls;
(3) Subject-initiated dialing and signaling information ;
(4) In-band and out-of-band signaling;
(5) Timing information;
(6) Dialed digit extraction.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

5. The authority citation for part 64 is amended to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

6. Part 64 is amended to add Subpart W to read as follows:

Subpart W—Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

Sec.
64.2200 Purpose.
64.2201 Scope.
64.2202 Definitions.
64.2203 Capabilities that must be provided by a wireline telecommunications carrier.

§ 64.2200 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act (CALEA), Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains rules that require a wireline telecommunications carrier to implement certain capabilities to ensure law enforcement access to authorized communications or call-identifying information.

§ 64.2201 Scope.

The definitions included in this subpart shall be used solely for the purpose of implementing CALEA requirements.

§ 64.2202 Definitions.

Call identifying information. Call identifying information means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier. Call identifying information is ''reasonably available'' to a carrier if it is present at an intercept access point and can be made available without the carrier being unduly burdened with network modifications.

Collection function. The location where lawfully authorized intercepted communications and call-identifying information is collected by a law enforcement agency (LEA).

Content of subject-initiated conference calls. Capability that permits a LEA to monitor the content of conversations by all parties connected via a conference call when the facilities under surveillance maintain a circuit connection to the call.

Dialed digit extraction. Capability that permits a LEA to receive on the call data channel a digits dialed by a subject after a call is connected to another carrier's service for processing and routing.

IAP. Intercept access point is a point within a carrier's system where some of the communications or call-identifying information of an intercept subject's equipment, facilities, and services are accessed.

In-band and out-of-band signaling. Capability that permits a LEA to be informed when a network message that provides call identifying information (*e.g.*, ringing, busy, call waiting signal, message light) is generated or sent by the IAP switch to a subject using the facilities under surveillance. Excludes signals generated by customer premises equipment when no network signal is generated.

J–STD–025. The interim standard developed by the Telecommunications Industry Association and the Alliance for Telecommunications Industry

Solutions for wireline, cellular, and broadband PCS carriers. This standard defines services and features to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a LEA.

LEA. Law enforcement agency; *e.g.*, the Federal Bureau of Investigation or a local police department.

Party hold, join, drop on conference calls. Capability that permits a LEA to identify the parties to a conference call conversation at all times.

Subject-initiated dialing and signaling information. Capability that permits a LEA to be informed when a subject using the facilities under surveillance uses services that provide call identifying information, such as call forwarding, call waiting, call hold, and three-way calling. Excludes signals generated by customer premises equipment when no network signal is generated.

Timing information. Capability that permits a LEA to associate call-identifying information with the content of a call. A call-identifying message must be sent from the carrier's IAP to the LEA's Collection Function within eight seconds of receipt of that message by the IAP at least 95% of the time, and with the call event time-stamped to an accuracy of at least 200 milliseconds.

§ 64.2203 Capabilities that must be provided by a wireline telecommunications carrier.

(a) Except as provided under paragraph (b) of this section, as of June 30, 2000, a cellular telecommunications carrier shall provide to a LEA the assistance capability requirements of CALEA, *see* 47 U.S.C. 1002. A carrier may satisfy these requirements by complying with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, such as J–STD–025.

(b) As of September 30, 2001, a cellular telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications and the following capabilities:

(1) Content of subject-initiated conference calls;

(2) Party hold, join, drop on conference calls;

(3) Subject-initiated dialing and signaling information ;

(4) In-band and out-of-band signaling;

(5) Timing information;

(6) Dialed digit extraction.

[FR Doc. 99–24896 Filed 9–23–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[RSPA–99–6195 (Docket No. HM–206D)]

RIN 2137–AD37

Hazardous Materials: Limited Extension of Requirements for Labeling Materials Poisonous by Inhalation (PIH); Corrections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule; corrections.

SUMMARY: On September 16, 1999, RSPA published an interim final rule which provided a limited exception, until October 1, 2001, from requirements to place the new POISON INHALATION HAZARD or POISON GAS labels on packages that are intended for transportation in international commerce. The exception applies only to Division 2.3 materials and Division 6.1 liquids in Hazard Zone A or B that are loaded into a freight container or closed transport vehicle that is placarded and marked with the identification number, as currently required for those materials. This final rule corrects an inadvertent error in the section on Canadian shipments and packagings which, as published, would only provide relief for shipments of PIH materials transported from Canada.

As modified in this correction, the September 16, 1999 interim final rule is revised to provide for the transportation of packages containing PIH materials between the U.S. and Canada in conformance with the TDG labeling requirements.

DATES: *Effective Dates:* This final rule correction is effective on October 1, 1999. The effective date of the interim final rule remains October 1, 1999.

Comment Date: Comments must be received by November 15, 1999.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. See September 16 interim final rule for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On September 16, 1999, RSPA published an interim final rule providing a limited exception, until October 1, 2001, from requirements to place the new POISON INHALATION HAZARD or POISON GAS labels on packages containing PIH materials when transported in international commerce in accordance with the requirements prescribed in 49 CFR 171.12 or 49 CFR 171.12a. (64 FR 50260). In the preamble, RSPA stated that the exception would provide for the transportation of PIH materials to and from Canada. RSPA inadvertently did not include a necessary change to 49 CFR 171.12a(a) to provide for shipments transported from the U.S. to Canada. That section is amended to correct the error. In addition, 49 CFR 171.12a(b)(5)(iv), as added at 64 FR 50263, is amended to clarify that packages of PIH materials from or to the U.S. may be transported using this exception.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. A regulatory evaluation prepared for the January 8, 1997 final rule is available in the Docket (HM–206). Implementation of this labeling exception for PIH materials provided by this rulemaking should not result in any additional costs. Any savings associated with avoiding delay or frustration of shipments is considered so minimal as to not warrant revision of the regulatory evaluation.

B. Executive Order 12612

The final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism''). Federal hazardous materials transportation law, 49 U.S.C. 5101–5127 contains express preemption provisions at 49 U.S.C. 5125 and expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous materials that cover certain subjects and are not substantively the same as Federal requirements. These subjects are:

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, content, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Federal law 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be December 15, 1999.

C. Executive Order 13084

RSPA believes this change will not significantly or uniquely affect the communities of Indian tribal governments under the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Therefore, the funding and consultation requirements of this Executive Order would not apply.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether this interim final rule would have a significant economic impact on a substantial number of small entities. This rule provides limited relief to certain shippers and carriers of materials poisonous by inhalation and will have no significant economic impacts. I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This rule does not contain any new information collection requirements.

F. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

H. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. RSPA does not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This final rule does not contain business process changes and does not require modifications to computer systems for computer generated labels. The rule does not affect organizations' ability to respond to the Year 2000 problem and provides some relief to the international regulated community, until October 1, 2001, when mandatory compliance with the new PIH labeling is required.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.12a [Amended]

2. In § 171.12a(a), the second sentence is amended by removing the phrase ''The provisions'' and adding the phrase ''Except as provided in paragraph (b)(5)(iv) of this section, the provisions'' in its place.

3. In § 171.12a(b)(5)(iv), as added at 64 FR 50263, remove the phrase ''the package may be'' and add the phrase ''the package may be transported to or from the U.S. while'' in its place.

Issued in Washington, DC, on September 17, 1999, under the authority delegated in 49 CFR part 1.

Stephen D. Van Beek,

Deputy Administrator.

[FR Doc. 99–24752 Filed 9–23–99; 8:45 am]

BILLING CODE 4910–60–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 091799B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 20, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

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

The 1999 TAC of pollock in Statistical Area 610 of the GOA was established by the Final 1999 Harvest Specifications for Groundfish (64 FR 12094, March 11, 1999) as 23,120 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for pollock in Statistical Area 610 will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 23,020 mt, and is setting aside the remaining 100 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. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC pollock in Statistical Area 610 of the GOA. 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 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: September 17, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–24877 Filed 9–20–99; 4:50 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 64, No. 185

Friday, September 24, 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 LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–206C]

RIN 1218–AB62

Safety Standards for Fall Protection in the Construction Industry; Extension of Written Comment Period

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Advance Notice of Proposed Rulemaking; extension of written comment period.

SUMMARY: On July 14, 1999, OSHA published an Advance Notice of Proposed Rulemaking (ANPR) titled, ''Safety Standards for Fall Protection in the Construction Industry.'' The period for submitting written comments is being extended to allow information and data to be collected by those industries affected by the rule.

DATES: Comments must be received by January 24, 2000.

ADDRESSES: Two copies of comments must be submitted to the OSHA Docket Office, Docket S206C, Room N2625, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210, 202–693–2350. Comments consisting of 10 pages or less may be faxed to the Docket Office at the following FAX number: 202–693–1648. However, two hard copies must be mailed to us within two days. Electronic comments can be submitted on the Internet at *http://www.osha-slc.gov/e-comments/e-comments-fallprotection.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Occupational Safety and Health Administration, Office of Public Affairs, Room N3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, Telephone: (202) 693–1999. Anyone with questions regarding this document or the July 14 ANPR, should contact Ms. Jule Jones at (202) 693–2345.

SUPPLEMENTARY INFORMATION: On July 14, 1999, at 64 FR 38078, OSHA published an Advance Notice of Proposed Rulemaking (ANPR) titled ''Safety Standards for Fall Protection in the Construction Industry.'' In that document, OSHA requested comments and information on fall protection for workers engaged in certain construction activities currently covered by OSHA's standards. The comment period for submitting written responses to OSHA's questions was to expire on October 22, 1999. However, the following associations have requested a ninety-day extension for submitting written comments and information: National Association of Home Builders, Associated General Contractors of America, Associated Builders and Contractors, National Roofing Contractors Association, Mechanical Contractors Association of American, Sheet Metal and Air Conditioning Contractors National Association and the National Electrical Contractors Association. OSHA believes that this request is reasonable and that an extension will allow the regulated community time to gather information and data to assist the Agency.

Authority: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, D.C. this 15 day of September, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–24941 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA201–169b; FRL–6436–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District; Kern County Air Pollution Control District; and Ventura County Air Pollution Control District

ACTION: Proposed rule.

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_X) emissions from boilers, steam generators and process heaters and natural gas-fired residential water heaters.

The intended effect of this action is to regulate emissions of nitrogen oxides in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views these as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on these proposed rules. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by October 25, 1999.

ADDRESSES: Comments should be addressed to: Andy Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117–3027
Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301–2370
Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003–5417

FOR FURTHER INFORMATION CONTACT: Sam Agpawa, Rulemaking Office [Air-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1228.

SUPPLEMENTARY INFORMATION: This document concerns (1) Santa Barbara Air Pollution Control District Rule 342, Control of Oxides of Nitrogen (NO_X) From Boilers, Steam Generators and Process Heaters; (2) Kern County Air Pollution Control District Rule 425.2 Boilers, Steam Generators and Process Heaters (Oxides of Nitrogen) and (3) Ventura County Air Pollution District Rule 74.11, Natural Gas-Fired Residential Water Heaters. The rules were submitted to EPA on March 10, 1998; September 8, 1997 and October 16, 1985 respectively by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: September 1, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–24450 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0034b; FRL–6441–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Longmont Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the Longmont carbon monoxide redesignation request and maintenance plan. The redesignation request and maintenance plan were submitted by the Governor on August 19, 1998. In the Final Rules Section of this **Federal Register**, EPA is approving the State's redesignation request and maintenance plan State Implementation Plan (SIP) revision, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 25, 1999.

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

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

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

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules Section of this **Federal Register**.

Dated: September 10, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–24907 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–30115A; FRL–6382–1]

RIN 2070–AD23

Pesticide Tolerance Processing Fees; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: On June 9, 1999, EPA issued a proposed rule to revise and update its current tolerance processing fee regulation and provided 90 days for public comment. The comment period would have ended September 7, 1999. Due to the economic complexity of the proposal and the associated issues the Agency has decided to reopen the comment period for an additional 45–day period. In addition, the Agency is announcing in this notice the placement in the public docket for this proposed rule of two additional documents. It is EPA's hope that these documents will help the public better understand the calculations that went into deriving the proposed fees, and how the Agency percieves the waiver process working.

DATES: Comments on the proposed rule, identified by docket control number OPP–30115A, must be received on or before November 8, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30115A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Carol Peterson, Office of Pesticide Programs, Environmental Protection Agency (7506), 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–6598; e-mail: peterson.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice may directly affect any person who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or anyone who is interested in obtaining or retaining a tolerance in the absence of a registration. This group can include

pesticide manufacturers or formulators, companies that manufacture inert ingredients, importers of food, grower groups, or any person who seeks a tolerance. Federal, State, local, territorial, or tribal government agencies that petition for, or hold, emergency exemption tolerances are exempt from this rule. The vast majority of potentially affected categories and entities may include, but are not limited to:

Category	NAICS	SIC	Examples of Potentially Affected Entities
Chemical Industry	32532, 115, 112	0286, 0287	Pesticide chemical manufacturers, formulators, chemical manufacturers of inert ingredients

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under ''**Federal Register**— Environmental Documents.'' You can go directly to the **Federal Register** listings http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30115A. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

As described in Unit I.C. of the June 9, 1999, **Federal Register** notice (64 FR 31039) (FRL–6028–2), you may submit comments through the mail, in person, or electronically. Please follow the instructions that are provided in the June 9, 1999, notice. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30115A in the subject line on the first page of your response.

II. What Action is the Agency Taking?

The Agency issued a proposed rule to revise its tolerance fees and solicited comments from the public. The background on the proposal can be found in the previous **Federal Register** Notice published on June 9, 1999. The comment period is being reopened for an additional 45 days. The comment period will now end on November 8, 1999.

In addition, due to numerous questions received relating to the proposed rule, the Agency has placed several additional documents in the public docket. The first document, entitled ''Supplemental Tables,'' contains easier to read tables than those contained in the Economic Analysis, along with a table of Full Time Equivalents (FTEs) for each division and a detail explanation of the derivation of the overhead factors. The second document, entitled ''DRAFT DOCUMENT: Pesticide Registration (PR) Notice 99–X'' outlines draft criteria for the submission of waiver requests that are based on economic hardship or public interest. Many people have expressed the need for this criteria to fully examine how the tolerance fee rule may affect them. Please do not submit comments on this Draft PR notice. Once the Agency has determined the course of the final tolerance fee rule, it will issue a Notice of Availability of the PR Notice and solicit comments at that time.

List of Subjects

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

Dated: September 7, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–24910 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6443–6]

Vermont: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to hazardous waste program revisions submitted by Vermont. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before October 25, 1999.

ADDRESSES: Mail written comments to Geri Mannion, Vermont Authorization Coordinator, Hazardous Waste Program Unit, Office of Ecosystem Protection, EPA Region I, One Congress Street, Suite 1100 (CHW), Boston, MA, 02114–2023; Phone Number: (617) 918–1648. Copies of the Vermont program revision application are available for inspection and copying at the following addresses: EPA Region I Library, One Congress Street, Suite 1100 (LIB), Boston, MA, 02114–2023; Phone number: (617) 918–1990; Business Hours: 8:30 A.M. to 5:00 P.M. and the Agency of Natural Resources, Vermont Department of Environmental Conservation, Waste Management Division, 103 South Main Street—West Office Building, Waterbury, VT 05671–0404; Phone: (802) 241–3888; Business Hours: 7:45 A.M. to 4:30 P.M.

FOR FURTHER INFORMATION CONTACT: Geri Mannion at the above address and phone number.

SUPPLEMENTARY INFORMATION: In addition to proposing the authorization for changes to Vermont's hazardous waste program, EPA is making technical corrections to provisions referenced in its immediate final rule published in the **Federal Register** on May 3, 1993 (58 FR 26242) and effective August 6, 1993 (58 FR 31911) which authorized the State for revisions to its hazardous waste program. This proposed rule relates only to the immediate final rule to authorize the State's program changes and not to the technical corrections to the 1993 **Federal Register**.

For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: September 16, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–24909 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1602; MM Docket No. 99–73; RM–9348]

Radio Broadcasting Services; Gulf Hammock, FL

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document denies the proposal allotment of Channel 257A at Gulf Hammock, Florida, in response to a petition filed by Levy County Broadcasting. See 64 FR 12922, March 16, 1999. The Notice of proposed rulemakiing summarized at 64 FR 12922 questioned community status and requested additional information. Based on the information supplied by petitioner, it was determined that Gulf Hammock did not qualify as a community for allotment purposes.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–73, adopted August 11, 1999, and released August 13, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–24664 Filed 9–23–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223 and 224

[Docket No. 990910253–9253–01; I.D. 073099D]

RIN 0648–AM90

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List White Abalone (Haliotis sorenseni) as Endangered

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

ACTION: Notice of petition finding; request for information and comments.

SUMMARY: NMFS has received a petition to list white abalone (*Haliotis sorenseni*) as an endangered species on an emergency basis and to designate critical habitat under the Endangered Species Act (ESA). NMFS finds that the petition presents substantial scientific and commercial information indicating that the request for listing may be warranted. Therefore, NMFS is conducting a status review to determine whether the petitioned action is warranted. To assure that the review is comprehensive, NMFS is soliciting information and data regarding this species and potential critical habitat from any interested party. We will use information received during the comment period, and other information, in our review of the status of white abalone. The petition does not present substantial evidence to warrant the listing of white abalone on an emergency basis at this time.

DATES: Comments and information must be received by November 23, 1999.

ADDRESSES: Requests for copies of the petition and comments regarding white abalone should be submitted to Irma Lagomarsino, Division Manager for Protected Resources, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA, 90802–4213. The petition and supporting data are available for public inspection, by appointment, Monday through Friday at the address above.

FOR FURTHER INFORMATION CONTACT: Irma Lagomarsino, NMFS Southwest Region, 562/980–4016; Marta Nammack, NMFS Office of Protected Resources, 301/713–1401.

SUPPLEMENTARY INFORMATION:

Background

Based on information indicating major declines in the abundance of white abalone, NMFS designated the white abalone, a marine invertebrate, as a candidate species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) on July 14, 1997 (62 FR 37560). In August 1998, NMFS contracted with Scripps Institution of Oceanography for a review of the biological status of white abalone and current and historical impacts to the species. NMFS received this status review on April 21, 1999. In order to obtain an independent peer review of the contracted status review, NMFS requested three non-federal scientists to review and report on the scientific merits of the document. The scientists will submit their anonymous reviews by the end of August 1999.

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce (Secretary) to add a species to or remove a species from the List of Endangered and Threatened Wildlife and to

designate critical habitat. On April 29, 1999, NMFS received a petition from the Center for Biological Diversity and the Southwest Center for Biological Diversity to list white abalone as an endangered species on an emergency basis and designate critical habitat under the ESA.

On May 17, 1999, NMFS received a second petition to list white abalone as an endangered species throughout its range and to designate critical habitat under the ESA from the Marine Conservation Biology Institute, Abalone and Marine Resources Council, Sonoma County Abalone Network, Asociacion Interamericana para la Defensa del Ambiente, Channnel Islands Marine Resource Institute, Proteus SeaFarms International, Environmental Defense Fund and Natural Resources Defense Council. NMFS will treat this second request as supplemental information to the first petition. Section 4(b)(3)(A) of the Endangered Species Act (16 U.S.C. 1531–1544) requires that the NMFS make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. In determining whether substantial information exists for a petition to list a species, NMFS will take into account information submitted with and referenced in the petition and all other information readily available in NMFS' files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the *Federal Register*. If NMFS finds that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(B) of the ESA requires NMFS to make a finding as to whether or not the petitioned action is warranted within 1 year of the receipt of the petition.

The definition of ''species'' in section 3(16) of the ESA does not provide for distinct population segments of invertebrate species to be listed under the ESA. As a result, the white abalone would have to be listed throughout its entire range, including Mexico, if the listing is found to be warranted. In contrast, pursuant to 50 CFR 424.12(h), any critical habitat designated for white abalone may not include Mexico.

The Secretary may, at any time, issue a regulation adding a species to the list regarding to any emergency that poses a significant risk to the well-being of a species under section 4(b)(7) of the ESA. Such rules will, at the discretion of the Secretary, take effect immediately on publication in the **Federal Register** and detail the reasons for an emergency listing.

Finding

NMFS finds that the petitioners and comments on the petition present substantial scientific and commercial information indicating that a listing may be warranted, based on the criteria specified in 50 CFR 424.14(b)(2). Although a positive 90-day finding is not a decision to list a species, under section 4(b)(3)(A) of the ESA, this finding requires that a review of the status of white abalone be completed within 12 months of receiving the petition (by April 28, 2000) to determine whether the petitioned action is warranted.

Emergency Listing

The petitioners express concern about the decline of white abalone from its original abundance and believe that this decline constitutes an emergency posing a significant risk to the well-being of the species. Consequently, the petitioners conclude that white abalone will go extinct within 10 years unless immediate measures are taken to restore the species. For these reasons, the petitioners request that white abalone be listed as an endangered species on an emergency basis under the ESA.

NMFS finds that there is not substantial evidence to warrant listing white abalone on an emergency basis under the ESA and believes that the normal rulemaking procedures are sufficient and appropriate for the protection of white abalone. Based on NMFS' review of the petition and on other available information, we believe the decline of white abalone is primarily the result of over-harvesting in the early 1970s. Regulations limiting abalone harvest were instituted by California as early as the 1880s and later included restrictions on minimum size, harvest rate, and timing of harvest. The State of California closed its commercial and recreational white abalone fisheries in March 1996 and the best available information indicates that white abalone habitat is not currently at risk from destruction or modification.

Because fishery-independent assessment surveys of white abalone abundance have been limited in number and spatial coverage, a peer review of the NMFS-funded status review is necessary to determine whether previous sampling adequately represents the current density of white abalone. Since 80 percent of the historical white abalone landings in California were taken from San Clemente Island, the northern Channel Islands may never have supported high densities of white abalone. Thus, the estimate of white abalone abundance throughout its range using density estimates only from the surveys in the northern Channel Islands may not provide representative estimates of current abundance.

Thus, NMFS concludes that there is no emergency posing a significant risk to the well-being of the species. For these reasons, NMFS is not publishing a regulation to list white abalone as an endangered species on an emergency basis at this time.

Listing Factors and Basis for Determinations

Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by the State or foreign nations to protect such species.

Information Solicited

To ensure that the white abalone status review is complete and based on the best available scientific and commercial data, NMFS is soliciting information and comments on whether the white abalone is endangered or threatened based on the above listing criteria. Specifically, NMFS is soliciting information in the following areas: historical and current abundance of white abalone, current spatial distribution, trends in abundance, historic harvest levels, and possible threats to genetic integrity or demography due to reduced numbers of white abalone individuals. NMFS is also soliciting information regarding factors that have contributed to the decline of white abalone and any efforts being made to protect the species. This information should address white abalone throughout its range, from Point Conception, California, U.S.A., to between Punta Tortugas and Punta Abreojos, Baja California, Mexico.

Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for white abalone in California. Areas that include the physical and

biological features essential to the recovery of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the recovery of the species. Essential features should include, but are not limited to: (1) Space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting the following information describing: (1) The activities that affect the area or could be affected by the designation and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact of the critical habitat designation upon proposed or ongoing activities (50 CFR 424.19). NMFS considers the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

Data, information, and comments should include: (1) Supporting documentation, such as maps, bibliographic references, or reprints of pertinent publications, and (2) the person's name, address, and association, institution, or business.

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701; 16 U.S.C. 1361 *et seq.*

Dated: September 21, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–24961 Filed 9–23–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 185

Friday, September 24, 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

Forest Service

East Face Ecosystem Management Project, Beaverhead-Deerlodge National Forest, Beaverhead County, Montana

AGENCY: Forest Service, USD.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to document the analysis and disclose the environmental impacts of a proposed action to manipulate forest, shrubland, and grassland vegetation on about 16,000 acres. This area lies in the southeast corner of the Pioneer Mountains, about 17 miles northwest of Dillon, Montana.

The proposed action would commercially thin about 1,659 acres of Douglas-fir forest, thin another 6,602 acres of Douglas-fir forest using prescribed fire, release about 628 acres of aspen/shrub communities, release about 1,688 acres of mountain mahogany, restore about 5,200 acres of shrub/grass habitat that has been lost to conifer succession, and release riparian shrub communities form overstory conifers on about 448 acres.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than October 15, 1999.

ADDRESSES: The responsible official is the Forest Supervisor, Beaverhead-Deerlodge National Forest, 420 Barrett Street, Dillon, MT 59725. Send written comments to the responsible official, Acting Forest Supervisor Lawrence A. Timchak.

FOR FURTHER INFORMATION CONTACT: Ben Conard, Interdisciplinary Team Leader, Dillon Ranger District, or phone: (406) 683–3900.

SUPPLEMENTARY INFORMATION: About 80% of the Douglas-fir thinning would be done using slashing and prescribed fire, and 20% using wood product removal and prescribed fire. Aspen restoration would be done by slashing or removing conifers, some stands would be burned after slashing. Mountain mahogany restoration would be done by slashing and piling, then burning the piles. Shrub/grass restoration would be done using slashing and prescribed fire. Riparian shrub communities would be released using harvest, felling and/or slashing. Some slash may be piled and burned. Low standard temporary roads may be built to reach some treatment areas.

The project area lies in that portion of the East Pioneer Mountains between Rock Creek and Black Mountain in Townships 3, 4, and 5 South, Range 10 West; Township 5 South, Range 11 West; and Township 6 South, Range 10 and 11 West. The scope of this proposal is limited to specific prescribed burning, timber harvest, and associated temporary road building, slashing, lopping, or otherwise disposing of debris within the affected area.

Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues. A scoping notice describing the project was mailed to those who requested information on timber harvest and burning activities on the Beaverhead-Deerlodge National Forest. Montana Fish, Wildlife and Parks has been involved in the development of this proposal and will be consulted throughout the analysis and decision making process. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species.

Preliminary issues identified by the Forest Service include effects to vegetation, wildlife habitats, and maintaining the existing character of inventoried roadless areas. Slashing and prescribed fire are proposed in Inventoried Roadless Areas 1–800D and 1–009. No road building is proposed in inventoried roadless area. The analysis will consider all reasonably foreseeable activities, including proposed actions on adjacent BLM lands.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS period.

During the scoping process, the Forest Service is seeking additional information and comments from individuals or organization who may be interested in or affected by the proposed action, Federal, State and local agencies. The Forest Service invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

The draft EIS should be available for review in February 2000. The final EIS is scheduled for completion in July, 2000.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

It is very important those interested in this proposed action participate by the close of the 45 day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at CFR 1503.3 in addressing these points.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: September 7, 1999.

Jack de Golia,

Acting Forest Supervisor.

[FR Doc. 99–24826 Filed 9–23–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Triangle Land Exchange; Malheur, Umatilla, and Wallowa-Whitman National Forests; Baker, Grant, Harney, and Wallowa Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare and environmental impact statement (EIS) on a proposal to exchange lands with Clearwater Land Exchange-Oregon (Clearwater). Clearwater is acting as a third party facilitator for multiple non-federal landowners. The proposal is to exchange about 5,700 acres of non-federal land for approximately 3,939 acres of federal lands in the Blue Mountains of Northeastern Oregon. The proposed exchange will be in compliance with the 1990 National Forest Land and Management Plans (Forest Plans) for the Malheur, Umatilla, and Wallowa-Whitman National Forests, as amended, which provide overall guidance for management of this area. The federal and non-federal lands are located in Baker, Grant, Harney, and Wallowa Counties of eastern Oregon; and on eight Ranger Districts of the three Pacific Northwest Forests. Ranger Districts involved are Bear Valley, Burns, and Long Creek Districts on the Malheur National Forest; Pomeroy, North Fork John Day, and Walla Walla Districts on the Umatilla National Forest; and Baker and Unity Districts on the Wallowa-Whitman National Forest. Implementation of proposed exchange is scheduled for January 2001. The Malheur National Forest invites written comments and suggestions on the scope of the analysis. The agency gives notice of full environmental analysis and decision making process that will occur on the proposal so interested and affected members of the public may become aware of how they can participate in the process and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing on or before October 29, 1999.

ADDRESSES: Send site specific written comments and suggestions concerning this proposal to Gary W. Lieuallen, Lands Officer, Malheur National Forest, PO Box 909, John Day, Oregon 97845.

FOR FURTHER INFORMATION CONTACT: Bob Miles, Resource Planner, PO Box 909, John Day, Oregon 97845, phone 541–575–3000.

SUPPLEMENTARY INFORMATION: An environmental assessment (EA) on an original proposal entitled the Triangle Land Exchange was released for public comment on October 22, 1998. After this comment period, it was determined that Clearwater could not acquire mineral ownership on about 1,630 acres of the non-federal land, and this land was dropped from the exchange. The EA was revised and released for public comment on April 14, 1999. The revised EA could not make a Finding of No Significant Impact (FONSI). It was determined that an EIS should be completed for this proposal.

The purpose and need of the proposed exchange is to enhance natural resource management and improve management efficiency of federal lands through ownership consolidation. Consolidation (1) reduces boundaries requiring survey and maintenance (2) reduces numbers of permits for join-use roads, and (3) eliminates easements and agreements necessary to access in-holdings.

Other federal goals and objectives are (1) to protect habitat for threatened, endangered , or sensitive species, (2) to acquire private land in-holdings within the Wenaha Wild and Scenic River Corridor, (3) to acquire private land in-holdings adjacent to the North Fork John Day Wilderness, (4) to improve public access to federal lands, (5) to improve efficiency in resource management by focusing limited dollars and staff in consolidated areas, and (6) to improve public service.

All the federal lands proposed for exchange are on the Malheur National Forest. They were included in the land ownership adjustment schedule of the 1990 Malheur National Forest Land and Resources Management Plan (LRMP) (Appendix M of the Plan) as lands available for exchange. These federal parcels are not within the interior of the Forest. Public access on National Forest System (NFS) lands adjacent to or near the federal parcels will be maintained.

All the parcels proposed to be acquired meet Oregon State Forest Practices Act standards and no reforestation or restoration activities have been identified. There are no anticipated rehabilitation costs to the federal government.

All the parcels for exchange are within the geographic area of ceded lands and/or area of interest of the Confederated Tribes of the Umatilla Reservation, Confederated Tribes of the Warm Springs Reservation, Confederated Tribes of the Nez Perce, or the Burns Paiute Tribes.

No Congressionally Designated Areas (i.e., Wilderness, Wild and Scenic Rivers) are proposed to change from USDA jurisdiction. The regulations for land exchanges (36 CFR 254.3(f)) state: ''Lands acquired by exchange that are located within areas having an administrative designation established throught the land management planning process shall automatically become part of the area within which they are located without further action by the Forest Service, and shall be managed in accordance with the laws, rules, and regulations, and land and resource management plan applicable to such area.''

The Clearwater exchange lands are suitable and desirable for inclusion in NFS, because consolidated ownership of these lands with NFS would enhance the Forest Service's ability to implement ecosystem management, and would increase the amount of Wild and Scenic River in the NFS.

The exchange meets the pubic interest requirements in 36 CFR 254.3(b): (1) The resource values and the public objectives served by the non-federal lands and interests to be acquired are equal or exceed the resource values and the public objectives served by the federal lands to be disposed; and (2) The intended use of the disposed federal land will not substantially conflict with established management objectives on adjacent federal lands, including Indian Trust lands.

Lands will be exchanged on a value for value basis, based on current fair market value appraisals. The appraisal is prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal prepared for the land exchange is reviewed by a qualified review appraiser to ensure that it is fair and complies with the appropriate standards. Under the Federal Land Policy and Management Act of 1976, all exchanges must be equal in value. Forest Service regulations at 36 CFR 254.3(c) require that exchanges must be of equal value or equalized pursuant to 35 CFR 254.12 by cash payment after making all reasonable efforts to equalize values by adding or deleting lands. If lands proposed for exchange are not equal in value, either party may make them equal by cash payment not to exceed 25 percent of the federal land value.

Five of the non-federal parcels proposed for exchange are identified as having floodplains; however, preliminary analysis indicates that implementation of any action alternative meets the intent of Executive Order 11988, Floodplain Management.

Preliminary issues identified will include effects on threatened, endangered, and proposed species; and exchanging federal lands which contain late and old structure stands (LOS).

One of the purposes of this notice of intent is to solicit input and encourage members of the public, interested organizations, federal, state and county agencies, and local tribal governments to take part in planning this project. Public participation will be especially important at several points during the analysis, beginning with this scoping process. Scoping will include listing this EIS in the Malheur National Forest's Schedule of Proposed Activities; letters to agencies, organizations, and individuals who have already indicated their interest in land exchanges; and news releases in the Blue Mountain Eagle, Baker City Herald, and Eastern Oregonian. Information received will be used in preparation of the draft EIS. The scoping process will include: (1) Identifying additional potential issues; (2) identifying issues to be analyzed in depth; (3) eliminating non-significant issues or those which have been covered by a previous environmental analysis; (4) exploring additional alternatives; and (5) identifying potential environmental effects of the proposed action and alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions).

No public meetings are contemplated; however, an open house in John Day, Oregon, is anticipated to occur following issuance of the draft EIS. This open house will be announced in the Malheur National Forest's newspaper of record, the Blue Mountain Eagle; the Umatilla National Forest's newspaper of record, the Eastern Oregonian; and the Wallowa-Whitman National Forest's newspaper of record, the Baker City Herald.

A full range of alternatives will be considered, including a no action alternative. The no action alternative will serve as a baseline for comparison of alternatives. This alternative will be no change from the current management of the Forests and will be fully analyzed. The proposed action will be considered and additional alternatives developed around the proposed action to address significant issues identified during the scoping and public involvement process. Issues gathered may vary action alternatives in the number, location, and which parcels to exchange.

Comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 and 251. Additionally, pursuant to 7 CFR 1.27(d); any person may request the agency to withhold a submission from the public record by showing how the freedom of information act (FOIA) permits such confidentiality, however, they should be aware that, under FOIA, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service is seeking information and comments from other Federal, State, and Local agencies; tribes, organizations; and individuals who may be interested in or affected by the proposed action. This input will be used in the preparation of the draft EIS.

The draft EIS will be filed with the Environmental Protection Agency (EPA) and is anticipated to be available for public review by March 2000. The comment period on the draft EIS will be 45 days from the date of EPA's Notice of Availability in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comments. It is important that those interested in the management of the Malheur, Umatilla, and Wallowa-Whitman National Forests participate at that time.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stag, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1002 (9th Cir, 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1335, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45 day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is helpful if comments refer to specific page or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

After the 45 days comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by September 2000. In the final EIS, the Forest Service is required to respond to substantive comments received during the public comment period. The Responsible Official is the Forest Supervisor for the Malheur National Forest. She will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this land exchange. The Responsible Official will document the Triangle Land Exchange EIS decision and rationale for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: September 17, 1999.

Bonnie J. Wood,

Acting Forest Supervisor, Malheur National Forest.

[FR Doc. 99–24891 Filed 9–23–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Upper North Fork 25 Fire Restoration, Wenatchee National Forest, Chelan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact

statement (EIS) to analyze and disclose the environmental impacts of a site specific proposal for the Upper North 25 Fire Restoration. The proposed action is approximately 20 miles northwest of the town of Chelan, Washington on approximately 800 acres of National Forest System Land in the North Fork 25 Mile Creek drainage on the Chelan Ranger District of the Wenatchee National Forest. It includes part of an area identified in Appendix C of the 1990 Wenatchee National Forest Land and Resource Management Plan as the Stormy Mountain Inventoried Roadless Area. It excludes the portion of that area allocated by the plan to roadless recreation. The purpose of the EIS will be to develop and evaluate a range of alternatives for ecosystem restoration activities within the area of upper North Fork 25 Mile Creek that was burned by the 1998 North 25 Fire. The objectives include: (1) Protecting/restoring existing late-successional habitat; (2) creating heterogeneity in the distribution of woody fuel and snags; (3) salvaging fire killed/injured trees; (4) maintaining site productivity; and (5) promoting recovery of riparian areas. To achieve these objectives, the alternatives may include the following actions: Snag/tree removal, snag falling, and prescribed fire.

The alternatives will include a no action alternative and at least one alternative that proposes no action within the Stormy Mountain Inventoried Roadless Area. The proposed project will be consistent with direction given in the Wenatchee National Forest Land and Resource Management Plan, as amended by the April 1994 Record of Decision for Amendments to the Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. This Forest Service proposal is scheduled for implementation between the years 2000 and 2005. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and analysis of this proposal must be post-marked by October 22, 1999.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Al Murphy, District Ranger, Chelan Ranger District, 428 West Woodin Avenue, Chelan, Washington 98816.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Matt Dahlgreen, Interdisciplinary Team Leader, Entiat Ranger District, PO Box 476, Entiat, Washington 98822; phone 509–784–1511, extension 524.

SUPPLEMENTARY INFORMATION: This analysis was prompted by the North 25 Fire Restoration Environmental Analysis which was conducted in response to the North 25 Fire of 1998. During that analysis, vegetation treatments within the Stormy Mountain Inventoried Roadless Area and adjacent unroaded areas were dropped in response to public concern about roadless area issues. The Upper North 25 Fire EIS analysis will re-evaluate the effects of alternative treatments, designed to meet the objectives summarized above, within these unroaded areas.

The proposed action is to treat approximately 855 acres within the upper watershed of the North Fork 25 Mile Creek. The area proposed for treatment within the Inventoried Roadless Area was allocated to Late Successional Reserves by the amended Wenatchee National Forest Land and Resource Management Plan. The objective of this allocation is to maintain and enhance late-successional forest ecosystems and protect them from loss due to large-scale fire, insect and disease epidemics, and major human impacts. Treatments would include replanting of a portion of the burned area and commercial or noncommercial salvage of trees killed directly by the fire or indirectly by Douglas-fir bark beetles using both helicopter and skyline logging methods. No new roads would be constructed.

To date, the following key issues have been identified: ecosystem sustainability and biodiversity; roadless character; and scenic quality.

The decision to be made through this analysis is whether restoration treatments should be implemented within the Upper 25 Mile Fire Analysis Area, and if so, where, how, and to what extent.

A range of alternatives will be considered, including a no action alternative, and at least one alternative that proposes no action within the Stormy Mountain Inventoried Roadless Area. Other alternatives will be developed in response to relevant issues received during scoping. All alternatives will need to respond to specific conditions in the Upper North Fork 25 Mile Creek Analysis Area.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, tribes, and local agencies, as well as individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating non-significant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (*i.e.*, direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in December 1999. The comment period on the draft EIS will be 45 days from the date the EPA's Notice of Availability appears in the **Federal Register**. Copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes and members of the public for their review and comment. It is very important that those interested in the management of the Wenatchee National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

At this early stage, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. (*City of Angoon* v. *Hodel,* 803 f. 24d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The final EIS is scheduled to be completed in March 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The Forest Service is the lead agency for this environmental analysis. The responsible official is the Chelan District Ranger. The responsible official will document the Upper North Fork 25 Fire Restoration decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: September 14, 1999.

Al Murphy,

Chelan District Ranger.

[FR Doc. 99–24890 Filed 9–23–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Transfer of Jurisdiction

AGENCY: USDA—Forest Service.

ACTION: Transfer of jurisdiction of the Townsite of Dutch John, Utah, to the Bureau of Reclamation, Department of the Interior.

SUMMARY: On June 24, 1999, Jeanne A. Evenden, Director of Lands, Regional Office, Intermountain Region, signed a Transfer Order transferring jurisdiction of 2,432.73 acres of land within the Townsite of Dutch John, Utah, Ashley National Forest, to the USDI Bureau of Reclamation.

This action is in compliance with Section 6 of the Dutch John Federal Property Disposition and Assistance Act of 1998 (Pub. L. 105–326).

Copies of the Transfer Order are available for public inspection at the Chief's Office, Forest Service, U.S. Department of Agriculture, Auditors Building, 210 14th Street, SW at Independence Ave., SW, Washington, DC 20250, or the Ashley National Forest, 355 North Vernal Avenue, Vernal, UT 84078.

Dated: September 10, 1999.

Jack A. Blackwell,

Regional Forester, Intermountain Region, USDA Forest Service, 324 25th Street, Ogden, UT 84401, (801) 625–5605.

[FR Doc. 99–24878 Filed 9–23–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of field trip and meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on October 20 & 21, 1999. The meeting will begin at 11:00 AM on Wednesday, October 20 which will be spent in the field visiting Special Forest Product's facilities and sites. The committee will assemble at the Forest's Headquarters office in Olympia before traveling to the field. The field trip will conclude approximately 4:00 PM. On Thursday the 21st, the meeting will be held in the Olympic National Forest Headquarter's office at 1835 Black Lake Blvd. SW, Olympia, Washington. The meeting will be in the Willaby Conference room and will begin at 8:00 AM and end at approximately 2:30 PM. Agenda topics are: (1) Update on Survey & Manage; (2) Bull trout listing: (3) Regional Ecosystems Office update; (4) Topics for future committee discussion; (5) Open forum; and (8) Public comments.

All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd. Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: September 17, 1999.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 99–24874 Filed 9–23–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Notice of Request for New Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Grain Inspection, Packers and Stockyards Administration's (GIPSA) intent to request approval for a new information collection related to the delivery of services conducted under the official inspection, grading, and weighing programs authorized under the United States Grain Standards Act and the Agricultural Marketing Act of 1946. This voluntary survey would give customers of the official inspection, grading, and weighing programs, who are primarily in the grain, oilseed, rice, lentil, dry pea, edible bean, and related agricultural commodity markets, an opportunity to provide feedback on the quality of services they receive and will provide information on new services that they would like to receive. This feedback would assist GIPSA's Federal Grain Inspection Service (FGIS) to

improve services and service delivery provided by the official inspection, grading, and weighing system.

DATES: Written comments must be submitted on or before November 23, 1999.

ADDRESSES: Written comments must be submitted to Sharon Vassiliades, USDA, GIPSA, ART, 1400 Independence Avenue, SW, Stop 3649, Washington, DC 20250–3649, or faxed to (202) 720–4628. Comments may also be sent by electronic mail or Internet to: comments@gipsadc.usda.gov. All comments received will be made available for public inspection during regular business hours in Room 0623, South Building, USDA, 1400 Independence Avenue, SW, Washington, DC 20250–3649 (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Marianne Plaus at (202) 720–0292.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71–87) (USGSA), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) (AMA), authorize the Secretary of the United States Department of Agriculture to establish official inspection, grading, and weighing programs for grains and other agricultural commodities. Under the USGSA and AMA, GIPSA's FGIS offers inspecting, weighing, grading, quality assurance, and certification services for a user-fee, to facilitate the efficient marketing of grain, oilseeds, rice, lentils, dry peas, edible beans, and related agricultural commodities in the global marketplace. Under FGIS oversight, the official inspection, grading, and weighing programs is a public-private partnership including Federal, State, and private agencies and provides official inspection, grading, and weighing services to the domestic and export trade.

There are approximately 2,500 current users of the official inspection, grading, and weighing programs. These customers are located nationwide and represent a diverse mixture of small, medium, and large producers, merchandisers, processors, exporters, and other financially interested parties. These customers request official services from an FGIS Field Office; delegated, designated, or cooperating State office; or designated private agency office.

The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high-quality, accurate, consistent, and professional service that facilitates the orderly marketing of grain and related commodities. To accomplish this goal and in accordance with E.O. 12862, FGIS is seeking feedback from customers to evaluate the services provided by the official inspection, grading, and weighing programs.

Title: Survey of Customers of the Official Inspection, Grading, and Weighing Programs (Grain and Related Commodities).

OMB Number: New collection, a number will be assigned after approval.

Expiration Date of Approval: New collection.

Type of Request: New information collection.

Abstract: The collection of information using a voluntary customer service survey will provide all paying customers of FGIS and the official inspection, grading, and weighing programs an opportunity to evaluate, on a scale of one to five, the timeliness, cost-effectiveness, accuracy, consistency, and usefulness of services and results, and the professionalism of employees. Customers will also have an opportunity to indicate what new or existing services they would use if such services were offered or available.

FGIS needs to have a more formal means of determining customers' expectations or the quality of service that is delivered. To collect this information, FGIS proposes to distribute, over a 3-year period, a voluntary customer service survey. The initial survey instrument will consist of nine questions. Subsequent survey instruments will be tailored to earlier responses. The information collected from the survey will allow FGIS to ascertain customers' satisfaction with existing services, compare results from year to year, and determine what new services customers desire.

The customer service survey consists of one document comprised of nine questions where customers assess the timeliness, cost-effectiveness, accuracy, consistency, and usefulness of services and results, and the professionalism of employees. Some examples of survey questions include the following: ''I receive results in a timely manner,'' ''Official results are accurate,'' and ''Inspection personnel are knowledgeable.'' These survey questions will be assessed using a rating scale ranging from ''strongly disagrees'' to ''strongly agrees'' or ''no opinion.'' Customers are also asked for which product they primarily request service, and what percentage of their product is officially inspected. There is also space available on the survey for the customer to provide a response to the following statement: ''I would use the following new/existing service if they were offered/available.''

By obtaining information from customers through a voluntary customer service survey, FGIS could continue to improve services and service delivery provided by the official inspection, grading, and weighing programs in order to meet or exceed customer expectations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes (*i.e.*, 0.167 hours) per response.

Respondents: The primary respondents will be the direct paying customers of FGIS and the official inspection, grading, and weighing programs.

FY 2000: Estimated Number of Respondents: 1,874 (*i.e.*, 2,498 total customers × 75% response rate = 1,874).

Frequency of Responses: 1.

Estimated Annual Burden: 313 hours (1,874 responses × 0.167 hours/response = 313 hours).

FY 2001: Estimated Number of Respondents: 1,874.

Frequency of Responses: 1.

Estimated Annual Burden: 313 hours.

FY 2002: Estimated Number of Respondents: 1,874.

Frequency of Responses: 1.

Estimated Annual Burden: 313 hours.

Copies of this information collection can be obtained from Sharon Vassiliades, Grain Inspection, Packers and Stockyards Administration, FGIS, at (202) 720–1738.

Comments: Comments are invited on: (a) Whether the collection of the information is necessary for the proper performance of the functions of FGIS, including whether the information will have a practical utility; (b) the accuracy of FGIS' estimate of the burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques, or other forms of information technology. Comments should be addressed to Sharon Vassiliades, as referenced above. All responses to this notice will be summarized and include in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 20, 1999.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99–24949 Filed 9–23–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Dates: October 21–22, 1999.

Place: Omni Royal Orleans Hotel, 621 St. Louis Street, New Orleans, Louisiana.

Time: 8:00 a.m.–11:30 a.m. on October 21 and October 22, 1999.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda includes a review and discussion of GIPSA's financial status and fee proposals, reauthorization, biotechnology, deoxynivalenol testing in barley, feed wheat, wheat cleanliness, and other related issues concerning the delivery of grain inspection and weighing services to American agriculture.

The meeting will be open to the public. Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, DC 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

Dated: September 20, 1999.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99–24950 Filed 9–23–99; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by Section 302 (a). Notice was given to the stockyard owners and to the public as required by Section 302 (b), by posting notices at the stockyards on the dates specified below, that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
AR–174 Crawford County Livestock Auction, Mountainburg, Arkansas	December 19, 1998.
GA–223 Holland's Livestock Sales, Reidsville, Georgia	April 11, 1998.
NJ–108 Camelot Auction Company, Cranbury, New Jersey	July 1, 1998.
SC–156 Greer Horse & Pony Auction, Greer, South Carolina	June 18, 1998.
SC–157 Rocking R, Inc., Laurens, South Carolina	December 21, 1998.
TN–192 Morris Brothers Auction, Pikesville, Tennessee	February 12, 1999.

Done at Washington, D.C., this 20th day of September, 1999.

Andrea Giberson,

Acting Director, Office of Policy/Litigation Support, Packers and Stockyards Programs.

[FR Doc. 99–24951 Filed 9–23–99; 8:45 am]

BILLING CODE 3410–EN–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 25, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 18, August 6 and 13, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 32844, 42902 and 44198) of proposed additions to the Procurement List.

The Following Comments Pertain to Full Food and Dining Facility Attendant, Fort Polk, Louisiana

Comments were received from an organization which represents blind vendors under the Randolph-Sheppard Act, 20 U.S.C. 107, and from the State agency responsible for licensing blind vendors in Louisiana. Both commenters stated that addition of this food service to the Procurement List would be a direct violation of the Randolph-Sheppard Act, which they believe affords blind vendors a paramount priority in the operation of military troop dining facilities. Both commenters requested that the Committee withdraw the proposed addition of this food service to the Procurement List so that the service might be performed by a licensed blind vendor under the Randolph-Sheppard Act.

It is the Committee's longstanding position that the Randolph-Sheppard Act, which by its terms applies to ''concession vending opportunities'' (20 U.S.C. 107a(a)(2)), is not applicable to Government food service contracts financed by appropriated funds, such as military troop dining facilities. Consequently, the Randolph-Sheppard Act is no bar to the addition of this food service to the Procurement List, and the Committee declines to withdraw its proposal to add the service to the List.

The State licensing agency cited an authority added to the Randolph-Sheppard Act in 1974, which permits the Department of Education to establish a priority ''for the operation of cafeterias on Federal property by blind licensees,'' 20 U.S.C. 107d–3(e), as a basis for the establishment of Randolph-Sheppard jurisdiction over the food service being added to the Procurement List. The Committee is familiar with this authority and its legislative history, and does not agree with the State licensing agency's conclusion for several reasons. First, ''cafeteria'' as used in the Randolph-Sheppard Act is defined as a subset of ''vending facility,'' 20 U.S.C. 107(e)(7), and Randolph-Sheppard vending facilities are concession operations, as noted in the preceding

paragraph. Second, the nonprofit agency will not be operating this facility, as it will be performing its functions under the oversight and management of Army personnel. Accordingly, the Committee rejects the State licensing agency's argument that ''operation'' in this Randolph-Sheppard authority is equivalent to ''provide food services.''

The State licensing agency also noted that the purpose of the Randolph-Sheppard Act is to increase opportunities for the blind. ''Operation,'' as used in the Randolph-Sheppard Act, is thus to be construed broadly, according to the State licensing agency, to promote this statutory purpose. However, the Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. 46–48c, under which this food service is being added to the Procurement List, is also intended to increase employment opportunities for people who are blind, as well as people with other severe disabilities. The Committee believes that it should also be construed broadly and, as it is intended to apply to Federal procurements of supplies and services, normally done with appropriated funds as is the case for this food service, that the JWOD Act is the statute which was intended to have paramount priority in this situation, not the Randolph-Sheppard Act.

The Following Comments Pertain to Laundry Service, Bangor Naval Subase BOQ & BEQ, and Miscellaneous Sites To Include Ships in Port, Bremerton, Washington

Comments were received from the current contractor for a portion of the service requirement which was proposed for addition to the Procurement List. The Committee received these comments both directly and through a Member of Congress. This contractor provides laundry service at the Bangor Submarine Base but not for the ships included in the service requirement. The contractor claimed that loss of its contract for the base, along with two Procurement List additions in 1994 and a loss earlier this year of a major commercial contract, would severely impact the contractor's business. The contractor also noted that the nationwide chain laundries operating in the Puget Sound area have practically quit doing commercial laundry work, so if the contractor ceases operations there will be no backup to the nonprofit agency designated to perform this service requirement if it is unable to perform.

According to Committee records, the contractor held the Government contract for only one of the two 1994 services added to the Procurement List which the contractor mentioned. The contractor's continued commercial existence since that time suggests that the 1994 addition did not have a severe adverse impact on the contractor. If its competitors are leaving the local commercial laundry market, it would appear likely that the contractor will be able to recoup its loss of a major customer. However, the Committee has decided to lessen the impact on this customer by limiting its addition of the base's laundry service to the Procurement List to two buildings, which are the bachelor officers and enlisted quarters for the base. The contractor has told the Committee that these two buildings generate very little sales. Consequently, the Committee does not believe that the revised Procurement List addition will have a severe adverse impact on the contractor, and that the contractor will remain in business to serve, among other things, as a backup for the nonprofit agency, although this will be unlikely as the nonprofit agency has been found fully capable of performing the service requirement being added to the Procurement List.

The following Material Pertains to All of the Services Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Full Food & Dining Facility Attendant, Fort Polk, Louisiana

Janitorial/Custodial

Denver Federal Center, Building 95, Denver, Colorado
Kennesaw National Battlefield Park Visitor Center, Kennesaw, Georgia

Laundry Service

Bangor Naval Subase BOQ & BEQ and Miscellaneous Sites to include ships in port, Bremerton, Washington

Mail and Messenger Service

Naval Engineering Field Activity Chesapeake, Atlantic Division, Washington Navy Yard, Naval Facilities Engineering Command (NAVFACENGCOM), 851 Sicard Street, SE, Washington, DC

Mail and Messenger Service

Headquarters, Naval Facilities Engineering Command (NAVFACENGCOM), 1322 Patterson Avenue, SE, Washington, DC

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–24944 Filed 9–23–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 25, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons

an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Line, Multi-Loop
1670–01–062–6310
NPA: Industrial Opportunities, Inc., Marble, North Carolina
Cup, Paper, Disposable, Hot
7350–00–162–3006
NPA: The Lighthouse f/t Blind in New Orleans, New Orleans, Louisiana
Cheesecloth
8305–00–205–3495
8305–00–205–3496
8305–00–262–3321
8305–01–125–0725
NPA: Lions Services, Inc., Charlotte, North Carolina

Services

Base Supply Center, Wright-Patterson Air Force Base, Ohio
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio

Duplicating Service

(GPO Program C285–S)
Federal Bureau of Investigation, Criminal Justice Information Services Complex, Clarksburg, West Virginia
NPA: Job Squad, Inc., Clarksburg, West Virginia

Grounds Maintenance

Keyport Naval Undersea Warfare Center, Keyport, Washington
NPA: Peninsula Services, Bremerton, Washington

Janitorial/Custodial

Naval Reserve Center, 7401 W. Roosevelt Road, Forrest Park, Illinois
NPA: Lester and Rosalie ANIXTER CENTER, Chicago, Illinois

Janitorial/Custodial

Gamelin USARC, Bristol, Rhode Island
NPA: Newport County Chapter of Retarded Citizens, Inc., Middletown, Rhode Island

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–24945 Filed 9–23–99; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATES AND TIME: Friday, October 1, 1999, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda

II. Approval of Minutes of September 17, 1999 Meeting

III. Announcements

IV. Staff Director's Report

V. Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume II: The Mississippi Delta Report

VI. State Advisory Committee Report

- Employment Opportunities for Minorities in Montgomery, County, Ohio (Ohio)

VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–25057 Filed 9–22–99; 2:30 pm]

BILLING CODE 6335–00–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 990831240–9240–01]

Service Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of consideration.

SUMMARY: The U.S. Census Bureau is considering a proposal to conduct the 1999 Service Annual Survey (SAS). The results of the service annual program currently are published on a Standard Industrial Classification basis. Beginning with the survey year 1999, we will publish data using the new North American Industry Classification System (NAICS). With NAICS implementation, SAS will incorporate the previous Transportation Annual Survey and the Annual Survey of Communication Services into one service program. There will be an additional 149 new and emerging industries added to the Service Annual Survey, including Air Couriers, Publishing, Sound Recording, Waste Management and Remediation Services, and selected Financial Services. An Information Sector also will be added to the survey.

DATES: Written comments must be submitted on or before October 25, 1999.

ADDRESSES: Direct all written comments to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Ruth Bramblett, Chief, Current Services Branch, Service Sector Statistics Division, on (301) 457–2766.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code, Sections 182, 224, and 225. The SAS will provide continuing and timely national statistical data for the period between the economic censuses. The next Economic Census will occur in the year 2002. Data collected in this survey will be within the general scope, type, and character of those inquiries covered in the Economic Census.

Beginning with the survey year 1999, we will publish SAS data using NAICS. The structure of NAICS was developed in a series of meetings between the United States, Canada, and Mexico in the early to mid-1990s. NAICS recognizes the rapid changes in both the U.S. and world economies by providing a means to classify new and emerging

industries. The system was constructed on a production-oriented, or supply-based, conceptual framework.

Effective with the 1999 survey, the Census Bureau proposes to change the SAS survey questionnaires to reflect the many changes brought about by NAICS. We are expanding the number of form types and are developing these forms to be more tailored to the industries they survey. The goal is to maximize industry coverage within our available resources.

The revision to the SAS will increase industry coverage. Previously, a single summary report was produced for each of the three surveys. We will now produce multiple data products and reports by various sectors.

The SAS will produce estimates of total receipts for all industries covered and source of receipts and other expanded data items for the following sectors:

- Trucking (484).
- Information (51).
- Selected industries in Finance and Insurance (52).
- Computer Systems Design and Related Services Industry (5415).
- Health and Social Assistance Sector (62) except subsector 624 (Social Assistance).

The SAS will provide dollar volume estimates for specific industries in the following NAICS sectors:

- Transportation and Warehousing (48–49).
- Information (51).
- Finance and Insurance (52).
- Real Estate and Rental and Leasing (53).
- Professional Scientific and Technical Services (54).
- Administrative and Support, Waste Management and Remediation Services (56).
- Educational Services (61).
- Health and Social Assistance (62).
- Arts, Entertainment and Recreation (71).
- Other Services (81).

The Census Bureau need report only from a limited sample of service sector firms in the United States. The probability of a firm's selection is based on its revenue size (estimated from payroll). We will mail report forms to the firms covered by this survey and require their submission within thirty days after receipt.

Preliminary information and recommendations received by the Census Bureau indicate that the data have significant application to the informational needs of government agencies, the public, and the service, transportation, information, finance, and other service industries. The data are not publicly available from nongovernmental or other governmental sources on a timely and continuing basis.

This survey will be submitted to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the proposed forms are available upon request to the Director of the Census Bureau (see **ADDRESSES** section).

Dated: August 27, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–24862 Filed 9–23–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Administration, in the matter of Porcelain-on-Steel Cookware from Mexico, Secretariat File No. USA–97–1904–07.

SUMMARY: Pursuant to the Order of the Binational Panel dated July 9, 1999, affirming the final remand described above was completed on July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On July 9, 1999, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Administration (''ITA'') concerning Porcelain-on-Steel Cookware from Mexico. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective August 20, 1999.

Dated: September 20, 1999.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–24858 Filed 9–23–99; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083199B]

Fisheries Off West Coast States and in the Western Pacific; Availability of a Limited Access Permit

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

ACTION: Availability of a limited access permit.

SUMMARY: The Acting Regional Administrator (Regional Administrator), Southwest Region, notifies all potential applicants that one permit is available for the Ho'omalu Zone limited access bottomfish fishery in the Northwestern Hawaiian Islands (NWHI). Applications are being accepted and NMFS will issue a Ho'omalu permit to a qualifying vessel owner in accordance with the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP).

DATES: Applications must be filed no later than November 8, 1999.

ADDRESSES: Applications may be obtained from, and completed applications must be sent to, the Pacific Islands Area Office, Southwest Region, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, NMFS, (808) 973–2935 ext 207.

SUPPLEMENTARY INFORMATION: At the Western Pacific Fishery Management Council (Council) meeting held on July 15 - 18, 1999, the Administrator of the Pacific Islands Area Office, NMFS, (PIAO Administrator) informed the Council that a Ho'omalu Zone permit holder was determined to be ineligible for permit renewal during calendar year 1999. The permit was lost under the Ho'omalu Zone's limited access program ''use it or lose it'' requirement when the permit holder's vessel failed to make the minimum number of annual bottomfish landings to be eligible for permit renewal. The Regional Administrator, in consultation with the Council, has determined that the Ho'omalu Zone fishery can still support seven bottomfishing vessels at this time.

The Regional Administrator will issue one permit to an eligible applicant to maintain the current total.

Any prospective applicant may file an application for a Ho'omalu Zone permit. Forms will be provided by the Pacific Islands Area Office, Southwest Region, NMFS (See ADDRESSES). In accordance with 50 CFR 660.61 (g)(1) a permit will be awarded based on a point system as follows:

(1) Two points will be assigned for each year in which the applicant was owner or captain of a vessel that made three or more qualifying landings of bottomfish in the NWHI. A qualifying landing is: (a) Any amount of bottomfish management unit species, regardless of weight, if made on or before August 7, 1985; (b) At least 2,500 lb (1,134 kg) of bottomfish management unit species, if made after August 7, 1985; or (c) At least 2,500 lb (1,134 kg) of any fish legally harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

(2) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the main Hawaiian Islands.

(3) For any one year, points will be assigned for bottomfish landed from either the NWHI or the main Hawaiian Islands, but not for a combination of both areas.

Applicants must maintain their own files or valid documentation verifying claims of accrued points. Copies of these documents must accompany all permit applications. A permit shall be awarded to a qualifying applicant in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permit shall be awarded by the Regional Administrator through a lottery. An applicant must own at least a 25–percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel. No additional permits will be issued to any vessel owner who already has a Ho'omalu Zone bottomfish permit or to a vessel owner whose permit was not renewed for the 1999 permit year. Also, in considering applications for a Ho'omalu Zone permit the Regional Administrator will follow the guidance recommended by the Council at its 91st meeting, November 18–21, 1996: (1) No State of Hawaii fish catch reports used to document eligibility points will be accepted that are more than 1 year delinquent; (2) only State of Hawaii fish catch reports will be accepted by NMFS to validate accrued qualifying points demonstrating historical participation in the Hawaiian Islands bottomfish fishery; (3) the cutoff date for applications is 45 days after publication of this notice of availability in the **Federal Register**; (4) relief captains and vessel owners must provide vessel insurance records or legal certificates of documentation demonstrating the minimum 25 percent ownership in the vessel; and (5) only records of bottomfish management unit species will be used for assigning qualifying points.

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

Dated: September 17, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–24879 Filed 9–23–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.090999B]

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from October 25–28, 1999.

DATES: The meetings are scheduled as follows:

October 25, 1999, 9:30 a.m. - 5:00 p.m.
October 26, 1999, 9:00 a.m. - 5:00 p.m.
October 27, 1999, 8:30 a.m. - 5:30 p.m.
October 28, 1999, 8:30 a.m. - 3:30 p.m.

ADDRESSES: The meetings will be held at NOAA Fisheries, 1315 East-West Highway, Silver Spring, at the Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW, Washington, D.C., and at the Hotel Washington, 515 15th Street, NW, Washington, D.C. Requests for special accommodations may be directed to MAFAC, Office of Operations, Management and Information, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lu Cano, Designated Federal Officer; telephone: (301) 713–2252.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC and MAFAC Subcommittees. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1971, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, and other national interests.

Matters to Be Considered

October 25, 1999

Orientation and program briefings for new MAFAC members

October 26, 1999

Legislative, Budget, Fisheries Overcapacity, and Multi-Disciplinary Science Subcommittee Meetings

October 27, 1999

Legislative Subcommittee Report and Recommendations, Budget Subcommittee Report and Recommendations, Multi-Disciplinary Science Subcommittee Report and Recommendations, and Fisheries Overcapacity Subcommittee Report and Recommendations

October 28, 1999

Constituent Outreach and Communication Presentation and Recommendations, Vessel Monitoring Systems Presentation and Recommendations, Steering Committee Report, and Full Committee

Discussion and Recommendations

Time will be set aside for public comment on agenda items.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: September 20, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 99–24962 Filed 9–23–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091599D]

Marine Mammals; File No. 707–1531–00

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the University of Hawaii at Manoa, College of Social Sciences, Hawaii Hall 105, Honolulu, Hawaii 96822, has applied in due form for a permit to take North Pacific humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before October 25, 1999.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222–226).

The applicant is requesting authorization to harass up to 750 North Pacific humpback whales (*Megaptera novaeangliae*) annually during the course of tracking and photographing/filming the animals for purposes of behavioral observation, individual identification, gender identification, size measurement, documentation of group membership and affiliations, and recording of vocalizations. The research will be carried out over a five-year period in waters of the North Pacific Ocean, with primary emphasis on the whales' Hawaiian winter grounds.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6426);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4027);

Protected Species Program Manager, Pacific Islands Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2941 (808/973–2987); and

Regional Administrator, Alaska Region, NMFS, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7235).

Dated: September 15, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–24761 Filed 9–23–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0139]

Submission for OMB Review; Comment Request Entitled Federal Acquisition and Community Right-to-Know

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0139).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Federal Acquisition and Community Right-to-Know. A request for public comments was published at 64 FR 38896, July 20, 1999. No comments were received.

DATES: Comments may be submitted on or before October 25, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 23.9 and its associate solicitation provision and contract clause implement the requirements of E.O. 12969 of August 8, 1995 (60 FR 40989, August 10, 1995), ''Federal Acquisition and Community Right-to-Know,'' and the Environmental Protection Agency's ''Guidance Implementing E.O. 12969; Federal Acquisition Community Right-to-Know; Toxic Chemical Release Reporting'' (60 FR 50738, September 29, 1995). The FAR coverage requires offerors in competitive acquisitions over $100,000 (including options) to certify that they will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109).

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *167,487;* responses per respondent, *1;* total annual responses, *167,487*, preparation hours per response, *0.50;* and total response burden hours, *83,744.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: September 21, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–24952 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the United States Commission on National Security/21st Century

AGENCY: Department of Defense, Office of the Undersecretary of Defense (Policy).

ACTION: Notice of closed meeting.

SUMMARY: The United States Commission on National Security/21st Century will meet in closed session on October 4, 1999. The Commission was originally chartered by the Secretary of Defense on 1 July 1998 (charter revised on 18 August 1999) to conduct a comprehensive review of the early twenty-first century global security environment; develop appropriate national security objectives and a strategy to attain these objectives; and recommend concomitant changes to the national security apparatus as necessary.

The Commission will meet in closed session on October 4, 1999, to give guidance on the methodology and approach to follow for the development of its Phase Two report. By Charter, the Phase Two report is to be delivered to the Secretary of Defense no later than April 14, 2000. The report will be based on classified material concerning U.S. interests, objectives and a proposed national strategy to achieve those interests and objectives. The Commissioners also will meet with Secretary of State Madeline Albright and U.S. Ambassador to the United Nations Richard Holbrooke.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II], it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1) (1988), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public.

DATES: Monday, 4 October, 8:30 a.m.–5:00 p.m.

ADDRESSES: Crystal City Marriott, 1999 Jefferson Davis Hwy, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Dr. Keith A. Dunn, National Security Study Group, Suite 532, Crystal Mall 3, 1931 Jefferson Davis Highway, Arlington, VA 22202–3805. Telephone 703–602–4175.

Dated: September 20, 1999.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–24854 Filed 9–23–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Scientific Advisory Board

AGENCY: Armed Forces Institute of Pathology (AFIP), DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act Public Law (92–463), announcement is made of the following open meeting.

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: 15–16 November 1999.

Place: Armed Forces Institute of Pathology, Building 54, 14th St. and Alaska Ave., NW, Washington, DC 20306–6000.

Time: 8:30 a.m.–4:30 p.m. (15 November 1999). 8:00 a.m.–12:00 p.m. (16 November 1999).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Center for Advanced Pathology (CAP), AFIP, Building 54, Washington, DC 20306–6000, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION: *General function of the board:* The Scientific Advisory Board provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

Agenda: The Board will hear status reports from the AFIP Deputy Director, Center for Advanced Pathology Director, the National Museum of Health and Medicine, and each of the pathology departments which the Board members will visit during the meeting.

Open board discussions: Reports will be given on all visited departments. The reports will consist of findings, recommended areas of further research, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–24956 Filed 9–23–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Supplement to the 1992 Final Environmental Impact Statement on Modified Water Deliveries to Everglades National Park (Mod Waters Project) To Address a Change in Design of the Levee 67 and Levee 29 Water Conveyance Features Within Water Conservation Area 3 (WCA 3)

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The congressionally authorized Mod Waters project consists of structural modifications and additions to the existing C&SF Project required to improve water deliveries for ecosystem restoration of Everglades National Park (Park). The authorized plan calls for construction of six water control structures in Levee 67 (L–67) and its adjacent canal, which partition WCA 3 into two basins, WCA 3A and WCA 3B and two recently constructed structures in L–29. At the request of the local sponsor, the South Florida Water Management District (SFWMD), the Corps will be revaluating the design of the water conveyance features and addressing the need for water seepage control for WCA 3B.

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232; Attn: Mr. Elmar Kurzbach, 904–232–2325.

SUPPLEMENTARY INFORMATION:

1. Alternatives to be evaluated involve combinations of gated water control structures, passive structures (fixed-crest weirs), levee removal, and canal filling to convey water from WCA 3A into WCA 3B and from WCA 3B into Northeast Shark River Slough. Seepage

control alternatives involve combinations of new operational and structural elements such as pump stations.

2. A Scoping letter and public Scoping Meeting will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

3. The Draft EIS will analyze issues related to recreational fishing access, WCA 3B tree island flooding, introduction of poor quality water, and Everglades National Park ecosystem restoration.

4. The alternative plans will be reviewed under provisions of appropriate laws and regulations, including the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, and Farmland Protection Policy Act.

5. The Draft EIS is expected to be available for public review in the 4th quarter CY 2000.

Dated: September 10, 1999.

James C. Duck,

Chief, Planning Division.

[FR Doc. 99–24955 Filed 9–23–99; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Coastal Engineering Research Board (CERB); Meeting

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Dates of Meeting: October 26–27, 1999.

Place: Dauphin Island Sea Lab, Dauphin Island, Alabama.

Time: 8:15 a.m. to 12:00 p.m.

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Colonel Robin R. Cababa, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* On October 26, 1999, the members of the Board will be briefed on the Regional Sediment Management Demonstration conducted by the Mobile District and tour the demonstration site along the coasts of Alabama and the Florida Panhandle.

On Wednesday morning, October 27, 1999, the Board will travel to the Dauphin Island Sea Lab and hear discussions concerning the demonstration, its budget, monitoring, legal constraints, and guidance. Following the meeting the Board will hold an Executive Session.

This meeting is open to the public, but since seating is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Robin R. Cababa,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 99–24954 Filed 9–23–99; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF ENERGY

[Docket No. EA–116–A]

Applications To Export Electric Energy; Calpine Power Services Company

AGENCY: Office of Fossil Energy, DOE

ACTION: Notice of application.

SUMMARY: Calpine Power Services Company (CPSC) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before October 25, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On October 8, 1996, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized CPSC to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company and Comision Federal de Electricidad, the national electric utility of Mexico (Order No. EA–116). That two-year authorization expired on October 8, 1998. On August 31, 1999, CPSC filed an application with FE for a new two-year authorization to export electric energy to Mexico. DOE is treating this new application as a request for an amendment to the original authorization.

CPSC, a California corporation with its principal place of business in San Jose, is a power marketer and does not own or control any facilities for the generation or transmission of electricity, nor does it have a franchised service area. CPSC proposes to transmit to Mexico electric energy purchased from electric utilities and other suppliers within the U.S.

In FE Docket EA–116–A, CPSC proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities previously authorized by Presidential permits issued pursuant to Executive Order 10485 and owned by Arizona Public Service Company, San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, Imperial Irrigation District, and Comision Federal de Electricidad, the national electric utility of Mexico. CPSC also requests authority to export over the international transmission facilities proposed by Public Service Company of New Mexico and NRG Energy, Inc. DOE presently is processing Presidential permit applications filed by these two companies.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the CPSC application to export electric energy to Mexico should be clearly marked with Docket EA–215. Additional copies are to be filed directly with Cheryl Feik Ryan, Esq., Van Ness Feldman, P.C., 1050 Thomas Jefferson St. NW, Seventh Floor, Washington, DC

20007–3877; Joseph E. Ronan, Jr. Esq., Vice President, Regulatory Affairs, Calpine Corporation, 50 West San Fernando, 5th Floor, San Jose, CA 95113 *AND* Mr. James Glotfelty, Manager, Government Affairs, Calpine Corporation, 700 Louisiana Street, Suite 2350, Houston, Texas 77002.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA) and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory'', then ''Electricity'', then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on September 20, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy

[FR Doc. 99–24921 Filed 9–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-specific Advisory Board (EM SSAB) Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Wednesday, October 6, 1999: 6:00–9:30 p.m. Board Meeting.

ADDRESS: Oak Ridge Mall, Club Room, Main Street, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. ''Oak Ridge Operations outlook'' presented by Ms. Dever, Oak Ridge Operations Manager

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–0314.

Issued at Washington, DC on September 21, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–24918 Filed 9–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, October 6, 1999: 6:00 p.m.–9:00 p.m.

ADDRESS: DOE/Nevada Big Basin Room, 232 Energy Way, North Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Long-term Stewardship at the Nevada Test Site
- Oak Ridge SSAB proposal to exchange wastes with the Nevada Test Site

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on September 20, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–24919 Filed 9–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of change in meeting location.

SUMMARY: The meeting scheduled for September 30—October 1, 1999 in Wrightsville Beach, North Carolina has been moved due to structural damage. The new location for the meeting is in Virginia at the Hyatt Arlington, 1325 Wilson Blvd., Arlington, Va., (703) 525–1234. This meeting was announced in the **Federal Register** on August 18, 1999, 64 FR 44912.

Issued in Washington, DC on September 21, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–24920 Filed 9–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–621–000]

Texas Eastern Transmission Corporation; Notice of Application

September 20, 1999.

Take notice that on September 14, 1999, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP99–621–000 an application pursuant to Section 7 of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, for a certificate of public convenience and necessity authorizing Texas Eastern to construct, own, operate and maintain certain facilities to render a firm lateral transportation service for up to 120,000 dekatherms per day (Dth/d) of natural gas to Williams Energy Marketing & Trading Company (Williams), all as more fully set forth in the application 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).*

Any questions regarding the application should be directed to Steven E. Tillman, Director of Regulatory Affairs, Texas Eastern Transmission Corporation, PO Box 1642, Houston, Texas 77251–1642, (713) 627–5113 & (713) 627–5947 (FAX).

The facilities will comprise 3.6 miles of 16-inch pipeline lateral extending from points on Texas Eastern's existing two 30-inch main lines in Lebanon County, Pennsylvania to a proposed tie-in with the Ironwood Electric Generating Plant, located near Lebanon, Pennsylvania and currently under construction. Texas Eastern proposes to commence construction of the facilities in June, 2000 to meet its September 1, 2000 in service date for test gas deliveries to the Ironwood Plant. The cost of the facilities is estimated to be approximately $5.725 million based on year of construction dollars. Texas Eastern states that firm lateral transportation service of up to 120,000 Dth/d will be rendered to Williams.

Texas Eastern requests authorization to charge a NGA Section 7(c) initial rate, as a separately stated market area lateral charge consisting of an incremental reservation charge rate under Texas Eastern's Rate Schedule FT–1, which includes both a Peak and Off-Peak reservation charge rate. The initial reservation charge rates are designed to recover sixty percent (60%) of the annual reservation charge obligation of Williams during the period beginning May 1, through September 30 of each service year, and forty percent (40%) of the annual reservation charge obligation of Williams during the period beginning October 1 through April 30 of each service year. Texas Eastern states that the rates are designed on an incremental basis, using Texas Eastern's cost-of-service factors approved in Docket No. RP90–119, *et al.*

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before October 12, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protesters provide copies of their protests to the party or parties directly involved. 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.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–24867 Filed 9–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–93–000]

Turlock Irrigation District and Modesto Irrigation District v. California Independent System Operator Corporation; Notice of Filing

September 20, 1999.

Take notice that on September 17, 1999, the Turlock Irrigation District and the Modesto Irrigation District (collectively, Districts), tendered for filing a Complaint And Request For Investigation Of Discriminatory Application Of Tariff (Complaint) against the California Independent System Operator Corporation (CAISO). The Districts' Complaint alleges that the AISO has unduly discriminated in establishing standards for procuring certain Ancillary Services and Supplemental Energy.

Copies of the Complaint were served, simultaneous with filing with the Commission, on the CAISO and on the California Public Utilities Commission.

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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 7, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to the complaint shall be due on or before October 7, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–24962 Filed 9–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3289–001 et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

September 20, 1999.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator

[Docket No. ER99–3289–001]

Take notice that on September 15, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a compliance filing in the above-referenced docket which included a number of revisions to the ISO Tariff and a revision to the *pro forma* Participating Load Agreement. The ISO states that this filing was submitted to comply with the Commission's August 16, 1999 Order, 88 FERC ¶ 61,182 (1999), in the above-referenced docket.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: October 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Select Energy, Inc.

[Docket No. ER99–3658–000]

Take notice that on September 14, 1999, Select Energy, Inc. (Select), tendered for filing, under Section 205 of the Federal Power Act, revisions to the proposed market-based tariff and to the amended version of its existing market-based rate tariff filed in the above-captioned docket on July 21, 1999. The revisions would specify the ancillary services that Select offers for sale at market-based rates in markets where the Commission has authorized sales of certain ancillary services at market-based rates.

Copies of the filing were served on purchasers under Select's existing market-based rate tariff and on the Connecticut, Massachusetts and New Hampshire commissions.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Energy Company

[Docket No. ER99–4434–000]

Take notice that on September 14, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Firm Point-to-Point Transmission Service with Consumers Energy Company—Electric Sourcing and Trading. The agreement is pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) and has an effective date of September 9, 1999.

Copies of the filing were served upon the Michigan Public Service Commission, Detroit Edison and the customer listed above.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER99–4438–000]

Take notice that on September 14, 1999, Cinergy Services, Inc. (Cinergy) and American Energy Trading, Inc. (AET), tendered for filing Notice of Assignment that AET will replace American Energy Solutions, Inc., of Cinergy's Market-Based Power Sales Tariff Original Volume No. 7–MB, Service Agreement No. 135, dated October 25, 1998.

Cinergy and AET are requesting an effective date of one day after filing.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER99–4439–000]

Take notice that on September 14 1999, Cinergy Services, Inc. (Cinergy) and American Energy Trading, Inc. (AET), tendered for filing Notice of Assignment that AET will replace American Energy Solutions, Inc., of Cinergy's Cost-Based Power Sales Tariff Original Volume No. 6–CB, Service Agreement No. 135, dated October 25, 1997.

Cinergy and NYSEG are requesting an effective date of one day after filing.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER99–4440–000]

Take notice that on September 14, 1999, Wisconsin Public Service Corporation tendered for filing an executed service agreement with North Central Power Co., Inc. under its Market-Based Rate Tariff.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER99–4441–000]

Take notice that on September 14, 1999, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Northwestern Wisconsin Electric Co., under its Market-Based Rate Tariff.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PP&L, Inc.

[Docket No. ER99–4442–000]

Take notice that on September 14, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated August 24, 1999 with NRG Power Marketing Inc. (NRG), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds NRG as an eligible customer under the Tariff.

PP&L requests an effective date of September 14, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NRG and to the Pennsylvania Public Utility Commission.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. FirstEnergy System

[Docket No. ER99–4435–000]

Take notice that on September 14, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service for Northern States Power Company, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is September 9, 1999, for the above mentioned Service Agreement in this filing.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Energy St. Francis LLC

[Docket No. ER99–4436–000]

Take notice that on September 14, 1999, Duke Energy St. Francis LLC (DESF), tendered for filing a Long Term Service Agreement with Duke Energy Trading and Marketing Trading, LLC (DETM). Under the Long Term Service Agreement, DESF will make available to DETM the power to which DESF is entitled from the St. Francis units and DESF, as a power marketer for the Duke Energy Companies, will resell such power and remit associated revenue to DESF.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. FirstEnergy System

[Docket No. ER99–4437–000]

Take notice that on September 14, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for: Northern States Power Company, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is September 9, 1999.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PJM Interconnection, L.L.C.

[Docket No. ER99–4444–000]

Take notice that on September 14, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing 6 executed service agreements for transmission service under the PJM Open Access Transmission Tariff. The agreements are as follows: 3 umbrella agreements for firm point-to-point transmission service agreements with Citizens Power Sales, CNG Power Services Corporation, and CNG Retail Services Corporation; 2 umbrella non-firm point-to-point transmission service agreements with CNG Power Services Corporation and CNG Retail Services Corporation; and 1 umbrella agreement for network integration transmission service under state required retail access programs with CNG Retail Services Corporation.

Copies of this filing were served upon the parties to the service agreements.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Indeck-Olean Limited Partnership

[Docket No. ER99–4445–000]

Take notice that on September 14, 1999, Indeck-Olean Limited Partnership tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, its short-term agreements with Niagara Mohawk Energy Marketing, Inc.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Indeck-Olean Limited Partnership

[Docket No. ER99–4446–000]

Take notice that on September 14, 1999, Indeck-Olean Limited Partnership tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, its long-term agreements with Niagara Mohawk Energy Marketing, Inc.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Rochester Gas and Electric Corporation

[Docket No. ER99–4447–000]

Take notice that on September 15, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreement between RG&E and DukeSolutions, Inc., for service pursuant to RG&E's Market-Based Power Sales Tariff and its retail access program.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of August 30, 1999.

A copy of this application has been served on the Customer and the New York Public Service Commission.

Comment date: October 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Rochester Gas and Electric Corporation

[Docket No. ER99–4448–000]

Take notice that on September 15, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between RG&E and DukeSolutions, Inc., for service pursuant to RG&E's Market-Based Power Sales Tariff and its retail access program.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of September 2, 1999.

A copy of this application has been served on the Customer and the New York Public Service Commission.

Comment date: October 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Electric and Gas Company

[Docket No. ER99–4449–000]

Take notice that on September 15, 1999, Public Service Electric and Gas Company (PSE&G), tendered for filing tariff sheets regarding calculations of

peak and hourly loads used in the determination of capacity, transmission and energy interchange obligations of suppliers authorized to conduct business in PSE&G's service territory pursuant to New Jersey's state mandated retail electric choice program.

PSE&G has requested an effective date of November 14, 1999.

Copies of the filing were served upon members of the PJM Interconnection, L.L.C. and the New Jersey Board of Public Utilities.

Comment date: October 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Georgia Power Company

[Docket No. ER99–4450–000]

Take notice that on September 15, 1999, Georgia Power Company (Georgia Power), tendered for filing the Interconnection Agreement by and between Monroe Power Company (Monroe Power) and Georgia Power (the Agreement). The Agreement permits Monroe Power to interconnect and operate in parallel with the Georgia Power electric system. The Agreement was executed on August 25, 1999 and terminates in 30 years.

Comment date: October 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER99–4451–000]

Take notice that on September 15, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Coral Power, L.L.C. (Coral Power), for acceptance by the Commission.

The ISO states that this filing has been served on Coral Power and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of September 2, 1999.

Comment date: October 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Tampa Electric Company

[Docket No. ER99–4452–000]

Take notice that on September 15, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with the City of Lakeland, Florida (Lakeland) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on August 17, 1999.

Copies of the filing have been served on Lakeland and the Florida Public Service Commission.

Comment date: October 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Hardee Power Partners Limited

[Docket No. ER99–4453–000]

Take notice that on September 15, 1999, Hardee Power Partners Limited (HPP), tendered for filing an abbreviated rate filing in connection with amendments (Fourth Amendments) to two power sales agreements providing for the sale of electric capacity and associated energy to Seminole Electric Cooperative, Inc. (Seminole) and Tampa Electric Company (Tampa Electric), the rates under which were previously accepted by the Commission. The Fourth Amendments implement the provisions of the original agreements which contemplate the construction by HPP of additional generation at the HPP site and reflect certain related changes in the rates under the power sales agreements pursuant to the terms of those agreements.

HPP requests waiver of the Commission's sixty (60) day notice requirements and an effective date of November 1, 1999.

HPP has served copies of the filing on Seminole and Tampa Electric and the Florida Public Service Commission.

Comment date: October 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Hardee Power Partners Limited

[Docket No. ER99–4454–000]

Take notice that on September 15, 1999, Hardee Power Partners Limited (HPP), tendered for filing an abbreviated rate filing in connection with amendments (Third Amendments) to two power sales agreements providing for the sale of electric capacity and associated energy to Seminole Electric Cooperative, Inc. (Seminole) and Tampa Electric Company (Tampa Electric), the rates under which were previously accepted by the Commission. The Third Amendments implement the provisions of the original agreements which contemplate the construction by Seminole of additional generation at the HPP site and reflect certain related changes in the rates under the power sale agreements pursuant to the term of those agreements.

HPP requests waiver of the Commission's sixty (60) day notice requirements and an effective date of November 1, 1999.

HPP has served copies of the filing on Seminole and Tampa Electric and the Florida Public Service Commission.

Comment date: October 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Sierra Pacific Power Company

[Docket No. ER99–4455–000]

Take notice that on September 15, 1999, Sierra Pacific Power Company (Sierra), tendered for filing pursuant to Section 205 of the Federal Power Act, an executed Network Integrated Transmission Service Agreement (Service Agreement) between Sierra and the Truckee Donner Public Utility District. The Service Agreement is being filed in compliance with the June 3, 1998, Stipulation and Agreement filed in Docket No. ER97-3593–000 and approved by the Commission on April 15, 1999 (87 FERC ¶ 61,066).

Sierra has requested that the Commission accept the Service Agreement as of September 15, 1999.

Comment date: October 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. New York State Electric & Gas Corporation

[Docket No. ER99–4467–000]

Take notice that on September 15, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing Service Agreements between NYSEG and Engage Energy US, L.P. This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97–2353–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of July 26, 1999, for the Service Agreements.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: Oct 5, 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, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). 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. 99–24863 Filed 9–23–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–224–000, et al.]

Midwest Generation, LLC et al; Electric Rate and Corporate Regulation Filings

September 17, 1999.

Take notice that the following filings have been made with the Commission:

1. Midwest Generation, LLC

[Docket No. EG99–224–000]

Take notice that on September 10, 1999, Midwest Generation, LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and/or operating 9,287 MW of generating capacity in Illinois being acquired from Commonwealth Edision Company.

Comment date: October 8, 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.

2. Collins Trust I

[Docket No. EG99–225–000]

Take notice that on September 10, 1999, Collins Trust I filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a business trust created pursuant to the laws of the State of Delaware that will be engaged directly and exclusively in holding an undivided interest in a 2,698 MW dual-fired eligible facility in Morris, Illinois. The facility will be leased by applicant and other owners to Collins Holdings EME, LLC, which in turn will lease the facility to Midwest Generation, LLC, which will operate the facility as an exempt wholesale generator.

Comment date: October 8, 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. Collins Trust II

[Docket No. EG99–226–000]

Take notice that on September 10, 1999, Collins Trust II filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a business trust created pursuant to the laws of the State of Delaware that will be engaged directly and exclusively in holding an undivided interest in a 2,698 MW dual-fired eligible facility in Morris, Illinois. The facility will be leased by applicant and other owners to Collins Holdings EME, LLC, which in turn will lease the facility to Midwest Generation, LLC, which will operate the facility as an exempt wholesale generator.

Comment date: October 8, 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. Collins Trust III

[Docket No. EG99–227–000]

Take notice that on September 10, 1999, Collins Trust III filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a business trust created pursuant to the laws of the State of Delaware that will be engaged directly and exclusively in holding an undivided interest in a 2,698 MW dual-fired eligible facility in Morris, Illinois. The facility will be leased by applicant and other owners to Collins Holding EME, LLC, which in turn will lease the facility to Midwest Generation, LLC, which will operate the facility as an exempt wholesale generator.

Comment date: October 8, 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. Collins Trust IV

[Docket No. EG99–228–000]

Take notice that on September 10, 1999, Collins Trust IV filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a business trust created pursuant to the laws of the State of Delaware that will be engaged directly and exclusively in holding an undivided interest in a 2,698 MW dual-fired eligible facility in Morris, Illinois. The facility will be leased by applicant and other owners to Collins Holdings EME, LLC, which in turn will lease the facility in Midwest Generation, LLC, which will operate the facility as an exempt wholesale generator.

Comment date: October 8, 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. JPower Inc. and Fortistar Power Marketing LLC

[Docket Nos. ER95–1421–013 and ER98–3393–003]

Take notice that on September 10, 1999, the above-mentioned power marketers filed a quarterly report with the Commission in the above-mentioned proceedings for information only.

7. Amerada Hess Corporation and Advantage Energy, Inc.

[Docket Nos. ER97–2153–009 and ER97–2758–007]

Take notice that on September 17, 1999, the above-mentioned power marketers filed filing quarterly reports with the Commission in above-referenced proceedings for information only.

8. Mobile Energy LLC

[Docket No. QF96–103–002]

Take notice that on September 10, 1999, Mobil Energy LLC filed an amendment to their application filed on August 31, 1999.

Comment date: October 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. AES Placerita

[Docket No. EG99–231–000]

Take notice that on September 15, 1999, AES Placerita, Inc., 20885 Placerita Canyon Road, Newhall, CA 91321 (AESPL), filed with the Federal Energy Regulatory Commission (Commission) an application for

determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

AESPL states that it is a corporation organized and existing under the laws of the State of Delaware. AESPL indicates that it is engaged directly and exclusively in the business of owning and operating all or part of three cogeneration facilities located in the City of Santa Clarita, California and selling electric energy at wholesale.

Comment date: October 8, 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.

10. AES Red Oak, L.L.C.

[Docket No. EG99–229–000]

Take notice that on September 13, 1999, AES Red Oak, L.L.C. which is developing a generating facility in Sayerville, New Jersey 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.

Comment date: October 8, 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.

11. Northbrook New York, LLC

[Docket No. EG99–230–000]

Take notice that on September 14, 1999, Northbrook New York, LLC (Applicant), with its principal office at 225 West Wacker Driver, Chicago, Illinois 60606, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's regulations.

Applicant states that it will own and operate the approximately 35 megawatt (net) Glen Park Hydroelectric Project, FERC Project No. 4796, located in the Village of Glen Park, Jefferson County, New York, and will sell electric energy exclusively at wholesale.

Comment date: October 8, 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.

12. South Carolina Electric & Gas Company

[Docket No. ER99–4422–00]

Take notice that on September 10, 1999, South Carolina Electric & Gas Company (SGE&G), tendered for filing proposed changes to its Pro Forma Open Access Transmission Tariff. The filing would change the tariff to include language required by the Commission's Order No. 888–A, to reflect current addresses on certain forms, and to amend provisions appearing in Schedules 7 and 8.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company

[Docket No. ER99–4416–000]

Take notice that on September 10, 1999, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with Transalta Energy Marketing (U.S.) Inc. (Transalta).

Northern Indiana has requested an effective date of July 13, 1999.

Copies of this filing have been sent to Transalta, to the Indiana Utility Regulatory Commission, and to the Indiana Office opf Utility Consumer Counselor.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Allegency Power

[Docket No. ER99–1141–001]

Take notice that on September 13, 1999, Allegheny Power on behalf of Monongahela Power Company tendered for filing a summary of refunds to West Virginia Wholesale Customers.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER99–2854–000]

Take notice that on September 13, 1999, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing certain corrections to the 1999 annual rate redetermination for Entergy Services' Open Access Transmission Tariff.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Niagra Mohawk Power Corporation and Rochester Gas & Electric Corporation

[Docket No. ER99–3539–000]

Take notice that on September 13, 1999, Niagara Mohawk Power Corporation and Rochester Gas and Electric Corporation tendered for filing, under Sections 205 and 206 of the Federal Power Act, an Amendment to their July 9, 1999 filing amending Niagra Mohawk's Rate Schedule No. 176. This America Filing is designed to respond to the Deficiency Letter which the Commission issued in this docket on August 12, 1999, in response to the original July 9, filing.

A copy of this filing has been served upon the Public Service Commission of the State of New York.

Comment date: October 1, 1999, in accordance with Standard Paragrah E at the end of this notice.

17. InPower Marketing Group

[Docket No. ER99–3964–000]

Take notice that on September 13, 1999, InPower Marketing Corp. (InPower), tendered for filing proposed changes in its FERC No. 1 Rate Schedule. The proposed changes would clarify the business activities of InPower, the ownership of InPower, affiliates of InPower, and the business activities of InPower owners and affiliates. The proposed changes are the result of a deficient submittal of the original filing.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER99–4154–000]

Take notice that on August 20, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Transmission Service with Coral Power L.L.C., under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of July 23, 1999, the date service was first provided.

Copies of the filing were served upon Coral Power L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER99–4417–000]

Take notice that on September 10, 1999, the California Independent

System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and AES Placerita, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on AES Placerita, Inc. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective August 31, 1999.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. California Independent System Operator Corporation

[Docket No. ER99–4418–000]

Take notice that on September 10, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and AES Placerita, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on AES Placerita, Inc., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective August 31, 1999.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Portland General Electric Company

[Docket No. ER99–4419–000]

Take notice that on September 10, 1999, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Chelan County PUD.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective August 15, 1999.

A copy of this filing was caused to be served upon Chelan County PUD, as noted in the filing letter.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Duquesne Light Company

[Docket No. ER99–4423–000]

Take notice that on September 13, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with TransAlta Energy Marketing, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of September 10, 1999.

Copies of this filing were served upon Customer.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Portland General Electric Company

[Docket No. ER99–4425–000]

Take notice that on September 13, 1999, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with City of Tacoma Department of Public Utilities.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective August 15, 1999.

A copy of this filing was caused to be served upon City of Tacoma Department of Public Utilities, as noted in the filing letter.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Portland General Electric Company

[Docket No. ER99–4426–000]

Take notice that on September 13, 1999, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Seattle City Light.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective August 23, 1999.

A copy of this filing was caused to be served upon Seattle City Light, as noted in the filing letter.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Consumers Energy Company

[Docket No. ER99–4433–000]

Take notice that on September 13, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for unbundled wholesale power service with Wisconsin Electric Power Company, TransAlta Energy Marketing (U.S.) Inc. and Carolina Power & Light Company pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

Copies of the filing have been served on the Michigan Public Service Commission and the customers under the respective service agreements.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Duquesne Light Company

[Docket No. ER99–4424–000]

Take notice that on September 13, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with New Energy Partners, L.L.C. (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of September 10, 1999.

Copies of this filing were served upon Customer.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Florida Power & Light Company

[Docket No. ER99–4427–000]

Take notice that on September 13, 1999, Florida Power & Light Company (FPL), tendered for filing a Service Agreement with The Legacy Energy Group, LLC for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light and a Service Agreement with The Legacy Energy Group, LLC for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreements be made effective on August 18, 1999.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. American Electric Power Service Corporation

[Docket No. ER99–4428–000]

Take notice that on September 13, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing blanket service agreements by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff) and letters of assignment under the 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 the service agreements and assignments 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: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Entergy Services, Inc.

[Docket No. ER99–4429–000]

Take notice that on September 13, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing the Sixth Amendment to the Power Agreement between Entergy Arkansas and the City of North Little Rock, Arkansas (City) dated August 26, 1999 which establishes a new point of delivery at the City's Dixie Substation.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Entergy Services, Inc.

[Docket No. ER99–4430–000]

Take notice that on September 13, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing the Sixth Amendment to the Power Agreement between Entergy Arkansas and the City of North Little Rock, Arkansas (City) dated August 26, 1999 which establishes a new point of delivery at the City's Dixie Substation.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Cinergy Services, Inc.

[Docket No. ER99–4431–000]

Take notice that on September 10, 1999, Cinergy Services, Inc., collectively as agent for and on behalf of its utility operating company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and TransAlta Energy Marketing (U.S.) Inc. (TEMUS).

Cinergy and TEMUS are requesting an effective date of one day after the filing.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Illinois Power Company

[Docket No. ER99–4432–000]

Take notice that on September 13, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62522, tendered for filing a Netting Agreement between Louisville Electric & Gas Company/Kentucky Utilities Company (LG&E/KU) and Illinois Power. The Netting Agreement principally provides that, during each month in which payments for wholesale power services are due, Illinois Power and LG&E/KU will net the amounts owed by each party to the other, such that the only payment to be made will be by the party owing the difference between the two amounts.

Illinois Power has requested an effective date of September 1, 1999.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. AG–Energy, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P. and Power City Partners, L.P.

[Docket No. ER99–4443–000]

Take notice that on September 13, 1999, AG–Energy, L.P. (AG–Energy), Seneca Power Partners, L.P. (Seneca Power Partners), Sterling Power Partners, L.P. (Sterling Power Partners), and Power City Partners, L.P. (Power City Partners) (collectively, the Applicants), petitioned the Commission for acceptance of the Applicants proposed FERC Rate Schedules No. 2. Applicants request certain authority to make sales of ancillary services for resale at market-based rates within the markets administered by the New York Independent System Operator (New York ISO). Applicants also request certain blanket authorizations, and waiver of certain of the Commission's Regulations.

Comment date: October 1, 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, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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. 99–24901 Filed 9–23–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment of Licenses.

b. Project Nos.: 1869–037, 2188–044, 2301–015.

c. Date Filed: August 31, 1999.

d. Applicants: The Montana Power Company (MPC) and PP&L Montana, L.L.C. (PPLM).

e. Names of Projects: Thompson Falls, Missouri Madison, and Mystic Lake.

f. Location: The Thompson Falls project is located on the Clark Fork River in Sander County, Montana. The Missouri-Madison project is on the Missouri and Madison Rivers in Cascade, Gallatin, Lewis and Clark and Madison Counties, Montana. The Mystic Lake project is on West Rosebud Creek in Custer National Forest and Stillwater County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant's Contacts: For MPC, Michael P. Manion, 40 East Broadway, Butte, MT 59701, (406) 497–2456; for

PPLM, David R. Poe, LeBoeuf, Lamb, Green & MacRae LLP, 1875 Connecticut Avenue, NW, Washington, DC 20009, (202) 986–8039.

i. FERC Contact; Any questions on this notice should be addressed to Doan Pham at (202) 219–2851 or e-mail address *doan.pham@ferc.fed.us.*

j. Deadline for filing comments, motions to intervene, or protests: 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Numbers (1869–037, 2188–037, and 2301–015) on any comments, protests, or motions filed.

k. Description of Amendment: MPC, present licensee of the above captioned hydroelectric projects, and PPLM, prospective licensee of these same projects, have filed an application requesting: (1) Commission authorization to amend the license for project No. 2188 in order to (a) remove certain transmission facilities from the project and (b) to specify new Generation Point of Receipt (GPOR), as points of interconnection between developments in the project that will be conveyed to PPLM transmission facilities of MPC; (2) Commission authorization to amend the license for Project No. 2301 in order to specify a new GPOR similar to that being proposed for Project No. 2188; (3) for Project Nos. 2188, 2301 and 1869, Commission approval of and, as necessary, waivers for exercise of land use provisions in the respective project licenses to permit MPC to reserve certain land uses for itself. All of these changes in project licenses are being requested prior to the transfer of the project licenses and associated assets to PPLM, a transaction that has already received approval by Commission Order 88 FERC ¶ 62,018.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

David P. Boergers,

Secretary.

[FR Doc. 99–24864 Filed 9–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visits and Soliciting Scoping Comments

September 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2566–010.

c. *Date Filed:* March 30, 1999.

d. *Applicant:* Consumers Energy Company.

e. *Name of Project:* Webber Hydroelectric Project.

f. *Location:* On the Grand River, in Ionia County, near the City of Portland, Michigan. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Battige, Consumers Energy Company, Hydro Operations, 330 Chestnut Street, Cadillac, MI 49601, (616) 779–5506.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. *Deadline for filing scoping comments:* November 22, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenors files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application is not ready for environmental analysis at this time.

l. Description of the Project: The project consists of the following existing facilities: (1) a 32-foot-high, 1,200-foot-long dam comprising: (a) a 157-foot-long concrete powerhouse section, (b) a 313-foot-long concrete spillway with 10 Taintor gates and one hydraulic flap gate, and (c) two earth embankment sections having a combined total length of 730 feet; (2) a 7-mile-long reservoir having a 660-acre surface area at a normal pool elevation of 684,4 feet USGS; (3) a powerhouse containing two generating units with a total installed capacity of 3,250 kW; and (4) other appurtenances.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call

(202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

The Commission intends to prepare a Multiple Project Environmental Assessment (MPEA) for the relicensing of the Webber Project and the licensing of the Portland Municipal Project No. 11616, in accordance with the National Environmental Policy Act of 1969. The MPEA will consider both site-specific and cumulative environmental effects, if any, of the proposed action and reasonable alternatives, and will include an economic, financial, and engineering analysis.

Scoping Meetings

The Commission will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the MPEA. The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be addressed in the MPEA.

The evening meeting will be on Wednesday, October 20, 1999, beginning at 7:00 p.m. in the Portland High School auditorium, located at 1100 Ionia Road, Portland, Michigan. The morning meeting will be held on Thursday, October 21, 1999 beginning at 9:00 a.m. at the Lansing Center, Room 202, located at 333 East Michigan Avenue, Lansing, Michigan.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the MPEA to parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and the Commission staff will conduct project site visits on Wednesday, October 20, 1999, starting at 10:00 a.m. We will meet at the parking lot next to the Portland Dam powerhouse and fish ladder off Lyons Road. If you plan to attend the site visit, please call David Battige, Consumers Energy Company, at (616) 779– 5506, no later than October 13, 1999.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the MPEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the MPEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the MPEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the MPEA.

David P. Boergers,

Secretary.

[FR Doc. 99–24865 Filed 9–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visits and Soliciting Scoping Comments

September 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* 11616–000.

c. *Date Filed:* June 1, 1998.

d. *Applicant:* City of Portland, Michigan.

e. *Name of Project:* Portland Municipal Hydroelectric Project.

f. *Location:* On the Grand River, near the City of Portland, in Ionia County, Michigan. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Glen Hendrix, Earth Tech, Inc., 555 Glenwood Hills Pkwy., Grand Rapids, MI 49588, (616) 940–4406.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. *Deadline for filing scoping comments:* November 22, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

1. *Description of the Project:* The project consists of the following existing facilities: (1) a 13-foot-high, 325-foot-long dam with a concrete spillway; (2) a reservoir with a surface area of 90 acres, and a storage area of 140 acre-feet; (3) a powerhouse with a forebay containing two generating units with a total installed capacity of 375 kW; and (4) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

The Commission intends to prepare a Multiple Project Environmental Assessment (MPEA) for the licensing of the Portland Municipal Project and the relicensing of the Webber Project No. 2566, in accordance with the National Environmental Policy Act of 1969. The MPEA will consider both site-specific and cumulative environmental effects, if any, of the proposed action and reasonable alternatives, and will include an economic, financial, and engineering analysis.

Scoping Meetings

The Commission will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the MPEA. The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited

to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be addressed in the MPEA.

The evening meeting will be on Wednesday, October 20, 1999, beginning at 7:00 p.m. in the Portland High School auditorium, located at 1100 Ionia Road, Portland, Michigan. The morning meeting will be held on Thursday, October 21, 1999, beginning at 9:00 a.m. at the Lansing Center, Room 202, located at 333 East Michigan Avenue, Lansing, Michigan.

To help focus discussions, we will distribute a Scoping Document (SDI) outlining the subject areas to be addressed in the MPEA to parties on the Commission's mailing list. Copies of the SDI also will be available at the scoping meetings.

Site Visit

The applicant and the Commission staff will conduct project site visits on Wednesday, October 20, 1999, starting at 10:00 a.m. We will meet at the parking lot next to the Portland Dam powerhouse and fish ladder off Lyons Road. If you plan to attend the site visit, please call Glen Hendix, Earth Tech, Inc. at (616) 940–4406, no later than October 13, 1999.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the MPEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the MPEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the MPEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the MPEA.

David P. Boergers,

Secretary.

[FR Doc. 99–24866 Filed 9–23–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6246–4]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed September 13, 1999 Through September 17, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990330, Draft EIS, AFS, UT, Monroe Mountain Ecosystem Restoration Project, Implementation, Fishlake National Forest, Richfield Ranger District, Sevier and Piute Counties, UT, Due: November 08, 1999, Contact: Don Okerlund (435) 896–9233.

EIS No. 990331, Final EIS, FHW, WV, Elkins Bypass Project, Construction, Relocation of US–33 between Aggregates and Canfield, Funding NPDES Permit and COE Section 404 Permit, Randolph County, WV, Due: October 29, 1999, Contact: Thomas J. Smith (304) 347–5928.

EIS No. 990332, Draft EIS, FRC, IL, MI, IN, TriState Pipeline Project, Construction and Operation of Natural Gas Pipeline Facilities, Docket Nos.: CP99–61–000, CP99–62–000, CP99–63–000 and CP99–64–000, Presidential Permit, IL, IN and MI, Due: November 08, 1999, Contact: Paul McKee (202) 208–1088.

EIS No. 990333, Final EIS, NOA, ME, Atlantic Herring (Clupea harengus harengus) Fishery Management Plan (FWP), Management Measures, Exclusive Ecosystem Zone (EEZ), Gulf of Maine, George Bank, ME, Due: October 25, 1999, Contact: Hannah Goodale (978) 281–9300.

EIS No. 990334, Final EIS, FHW, MD, MD–331—Dover Bridge, Construction, Right-of-Way Grant, US Coast Guard Bridge Permit and COE Section 404 Permit, Easton, Talbot and Caroline County, MD, Due: October 25, 1999, Contact: Pam Stephenson (410) 962–4342.

Amended Notices

EIS No. 990226, Draft EIS, COE, FL, Southwest Florida Improvement to the Regulatory Process for Rapid Growth and Development, Alternatives Development Group (ADG), Lee and Collier Counties, FL, Due: November 02, 1999, Contact: Kenneth R. Dugger (904) 232–1686. Published FR 07–09–99—Review Period extended from 08–23–99 to 11–02–99.

EIS No. 990292, Draft EIS, BIA, AZ, NM, Programmatic EIS—Navajo Ten Year Forest Management Plan Alternatives, Implementation and Funding, AZ and NM, Due: October 20, 1999, Contact: Harold D. Russell (520) 729–7228. Published FR 08–20–99—Review Period Extended—from 10–04–99 to 10–20–99.

EIS No. 990312, Final EIS, COE, OR, WA and Lower Willamette River Federal Navigation Channel, Improvement Channel Deepening, OR and WA, Due: October 25, 1999, Contact: Steven J. Stevens (503) 808–4768. Published FR 09–10–99—Review Period Extended from 10–12–99 to 10–25–99.

Dated: September 21, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–24966 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6246–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 16, 1999 Through August 20, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (64 FR 17362).

Draft EISs

ERP No. D–BLM–L67037–ID Rating EO2, Dry Valley Mine—South Extension Project, Construction of two New Open Pit Mine, Special-Use-Permit, COE Section 404 Permit, Public and Private Land Used, Caribou County, ID.

Summary: EPA expressed the following objections: an inadequate discussion of the fate, transport, and speciation of selenium; an abridged

range of alternatives; a monitoring plan that lacks sufficient detail; concerns about selenium contamination of ground and surface waters; and proposed wetland mitigation at a site that is currently contaminated and one that could attract and subsequently harm wildlife.

ERP No. D–FHW–B40089–CT Rating EO2, CT–2/2A/32 Transportation Improvement Study, Construction, Funding, Coast Guard Bridge Permit, NPDES Permit, COE Section 10 and 404 Permit, New London County, CT.

Summary: EPA expressed environmental objections regarding impacts to the wetlands, air quality, and ground/surface waters and the level of information provided in the DEIS. EPA also requested additional analysis of community sensitive alternatives that may resolve the identified transportation problem.

ERP No. D–USN–B11024–ME Rating EO2, South Weymouth Naval Air Station, Disposal and Reuse, Norfolk and Plymouth Counties, ME.

Summary: EPA expressed concerns regarding potential direct and indirect impacts of the project related to traffic/air quality, water supply, wastewater treatment, and the potential for other growth related secondary and cumulative impacts. EPA requested that the Navy provide information to fully characterize the impacts of the project and to demonstrate that significant adverse impacts can be effectively mitigated.

ERP No. DS–AFS–J65287–SD Rating EC2, Veteran/Boulder Area Project, Updated Information on Additional Analysis for the Forbes Gulch Portion within the Beaver Park Roadless Area, Implementation, Black Hills National Forest, Spearfish and Nemo Ranger District, Lawrence and Meade Counties, SD.

Summary: EPA suggested that the analysis be expanded to include disclosure of future steps that would be required should the proposed treatments fail to control the pine beetle outbreak in the Beaver Park Roadless Area or should the outbreak spread to the Spearfish source-water watershed.

Final EISs

ERP No. F–FHW–B40071–CT I–95 at New Haven Harbor Crossing (Quinnipiac River Bridge) Improvement, from Interchange 43 southwest to Interchange 53 northeast, Funding, COE Section 10 and 404 Permits, U.S. Coast Guard Bridge Permit, New Haven, East and West Haven, CT.

Summary: EPA expressed concerns that the rationale for selecting a preferred alternative was not clear. EPA requested the FHWA/CTDOT to provide supplemental information which would further explain the basis for selection of one action over another and why certain transit measure were eliminated.

ERP No. F–FRC–B05192–MA Holyoke Hydroelectric Relicensing Project, (FERC Nos. 2004–073 and 11607–000), Construction, Operation and Maintenance, Located on the Connecticut River, Hampshire, Hampden and Franklin Counties, MA.

Summary: EPA remains concerned about fish passage, bypass flow, and alternative issues which remain largely unaddressed in the FEIS. EPA encouraged FERC to provide additional information concerning these issues prior to the conclusion of the NEPA process.

ERP No. F–USA–B11023–CT Stratford Army Engine Plant (SAEP) Disposal and Reuse, Implementation, City of Stratford, Fairfield and New Haven Counties, CT.

Summary: EPA had no outstanding objections to the proposal and continues to support the transfer of intertidal land to the USFWS.

Dated: September 21, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–24967 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6443–8]

Clean Air Act Advisory Committee; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

OPEN MEETING NOTICE: Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clear Air Act Advisory Committee will hold its next meeting on Wednesday October 13, 1999, from approximately 8:30 a.m. to 3:30 p.m. at the Georgetown University Conference Center, 3800 Reservoir Road, NW, Washington, DC Seating will be available on a first come, first served basis. Three of the CAAAC's four Subcommittees (Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Integration Subcommittee; and the Economic Incentives and Regulatory Innovations Subcommittee) will hold meetings on October 12, 1999. The Climate Change Subcommittee will not meet on this date. The Linking Transportation Land Use and Air Quality Subcommittee is scheduled to meet from 5 p.m. to 7:30 p.m.; the Economic Incentives and Regulatory Innovations Subcommittee is scheduled to meet from 5:30 p.m. to 7:30 p.m.; and the Permits/NSR/Toxics Subcommittee is scheduled to meet from 5:30 p.m. to 7:00 p.m.; All subcommittee meetings will be held at the Georgetown University Conference Center, the same location as the full Committee.

INSPECTION OF COMMITTEE DOCUMENTS: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION CONTACT: Concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 564–1306, FAX (202) 564–1352 or by mail at US EPA, Office of Air and Radiation (Mail code 6102 A), 401 M. St. SW, Washington, DC 20460. For information on the Subcommittee meetings, please contact the following individuals: (1) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; (2) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–260–7433; and (3) Linking Transportation, Land Use and Air Quality Concerns—Gay MacGregor, 734–668–4438. Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web Site:www.epa.gov/oar/caaac/.

Dated: September 15, 1999.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–24905 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34148A; FRL–6385–2]

Organophosphate Pesticide: Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, tribuphos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34148A, must be received by EPA on or before November 23, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34148A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on tribuphos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In Person.* The Agency has established an official record for this action under docket control number OPP–34148A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34148A in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34148A. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate, tribuphos. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for

involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the tribuphos preliminary risk assessments, which where released to the public on September 9, 1998 (63 FR 48213) (FRL–6030–2), through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for tribuphos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific tribuphos use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''pre-harvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, for example, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before November 23, 1999 at the addresses given under the **ADDRESSES** section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: September 17, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–24911 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51933; FRL–6381–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of the Toxic Substances Control Act (TSCA), EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 1, 1999 to August 13, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

FOR FURTHER INFORMATION CONTACT: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register** -- Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51933. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and

comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 1, 1999 to August 13, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 42 Premanufacture Notices Received From: 08/01/99 to 08/13/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1164	08/02/99	10/31/99	CBI	(G) Agricultural inert	(G) Polyethoxylated polyarylphenol sulfate, polyethoxylated alkylammonium salt
P–99–1165	08/02/99	10/31/99	Fabricolor, Inc.	(S) Dispersion aid for offset & gravure inks & solvent based paints	(G) Quaternary salt of a copper phthalocyanine derivative
P–99–1166	08/02/99	10/31/99	CBI	(S) Fluorescence quencher for pulp and paper	(G) Stilbene disulfonic acid triazine derivative
P–99–1168	08/02/99	10/31/99	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion copolymer
P–99–1169	08/02/99	10/31/99	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion copolymer
P–99–1170	08/02/99	10/31/99	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion copolymer
P–99–1171	08/02/99	10/31/99	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion copolymer
P–99–1172	08/02/99	10/31/99	CBI	(G) Contained use	(G) Imidazoline
P–99–1173	08/02/99	10/31/99	CBI	(G) Contained use	(G) Imidazoline
P–99–1174	08/02/99	10/31/99	CBI	(G) Contained use	(G) Imidazoline
P–99–1176	08/03/99	11/01/99	Eastman Chemical Company	(S) Chemical intermediate	(S) Hexanoic acid, 2-bromo-, methyl ester*
P–99–1177	08/03/99	11/01/99	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acylonitrile and butadadiene extended epoxy resin
P–99–1178	08/03/99	11/01/99	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acylonitrile and butadadiene extended epoxy resin
P–99–1179	08/04/99	11/02/99	CBI	(G) This material will principally be used as an uv stabilizer for automotive coatings	(G) Dialkylphenol
P–99–1180	08/03/99	11/01/99	CBI	(G) Pigment dispersant	(G) High molecular polymer with amino group
P–99–1181	08/04/99	11/02/99	Neste Resins Corporation	(G) Cross linking agent	(S) Morpholine, sulfate (2:1)*
P–99–1182	08/04/99	11/02/99	CBI	(G) Lubricant/corrosion inhibitor	(G) Tall oil fatty acid ester
P–99–1183	08/04/99	11/02/99	CBI	(G) Lubricant/corrosion inhibitor	(G) Tall oil fatty acid ester
P–99–1184	08/04/99	11/02/99	CBI	(G) Binder dor printing ink	(G) Polyacrylic resin
P–99–1185	08/06/99	11/04/99	CBI	(G) Open, non-dispersive use	(G) Amine soap
P–99–1186	08/06/99	11/04/99	Aceto Corporation	(S) Photopolymerisation sensitizer for uv radiation curing system	(S) Poly[oxy(methyl-1,2-ethanediyl)], α-[4-(dimethylamino)benzoyl-omega-butoxy-*
P–99–1187	08/05/99	11/03/99	CIBA Specialty Chemicals Corporation USA - performance polymers	(S) Resin for reinforced structural composites for aircraft interiors	(G) Substituted bisphenol, cyanate ester
P–99–1188	08/05/99	11/03/99	CIBA Specialty Chemicals Corporation USA - performance polymers	(S) Resin for structural composites; resin for electronic laminates	(G) Substituted 6,6′-(1-methylethylidene) bis [3,4-dihydro-3-phenyl,1,3-benzoxazine]
P–99–1189	08/05/99	11/03/99	CBI	(S) Ingredient monomer for casting/automotive parts adhesive	(G) Isoalkyl methacrylate ester
P–99–1190	08/06/99	11/04/99	BASF Corporation	(S) polymerization catalyst	(G) Metal organic compound
P–99–1191	08/09/99	11/07/99	CBI	(G) Phosphor	(G) Rare earth phosphate
P–99–1192	08/09/99	11/07/99	CBI	(G) Phosphor	(G) Rare earth phosphate
P–99–1193	08/09/99	11/07/99	CBI	(S) Moisture curing adhesive or coating for window glazing	(G) Isocyanate terminated urethane polymer

I. 42 Premanufacture Notices Received From: 08/01/99 to 08/13/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1194	08/09/99	11/07/99	Dainippon Ink and Chemicals, Inc.	(S) Waterborne paint binder	(G) Fluroolefin polymer
P–99–1195	08/10/99	11/08/99	CIBA Specialty Chemicals Corp.	(S) Pigment dispersant for coatings	(G) Acrylic copolymer
P–99–1196	08/10/99	11/08/99	CBI	(G) Coating component	(G) Acrylic acid, polymer with acrylate esters and substituted ethene
P–99–1197	08/10/99	11/08/99	CBI	(G) Hardener for epoxy-resins	(G) Methylated dicyclopentadiene
P–99–1198	08/11/99	11/09/99	Reichhold, Inc.	(G) Hot melt polyurethane adhesive	(G) Hot melt polyurethane adhesive
P–99–1199	08/10/99	11/08/99	CBI	(S) Base coat binder	(G) Polymonomeric polyurethane
P–99–1200	08/11/99	11/09/99	Champion Technologies, Inc.	(S) Used as coalbed dewatering agent.	(S) Alcohols, C_{11-14}-isoalkyl, c_{13}-rich, butoxylated ethoxylated*
P–99–1201	08/11/99	11/09/99	Champion Technologies, Inc.	(S) Corrosion inhibitor for oil and gas production in north sea	(S) 2-propenoic acid, reaction products with chloroacetic acid and 4,5-dihydro-1h-imidazole-1-ethanamine 2-nortall-oil alkyl derivs., sodium salts*
P–99–1202	08/11/99	11/09/99	The Dow Chemical Company	(G) Reactive additive for polymers	(G) Sulfonyl azide intermediate
P–99–1203	08/10/99	11/08/99	CBI	(G) Dye for cotton	(G) Bis-arylazo substituted sulfonated naphthalene compound
P–99–1204	08/12/99	11/10/99	MG Generon	(G) Membrane material	(S) Carbonic dichloride, polymer with 4,4′-(9h-fluoren-9-ylidene)bis[2,6-dibromophenol]*
P–99–1205	08/12/99	11/10/99	MG Generon	(G) Source or starting point for polymeric material	(S) 4,4′-(9a-fluoren-9-ylidene) bis[2,6-dibromo]phenol*
P–99–1206	08/12/99	11/10/99	CBI	(G) Additive for manufacture of articles	(G) Modified polyurethane emulsion
P–99–1207	08/13/99	11/11/99	CBI	(G) Destructive use	(G) Zinc alkaryl dithiophosphate

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 24 Notice of Commencement From: 08/01/99 to 08/13/99

Case No.	Received Date	Commencement/ Import Date	Chemical
P–93–0605	08/09/99	07/24/99	(G) Substituted polyoxyalkylene-*m*-toluidine
P–95–0524	08/10/99	01/22/99	(G) Polyurethane elastomer
P–97–0551	08/09/99	07/27/99	(G) Alkyl phosphites
P–97–0617	08/13/99	08/10/99	(G) Polyol ester
P–98–0756	08/09/99	07/26/99	(S) Siloxanes & silicones, ethoxy pr ethoxy vinyl, ethoxy-teminated*
P–98–0760	08/02/99	02/16/99	(S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, 2-hydroxyethyl 2-methyl-2-propenoate, 2-hydroxyethyl 2-propenoate, methyl 2-methyl-2-propenoate, and 2-propenamide*
P–98–0816	08/06/99	07/20/99	(G) Alkane, 1-3-bis(bis(substituted aryl)phosphino)
P–98–0967	08/02/99	07/22/99	(G) Fluoroalkyl vinyl ether
P–98–1046	08/02/99	07/14/99	(G) Fluoroalkyl diester
P–99–0023	08/12/99	08/05/99	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(1,3-dioxobutyl)-omega-(1,3-dioxobutoxy)-*
P–99–0187	08/04/99	02/22/99	(S) Glycine, *n,n*-dimethyl-*
P–99–0294	08/03/99	07/22/99	(S) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with (chloromethyl) oxirane and ar, ar-diethyl-ar-methylbenzenediamine*
P–99–0317	08/09/99	07/07/99	(G) Organometallic sulfide complex
P–99–0412	08/09/99	07/29/99	(G) Methacrylate graft copolymer
P–99–0454	08/10/99	07/23/99	(S) Benzene, [2-(cyclopentyloxy)ethyl]-*
P–99–0616	08/03/99	07/26/99	(G) Fatty alcohol alkoxylate
P–99–0654	08/02/99	07/15/99	(G) Thiocarbonate
P–99–0658	08/02/99	07/14/99	(G) Isothiocyanate
P–99–0667	08/02/99	07/22/99	(G) Triazolinone
P–99–0683	08/02/99	07/15/99	(G) Triazolinone
P–99–0684	08/10/99	08/04/99	(G) Fluorinated polyurethane
P–99–0692	08/02/99	07/19/99	(G) Modified polyacrylic acid, partial sodium salt
P–99–0693	08/02/99	07/19/99	(G) Modified polyacrylic acid, partial sodium salt
P–99–0726	08/09/99	07/29/99	(G) Naphthoquinone diazide sulfonate ester
P–99–0755	08/03/99	07/29/99	(G) Alkyne

List of Subjects

Environmental protection, Premanufacture notices.

Dated: September 10, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–24912 Filed 9–23–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 14, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 25, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0526.

Title: Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 13.

Estimate Time Per Response: 48 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 624.

Total Annual Costs: None.

Needs and Uses: The Commission requires Tier 1 LECs to provide expanded opportunities for third-party interconnection with their interstate special access facilities. The LECs are permitted to establish a number of rate zones within study areas in which expanded interconnection is operational. In the Fifth Report and Order in CC Docket No. 96–262, the Commission allows price cap LECs to define the scope and number of zones within a study area. These LECs must file and obtain approval of their pricing plans, which will be used by FCC staff to ensure that the rates are just, reasonable, and nondiscriminatory.

OMB Control Number: 3060–0770.

Title: Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94–1 (New Services).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 13.

Estimate Time Per Response: 10 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 130 hours.

Total Annual Costs: None.

Needs and Uses: In the Fifth Report and Order, the Commission permits price cap LECs to introduce new services on a streamlined basis, without prior approval. The Commission modified the rules to eliminate the public interest showing required by Section 69.4(g) and to eliminate the new services test (except in the case of loop-based new services) required under Sections 61.49(f) and (g). The information is needed by the Commission to carry out its mandate.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–24893 Filed 9–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

September 17, 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 October 25, 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 No.: 3060–0760.

Title: Access Charge Reform—CC Docket No. 96–262 (First Report and Order), Second Order on Reconsideration and Memorandum Opinion and Order, Third Report and Order, and Fifth Report and Order.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 14.

Estimated Time Per Response: 8–2,117 hours per respondent.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and other specific date requirements.

Total Annual Burden: 58,319 hours.

Total Annual Cost: $8,000.

Needs and Uses: The Commission provides detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops. The Order grants immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal of certain interstate interexchange services from price cap regulation and provides for additional pricing flexibility upon showings.

The information to be collected would be submitted to the FCC by incumbent LECs for use in determining whether the incumbent LECs should receive regulatory relief proposed in the Orders. The information collected under the Second Order on Reconsideration and Memorandum Opinion and Order would be submitted by the LECs to the interexchange carriers (IXCs) for use in developing the most cost-efficient rates and rate structures.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–24894 Filed 9–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 15, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 25, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0185.

Title: Section 73.3613, Filing of Contracts.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3,270.

Estimate Time Per Response: 0.25–0.5 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 1,428 hours.

Total Annual Costs: $83,000.

Needs and Uses: Section 73.3613 requires licensees of TV and low power TV broadcast stations to file network affiliation contracts with the FCC. All broadcast stations are required to file contracts relating to ownership or control and personnel. Radio licensees are required to file time brokerage agreements, which result in arrangement being counted in compliance with local and national radio multiple ownership rules. Certain contracts must be retained at the station. Data are used by the FCC staff to assure a licensee maintains full control over the station.

OMB Control Number: 3060–0214.

Title: Section 73.3526, Local Public Inspection File of Commercial Stations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 11,588.

Estimate Time Per Response: 1–2.5 hours.

Frequency of Response: Recordkeeping; Third party disclosure.

Total Annual Burden: 1,297,492 hours.

Total Annual Costs: None.

Needs and Uses: Section 73.3526 requires each licensee/permittee of a commercial AM, FM, or TV broadcast station to maintain a file for public inspection. The contents of the file vary according to the type of service and status. The data are used by the public and FCC staff to evaluate information about the station's performance.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–24895 Filed 9–23–99; 8:45 am]

BILLING CODE 6712–01–P

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 October 8, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Cape Cod Five Cents Savings Bank, Orleans, Massachusetts; to acquire voting shares of Falmouth Bancorp, Inc., Falmouth, Massachusetts, and thereby acquire voting shares of Falmouth Cooperative Bank, Falmouth, Massachusetts.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Jeffrey P. Orleans, Bryn Mawr, Pennsylvania; to acquire voting shares of Sterling Bank, Mount Laurel, New Jersey.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Samuel Mark Saunders, Gillette, Wyoming; to acquire voting shares of First National Bank of Gillette Holding Company, Gillette, Wyoming, and thereby indirectly acquire voting shares of First National Bank, Gillette, Wyoming.

Board of Governors of the Federal Reserve System, September 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–24884 Filed 9–23–99; 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 (12 U.S.C. 1843). 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 October 18, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Regal Bancorp, Inc., Owings Mills, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Regal Bank & Trust (successor to Regal Savings Bank, F.S.B.), Owings Mills, Maryland.

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Charter Banking Corp., Tampa, Florida; to acquire 100 percent of the voting shares of Columbia Bank, Tampa, Florida.

2. First Capital Bancorp, Inc., Norcross, Georgia; to become a bank holding company by acquiring at least 25 percent of the voting shares of First Capital Bank, Norcross, Georgia.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Farmers and Merchants Bancshares, Inc., Burlington, Iowa; to acquire 100 percent of the voting shares of Farmers and Merchants Bank and Trust, Mount Pleasant, Iowa (in organization).

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. National Bank of Commerce in Superior, Superior, Wisconsin; and NATCOM Bancshares, Inc., Superior, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of New National Bank of Commerce in Superior, Superior, Wisconsin, a *de novo* bank.

E. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Norton Bankshares, Inc., Norton, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Consolidated Insurance, Inc., Hill City, Kansas, and thereby indirectly acquire Consolidated State Bank, Hill City, Kansas.

Board of Governors of the Federal Reserve System, September 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–24885 Filed 9–23–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99-23843) published on page 49805 of the issue for Tuesday, September 14, 1999.

Under the Federal Reserve Bank of Boston heading, the entry for BostonFed Bancorp, Inc., Burlington, Massachusetts, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. BostonFed Bancorp, Inc., Burlington, Massachusetts; to acquire Diversified Ventures, Inc. (d/b/a Forward Financial Company), Northborough, Massachusetts, and thereby engage in the origination of consumer installment loans, pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y, and in collection and leasing activities, pursuant to § 225.28(b)(3) of Regulation Y.

Comments on this application must be received by September 28, 1999.

Board of Governors of the Federal Reserve System, September 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–24883 Filed 9–23–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation

Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Wintrust Financial Corporation, Lake Forest, Illinois; to acquire Tricom, Inc., Milwaukee, Wisconsin, and thereby engage in extending and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y, and data processing activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, September 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–24886 Filed 9–23–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, September 29, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–25015 Filed 9–22–99; 10:36 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Policy Statement on Delayed Disbursement

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board is issuing a consolidated and updated version of its three policy statements on delayed disbursement. The Board has eliminated obsolete provisions and combined the three policy statements into one. No new policies are included in this revised version.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Manager, 202/452–2660, or Larry Taft, Senior Financial Services Analyst, 202/530–6248, Division of Reserve Bank Operations and Payment Systems; or Stephanie Martin, Managing Senior Counsel, Legal Division, 202/452–3198; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins, at 202/452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Delayed disbursement is the practice of delaying payment of a check by drawing the check on a bank located in an area that is remote from the payee. Delayed disbursement practices are designed to increase the time it takes to clear a check, resulting in float benefits for paying banks and their customers. These practices reduce the efficiency of the check collection system and increase float and transportation costs for depositary banks.

The Board has issued three policy statements intended to discourage delayed disbursement practices. The Board issued general policy statements in 1979 and 1984 and a policy statement directed specifically at delayed disbursement of cashier's checks and teller's checks in 1989. (*See*, Statement of January 11, 1979, 1979 Fed. Res. Bull. 140; Statement of February 23, 1984, 1984 Fed. Res. Bull. 217; and Statement of March 31, 1989, 54 FR 13839 (April 6, 1989).) Since 1989, parts of the Board's 1979 and 1984 policy statements have become obsolete, due to changes in the check collection and return system and the implementation of the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) and the Board's Regulation CC (12 CFR part 229). The Board is removing obsolete provisions and consolidating the three policy statements into one policy statement. No new policies are included in this consolidation. The policy statement is set out below:

Policy Statement on Delayed Disbursement

General policy. Delayed disbursement (sometimes referred to as ''remote'' disbursement) is the practice of issuing checks that are payable by, through, or at a bank [1] located in a geographic area such that collection of the checks is generally delayed. For example, these arrangements may be designed to delay the collection and payment of checks by drawing checks on banks located substantial distances from the payee or outside of Federal Reserve cities when alternate and more efficient payment arrangements are available.

The Board is concerned that delayed disbursement practices reduce the efficiency of the check collection system. Drawing a check on a bank remote from the payee often increases the costs of handling the check. More institutions are likely to handle the check before it is finally paid, increasing processing costs, and higher transportation costs are incurred to move checks greater distances. In addition, delays in collection time can impose float costs on depositary banks. Furthermore, delayed disbursement practices delay the return of unpaid checks, increasing the possibilities for check fraud and other losses.

The Board believes the banking industry has a public responsibility not to design, offer, promote, or otherwise encourage the use of a service that is intended to delay payment and that exposes payment recipients and depositary banks to greater-than-ordinary risks. The Board urges the nation's banks and check-related service providers to eliminate delayed disbursement practices intended to obtain extended float.

There is no intention to discourage corporate disbursement arrangements with banks that provide for improved control over daily cash requirements, provided that these arrangements do not result in the undesirable effects noted above. Banks should provide the cash management services needed by their customers through the use of payments methods that facilitate prompt funds availability to payment recipients and that protect banks from unnecessary risk.

Delayed disbursement of teller's checks and cashier's checks. Although many classes

[1] As used in this policy statement, the term ''bank'' includes all depository institutions, such as commercial banks, savings and loan associations, and credit unions. A depositary bank is the first bank to which a check is transferred. A paying bank is a bank by, at, or through which a check is payable and to which it is sent for collection.

of checks are subject to delayed disbursement, the effects of delayed disbursement are particularly significant in the case of teller's checks and cashier's checks.[2] In addition to increased transportation costs, the delayed disbursement of teller's checks and cashier's checks imposes float costs on the depositary bank, which must generally make the proceeds of these checks available for withdrawal on the business day following deposit.

The Expedited Funds Availability Act and Regulation CC require a depositary bank to provide customers with next-day availability, under specified conditions, for certain checks deposited in transaction accounts, including cashier's checks and teller's checks. Depending on the location of the paying bank, a depositary bank may not receive credit for the check by the time funds must be made available to the customer for withdrawal. Thus, the practice of delayed disbursement permits a bank issuing such checks to impose costs, in terms of lost interest, on other banks and to benefit from interest or earnings credits earned on outstanding checks until the checks are presented for payment.

The Board recognizes that many banks that issue teller's checks benefit from the specialization and economies of scale of certain banks and other service providers that can perform the tracking, reconciliation, and payment services associated with teller's checks at a lower cost than the issuing bank would incur by issuing and paying cashier's checks. In addressing the delayed disbursement problem, the Board believes that it is desirable to reduce the float created by the issuance of these checks while minimizing the disruption of efficient teller's check services.

As a general matter, the Board believes that a depositary bank located in the same community as the bank that issues a teller's check should be able to receive next-day credit for the teller's check. The Board has determined, after review of Federal Reserve collection patterns and deposit deadlines across the country, that depositary banks in most areas generally can receive next-day credit for checks that are encoded with a nonlocal city routing number[3] and presented in a nonlocal Federal Reserve city. For checks that are encoded with a nonlocal RCPC or country routing number and presented in a nonlocal check processing region, credit is generally deferred by one or two days. The Board recognizes, however, that depositary banks located on the west coast generally may not be able to receive next-day availability for checks presented in most nonlocal cities. In addition, in other isolated areas of the country, next-day credit is generally not available for any check payable by a nonlocal paying bank. The Board recognizes that banks in these areas may benefit by having access to a centralized teller's check service provider.

The Board believes that banks issuing teller's checks and teller's check service providers should take steps to ensure that delays in the collection and return of teller's checks are kept to a minimum. First, the Board believes that any disbursement practice designed to extend the time needed to collect a teller's check is inappropriate. Although the Board believes that centralized disbursement is economically efficient in some cases, the location of the paying bank should be chosen so as to minimize collection time.

Second, the Board has determined that depositary banks can generally receive credit faster for checks payable by a bank with a city routing number than for checks payable by a bank with an RCPC or country routing number. The Board believes that teller's check service providers that serve issuing banks in check processing regions that are nonlocal to the paying bank should help speed the collection and return of teller's checks by use of a city presentment point and a city routing number in the MICR line of its teller's checks.

Some teller's check service providers confine the scope of their services to a state or other limited geographic area. Because the state or area may be divided into more than one check processing region, such service providers may use a paying bank that is nonlocal to many of their customer banks. In addition, the state or area may contain no Federal Reserve city. The Board recognizes that it may be impractical for such service providers to use a city presentment point.

Third, the Board believes that those teller's check service providers that serve banks nationwide should accept teller's checks at more than one presentment point, particularly those providers that serve west coast banks. For example, a teller's check service provider that uses an east coast paying bank could shorten collection and return times for its California customers by also providing a west coast presentment point for teller's checks.

The Board recognizes that similar delayed disbursement problems arise in connection with cashier's checks, issued by a bank with multistate branches, that depositary banks must send to a central location for payment. The Board believes that the same general guidelines should apply to the disbursement of cashier's checks as apply to teller's checks and will take further action regarding cashier's checks should abusive delayed disbursement practices occur.

The Board will monitor the industry's adherence to the policy statement and delayed disbursement practices in general and, should abuses continue, will consider appropriate further action.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 20, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–24887 Filed 9–23–99; 8:45 am]

BILLING CODE 6210–01–P

[2] A ''teller's check'' is a check provided to a customer of a bank, or acquired from a bank for remittance purposes, that is drawn by the bank and drawn on another bank or payable through or at another bank. For the purposes of this policy statement, ''teller's check'' includes checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank. A ''cashier's check'' is a check provided to a customer of a bank, or acquired from a bank for remittance purposes, that is drawn on the bank, is signed by an officer or employee of the bank on behalf of the bank as drawer, and is a direct obligation of the bank.

[3] These checks are payable by banks located in the same city as a Federal Reserve office. RCPC (''Regional Check Processing Center'') checks are payable by banks outside Federal Reserve cities. Certain Federal Reserve regions also contain country zones, which are generally more remote from Federal Reserve cities than are RCPC zones.

FEDERAL TRADE COMMISSION

Premerger Notification: Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of the issuance of Formal Interpretation 16 changing the policy of the Premerger Notification office to require filing persons to submit only one original affidavit and certification with their filings.

SUMMARY: The Premerger Notification Office (''PNO'') of the Federal Trade Commission (''FTC''), with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''DOJ,'' collectively, ''the enforcement agencies''), is issuing Formal Interpretation 16 addressing the number of original affidavits and certification pages which must accompany Premerger Notification filings. Section 803.5 of the Premerger Notification rules (''the rules'') requires all acquiring persons in transactions falling under § 801.30 and all parties to non-§ 801.30 transactions to submit certain affidavits with their premerger notification filings. Section 803.6 of the rules requires a notarized certification for such filings. The PNO has required that each copy of the form be submitted with an original affidavit and certification. Pursuant to Formal Interpretation 16, from now on the PNO will require that one original affidavit and one original certification page accompany one of the two copies of the form submitted to the FTC. The other affidavits and certification pages may be duplicates. Only the originals need be separately notarized.

DATES: Formal Interpretation 16 is effective on September 24, 1999.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2846, Thomas F. Hancock, Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2946.

SUPPLEMENTARY INFORMATION: The text of Formal Interpretation Number 16 is set out below:

Formal Interpretation Number 16

Formal Interpretation Pursuant to § 803.30 of the Premerger Notification Rules, 16 CFR § 803.30, Concerning the Number of Original Affidavits and Certification Pages Which Must Accompany a Premerger Notification Filing.

This is a Formal Interpretation pursuant to § 803.30 of the Premerger Notification Rules (''the rules''). The rules implement section 7A of the Clayton Act, 15 U.S.C. 18a, which was added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''the act''). The act requires the parties to certain acquisitions of voting securities or assets to notify the FTC and the DOJ and to wait a specified period of time before consummating the transaction. The purpose of the act and the rules is to ensure that such transactions receive meaningful scrutiny under the antitrust laws, with the possibility of an effective remedy for violations, before consummation.

The act states that ''no person shall acquire * * * any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section * * *.'' Section 803.1(a) of the rules states that the notification required by the act is the completed Antitrust Improvements Act Notification and Report For for Certain Mergers and Acquisitions (''the form''), 16 CFR part 803—Appendix.

Section 803.5(a) of the rules requires that ''* * * (f)or acquisitions to which § 801.30 applies, the notification required by the act from each acquiring person shall contain an affidavit, attached to the front of the notification, attesting (that the acquired person has been notified of certain facts about the proposed transaction, that the reporting person has a good faith intention to make the acquisition, and, in the case of a tender offer, that the intention to make a tender offer has been publicly announced).'' Section 803.5(b) requires that ''* * * (f)or acquisitions to which Section 801.30 does not apply, the notification required by the act shall contain an affidavit * * * attesting that a contract, agreement in principal or letter of intent to merge or acquire has been executed, and * * * to the good faith intention of the person filing notification to complete the transaction.'' Section 803.6(a) of the rules states that ''The notification required by the act shall be certified * * *.''

One of the primary purposes of these requirements—particularly that of certification—is to preserve the evidentiary value of the filing. The Statement of Basis and Purpose (''SBP'') for § 803.6 states that ''* * * the certification is intended to estop the person on whose behalf the report is filed from later denying the completeness or accuracy of the information provided on the form in the event that either enforcement agency seeks to introduce any such information into evidence in any proceeding.'' 43 FR 33511 (July 31, 1978). The certification requirement is also intended to place responsibility on an individual to ensure that information reported is true, correct, and complete and that the form is filled out in accordance with the act and the rules. *Id.*

The affidavit requirement is intended to ensure that several important prerequisites are met before the review process begins. Thus the acquiring person must attest that it has made certain disclosures about the proposed transaction to the acquired person so the acquired person has knowledge of its obligation to file. Id. at 33510. In consensual transactions, the parties must also attest that a contract, letter of intent, or agreement in principal has been executed. Id. Its contents also ensure that the parties intend to consummate the acquisition and are not using the notification process to vet a purely hypothetical transaction with the agencies. *Id.* at 33511.

The Instructions to the form state that each person filing notification must ''(c)omplete and return two notarized copies (with one set of documentary attachments) of (the form) to (the PNO) * * * and three notarized copies (with two sets of documentary attachments) to (the DOJ) * * *.'' The PNO has interpreted the instructions to require that each certification be originally signed and notarized and that each of the required affidavits also be originally signed and notarized. This has resulted in each party's submission to the enforcement agencies in a non-§ 801.30 transaction and acquiring persons' filings in non-§ 801.30 transactions having ten original signatures and ten original notarizations (five on the affidavits and five on the certifications). Acquired persons' filings in § 801.30 transactions must have five originally signed and notarized certifications.

The PNO has determined that multiple original signatures and notarizations, while not a great burden, is not a negligible one. Accordingly, the PNO has decided to modify its position on the necessity for original signatures and notarizations with permerger notification filings. From now on, filing persons need supply only one original signed and notarized affidavit (if required) and one original signed and notarized certification with one of the two copies of the form submitted to the FTC. The affidavits and certifications accompanying the other copies of the form may be copies of these originals. A copy is acceptable if the signature and notarization (including the embossed notary seal, if required in the jurisdiction of notarization) are clearly visible. Likewise, a person required to re-certify an amended filing because the original was deficient may submit one original certification and four copies with the new information.

This Formal Interpretation affects only the number of original signatures and notarizations which must accompany premerger notification filings. It does not change the affidavit or certification requirements themselves, who may sign the affidavit and certification, or the number of copies of the form and documentary attachments which must be provided. It also remains the case that any filing person, United States of foreign, can swear or affirm under penalty of perjury under the laws of the United States pursuant to 28 U.S.C. 1746 in lieu of notarization.

Donald S. Clark,

Secretary.

[FR Doc 99–24903 Filed 9–23–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, October 18, 1999, from 8:30 a.m. to 4:30 p.m. and Tuesday, October 19, 1999, from 8:30 a.m. to 11:30 a.m., in room 7C13 of the General Accounting Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Marcia Buchanan, Assistant Director,

Government Auditing Standards, AIMD, 202–512–9321.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 99–24965 Filed 9–23–99; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS–FY 2000–01]

Fiscal Year 2000 Discretionary Announcement for Select Areas of Early Head Start; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Notice.

SUMMARY: The Administration on Children, Youth and Families announces financial assistance to be competitively awarded to local public and private entities—including Early Head Start and Head Start grantees—to provide child and family development services for low-income families with children under age three and pregnant women. Early Head Start programs provide early, continuous, intensive and comprehensive child development and family support services on a year-round basis to low-income families. The purpose of the Early Head Start program is to enhance children's physical, social, emotional, and intellectual development; to support parents' efforts to fulfill their parental roles; and to help parents move toward self-sufficiency.

The funds available will be competitively awarded to eligible applicants to operate Early Head Start programs in select service areas.

Grants will be competitively awarded to eligible applicants, including current Head Start and Early Head Start grantees, to operate Early Head Start programs in geographic areas currently served by existing Early Head Start grantees which were first funded in fiscal year 1995 (see list below for the geographic areas). In awarding these grants, ACYF is interested in assuring that communities currently served by these existing grantees will have an opportunity to continue receiving services to low-income families with infants and toddlers and pregnant women through Early Head Start. Applicants in each geographic area will compete for funds against other applicants wishing to serve the same geographic area. There are 49 such competitive areas.

DATES: The closing date and time for receipt of applications is 5:00 p.m. EDT on November 23, 1999.

FOR FURTHER INFORMATION CONTACT: A copy of the program announcement and necessary application forms can be obtained by contacting: Early Head Start, ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, The telephone number is 1–800–351–2293. Copies of the program announcement can be downloaded from the Head Start web site at: www.acf.dhhs.gov/programs/hsb.

SUPPLEMENTARY INFORMATION:

Eligible Applicants

Applicants eligible to apply to become an Early Head Start program are local public and local non-profit and for-profit private entities. Local Early Head Start and Head Start grantees are eligible to apply.

Project Duration

The competitive awards made through this announcement will be for one-year budget periods and an indefinite project period. Subsequent year budget awards will be made non-competitively, subject to availability of funds and the continued satisfactory performance of the applicant.

Federal Share of Project Costs

Grantees that operate Early Head Start programs must, in most instances, provide a non-Federal contribution of at least 20 percent of the total approved costs of the project.

Available Funds

See the list below for the approximate amount of funds available for each geographic area.

Anticipated Number of Projects To Be Funded

It is estimated that there will be at least one award for each geographic area (49 geographic areas).

Statutory Authority: The Head Start Act, as amended, 42 U.S.C. 9831 *et seq.*

Catalog of Federal Domestic Assistance: Number 93.600, Head Start.

Dated: September 20, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

Early Head Start Select Service Areas

The following are general descriptions of the service areas (geographic areas) to be competed with approximated boundaries. The approximate funds available for each competition are indicated in parentheses.

Region I

1. Belknap County in New Hampshire ($465,000)
2. Strafford County in New Hampshire ($361,000)
3. Washington, Lamoille & Orange Counties in Vermont ($658,000)

Region II

4. In Newark, New Jersey: Central Ward; West Ward; North Ward (Verona Avenue to Orange Street and Lake Street to McCarter Highway); and Bakery Village ($1,022,000)
5. Warren and Sussex Counties in New Jersey ($655,000)
6. Chautauqua County in New York ($729,000)
7. Fort Greene in Brooklyn in New York ($1,329,000)
8. Dutchess County in New York ($795,000)
9. City of Syracuse and surrounding areas in New York ($1,352,000)
10. Cantera in Municipality of San Juan; Cucharillas in Municipality of Catano; Las Flores in Municipality of Coamo; Brenas, Muachauchal and Santa Ana in Municipality of Vega Alta in Puerto Rico ($1,384,000)
11. The Municipalities of Canovanas, Rio Grande, Loiza, Ceiba and Junco in Puerto Rico ($2,514,000)

Region III

12. In Washington, DC: In Ward One an area bounded on the Northeast by Spring Road, on the Northwest by Piney Branch Parkway, on the East by Michigan Avenue and Florida Avenue, on the Southeast by S Street, and on the West by Rock Creek; in Ward Two an area bounded on the Northeast by New Jersey Avenue, Florida Avenue and S Street, on the Northwest by Florida Avenue, on the East by Florida Avenue and Southwest Freeway, on the Southeast by the Anacostia River, and on the West by the Potomac River; in Ward Four an area bounded on the Northeast by Eastern Avenue, on the Northwest by Western Avenue, on the Southeast by Michigan Avenue, and on the Southwest by Rock Creek; and in Ward Five an area bounded on the Northeast by Eastern Avenue, on the Northwest by South Dakota, on the Southeast by the Anacostia River, on the Southwest by Florida Avenue and on the West by Harewood Road ($1,101,000)

13. In Southeast Baltimore, Maryland: An area bounded on the North by Monument Street, on the South by the Waterfront, on the East by the City Line and on the West by Broadway Street; Caroline County; and Southern Anne Arundel County, including the towns of Harwood, West River, Galesville, Lothian, Churchton, Deale, Shady Side and Traceys Landing ($1,614,000)
14. Northern Montgomery County, including Gaithersburg and Germantown, in Maryland ($706,000)
15. In North Philadelphia, Pennsylvania: an area bounded on the North by Allegheny Avenue, on the South by Norris Street, on the East by 5th Street and on the West by 17th Street, excluding the North Philadelphia Empowerment Zone area which is served by another EHS grantee ($865,000)
16. Monagalia County in West Virginia ($707,000)

Region IV

17. Grayson and Breckinridge Counties in Kentucky ($593,000)
18. In Kentucky: The Counties of Calloway, Fulton, Marshall, Hickman, Ballard and Carlisle; the towns of Mayfield, Fancy Farm, Lowes, Sedalia, Symsonia and Wingo in Graves County; the towns of Bowling Green, Rockfield, Albaton, Rich Panel, and Plano in Warren County; and the towns of Paducah, Concord, Farley, Heath, Hendron and Loneoak in McCracken County ($1,114,000)
19. City of Asheville, and towns of Woodson, Emma and Johnstown in North Carolina ($779,000)
20. In Greenville, South Carolina: The neighborhoods of Nicholtown (including the Jesse Jackson Town Homes), Woodland-Pierce Homes, and Parker District (including Monaghan, San Souci) ($462,000)
21. Communities of Soddy-Daisy, and Cedar Hill in Hamilton County in Tennessee ($581,000)
22. Counties of Henry, Weakley, and Gibson in Tennessee ($982,000)
23. City of Homestead and towns of Brownsville, Scott Carver, Liberty City, Winwood, Goulds, Leisure City, Carol City and OpaLocka in Dade County in Florida ($1,768,000)
24. Communities of Majestic Oaks, Sugarfoot Oaks, Tower Oaks, Cedar Ridge, Clayton Estates, Magnolia Plantation in Alachua County in Florida ($715,000)
25. Chattooga County in Georgia ($616,000)
26. City of Laurel and Towns of Ellisville and Soso in Jones County; Walnut Grove in Leake County; and Job Corps site in Crystal Springs in Copiah County in Mississippi ($1,121,000)

Region V

27. Counties of Columbia, Adams, Dodge, Juneau and Sauk in Wisconsin ($717,000)
28. Community area of Grand Boulevard in Chicago, Illinois ($731,000)
29. In Chicago, Illinois, the community areas* of: ($2,126,000)
    - 29a. Oakland
    - 29b. Albany Park
    - 29c. North Lawndale
    - 29d. Gage Park,
    - 29e. Fuller Park
    - 29f. Near West Side
    - 29g. Roseland
    - 29h. West Town
    - 29i. Austin
    - 29j. Logan Square
    - 29k. West Pullman
    - 29l. Chatham
    - 29m. Woodlawn
    - 29n. Washington Heights
    - 29o. Near North Side
    - 29p. Garfield Park
    - 29q. Douglas

* Applicants may apply to serve one or more community areas in Chicago.

30. Counties of Edwards, Gallatin, Hamilton, Saline, Wabash, Wayne and White in Illinois. ($1,035,000)
31. Vigo County in Indiana ($646,000)
32. Clermont County in Ohio ($729,000)
33. Communities of Over-the-Rhine and Mount Auburn in Central Cincinatti in Ohio ($564,000)

Region VI

34. In Westside of San Antonio, Texas: An area bounded by Woodlawn on the North, U.S. Highway 90 on the South, by Interstate 35 on the East and by Callahan on the West ($1,119,000)
35. In Dallas, Texas: The communities of Pleasant Grove (this community generally consists of an area bounded by I–635 on the North and East, I–45 on the South and I–30 on the West); and South Oak Cliff (this community generally consists of an area bounded by I–35 on the North, I–20 on the South, I–45 on the East and I–30 on the West) ($978,000)
36. In San Antonio, Texas: In general, the communities of Fredericksburg II, Circle North, New Westwood, Terrell Plaza, Fort Sam and Mount Zion ($1,215,000)

Region VII

37. Counties of Clay, Buena Vista, Dickinson, Emmet, O'Brien, Osceola, Pala Alto, and Pocahontas in Iowa ($648,000)
38. In Southeast area of Witchita, Kansas: An area bounded by Murdock Street on the North, 47th South Street on the South, Woodlawn Street on the East and Main Street on the West ($790,000)
39. Counties of Saline, Dickinson and Elsworth in Kansas ($587,000)
40. Counties of Platte, Holt, Valley, Garfield, Sherman, Howard, Greeley, and Colfax in Nebraska ($939,000)

Region VIII

41. School District 2 and 11 in El Paso County in Colorado ($1,139,000)

Region IX

42. In Phoenix, Arizona: The area bounded by Camelback Road on the North, Elliot Road on the South, 40th Street on the East, and 43rd Avenue on the West ($1,381,000)
43. In Humboldt County, California: The cities of Arcata, Eureka, Fortuna, Rio Dell, and McKinleyville and surrounding areas; and in Del Norte County the cities of Crescent City, Fort Dick and Smith River and surrounding areas ($957,000)
44. In the city of Sacramento, California: The communities of Del Paso Heights, North Sacramento/Gardenland, Midtown, Oak Park, South Sacramento, Meadowview, Natomas, Land Park and Arden/Howe; and in Sacramento County the cities of Citrus Heights and Galt and the towns of Rio Linda/Everta, North Highlands, Foothill Farms, Orangevale, Carmichael, Fair Oaks, Rancho Cordova, South Sacramento, Franklin/Laguna, Elk Grove, and Antelope ($2,537,000)

Region X

45. The villages of Pilot Station and St. Mary's in the Lower Yukon area and the villages of Nunapitchuk and Akiak in the Kuskokwin Delta area in Alaska ($623,000)
46. The city of Medford and metropolitan area; and the Illinois Valley in Oregon ($813,000)
47. The City of Spokane and surrounding areas in Washington ($969,000)

American Indian Programs

48. Spirit Lake Reservation in Benson County in North Dakota ($993,000)

49. Port Gamble S'Klallam Reservation in Kitsap County in Washington ($285,000)

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BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–3082]

International Conference on Harmonisation; Choice of Control Group in Clinical Trials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guidance entitled ''E10 Choice of Control Group in Clinical Trials.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance sets forth general principles that are relevant to all controlled trials and are especially pertinent to the major clinical trials intended to demonstrate drug (including biological drug) efficacy. The draft guidance describes the principal types of control groups and discusses their appropriateness in particular situations. The draft guidance is intended to assist sponsors and investigators in the choice of control groups for clinical trials.

DATES: Written comments by December 23, 1999.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT: Regarding the guidance: Robert Temple, Center for Drug Evaluation and Research (HFD–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In May 1998, the ICH Steering Committee agreed that a draft guidance entitled ''E10 Choice of Control Group in Clinical Trials'' should be made available for public comment. The draft guidance is the product of the Efficacy Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Efficacy Expert Working Group.

In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), this document is now being called a guidance, rather than a guideline.

The draft guidance sets forth general principles that are relevant to all controlled trials and are especially pertinent to the major clinical trials intended to demonstrate drug (including biological drug) efficacy. The draft guidance includes a description of the five principal types of controls, a discussion of two important purposes of clinical trials, and an exploration of the critical issue of assay sensitivity, i.e., whether a trial could have detected a difference between treatments when there was a difference, a particularly important issue in noninferiority/equivalence trials. In addition, the draft guidance presents a detailed description of each type of control and considers, for each: (1) Its ability to minimize bias, (2) ethical and practical issues associated with its use, (3) its usefulness and the quality of inference in particular situations, (4) modifications of study design or combinations with other controls that can resolve ethical, practical, or inferential concerns, and (5) its overall advantages and disadvantages.

This draft guidance represents the agency's current thinking on the choice of control group in clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before December 23, 1999, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or at CBER's World Wide Web site at ''http://www.fda.gov/cber/publications.htm''.

The text of the draft guidance follows:

E10 Choice of Control Group in Clinical Trials[1]

1.0 Introduction

The choice of control group is always a critical decision in designing a clinical trial. That choice affects the inferences that can be drawn from the trial, the degree to which bias in conducting and analyzing the study can be minimized, the types of subjects that can be recruited and the pace of recruitment, the kind of endpoints that can be studied, the public credibility of the results, the acceptability of the results by regulating authorities, and many other features of the study, its conduct, and its interpretation.

1.1 General Scheme and Purpose of Guidance

The general principles considered in this guidance are relevant to all controlled trials. They are of especially critical importance to the major clinical trials carried out during drug development to demonstrate efficacy. This guidance does not address the regulatory requirements in any region, but describes what studies using each design can demonstrate. Although any of the control groups described and discussed below may be useful and acceptable in studies serving as the basis for registration in at least some circumstances, they are not equally appropriate or useful in particular cases. After a brief description of the five principal kinds of controls (see section 1.3), a discussion of two important purposes of clinical trials (see section 1.4), and an exploration of the critical issue of whether a trial could have detected a difference between treatments when there was a difference in noninferiority/equivalence trials (see section 1.5), the guidance will describe each kind of control group in more detail (see section 2.0–2.5.7) and consider, for each:

- Its ability to minimize bias
- Ethical and practical issues associated with its use
- Its usefulness and the quality of inference in particular situations
- Modifications of study design or combinations with other controls that can resolve ethical, practical, or inferential concerns
- Its overall advantages and disadvantages

Several other ICH guidances are particularly relevant to the choice of control group:

- E3: Structure and Content of Clinical Study Reports
- E4: Dose–Response Information to Support Drug Registration
- E6: Good Clinical Practice: Consolidated Guideline
- E8: General Considerations for Clinical Trials
- E9: Statistical Principles for Clinical Trials

In this guidance, the drug terms ''test drug,'' ''study drug,'' and ''investigational drug'' are considered synonymous and are used interchangeably; similarly, ''active control'' and ''positive control,'' ''clinical trial'' and ''clinical study,'' ''control'' and ''control group;'' and ''treatment'' and ''drug'' are essentially equivalent terms.

1.2 Purpose of Control Group

Control groups have one major purpose: to allow discrimination of patient outcomes (changes in symptoms, signs, or other morbidity) caused by the test drug from outcomes caused by other factors, such as the natural progression of the disease, observer or patient expectations, or other treatment. The control group experience tells us what would have happened to patients if they had not received the test treatment (or what would have happened with a different treatment known to be effective).

If the course of a disease were uniform in a given patient population, or predictable from patient characteristics such that outcome could be predicted reliably for any given subject or group of subjects, results of treatment could simply be compared with the known outcome without treatment. For example, one could assume that pain would have persisted for a defined time, blood pressure would not have changed, depression would have lasted for a defined time, tumors would have progressed, the mortality after an acute infarction would have been the same as previously seen. In unusual cases, the course of illness is in fact predictable in a defined population and it may be possible to use a similar group of patients previously studied as a ''historical control'' (see section 1.3.5). In most situations, however, a concurrent control group is needed because it is not possible to predict outcome with adequate accuracy.

A concurrent control group is one chosen from the same population as the test group and treated in a defined way as part of the same trial that studies the test drug. The test and control groups should be similar with regard to all baseline and on-treatment variables that could influence outcome other than the study treatment. Failure to achieve this similarity can introduce a bias into the study. Bias here (and as used in ICH E9) means the systematic tendency of any aspects of the design, conduct, analysis, and interpretation of the results of clinical trials to make the estimate of a treatment effect deviate from its true value. Randomization and blinding are the two techniques usually used to prevent such bias and to ensure that the test treatment and control groups are similar at the start of the study and are treated similarly in the course of the study (see ICH E9). Whether a trial design includes these features is a critical determinant of its quality and persuasiveness.

1.2.1 Randomization

Assurance that subject populations are similar in test and control groups is best attained by randomly dividing a single sample population into groups that receive the test or control treatments. Randomization avoids systematic differences between groups with respect to variables that could affect outcome. The inability to eliminate systematic differences is the principal problem of studies without a concurrent randomized control (see external control trials, section 1.3.5). Randomization also provides a sound basis for statistical inference.

1.2.2 Blinding

The groups should not only be similar at baseline, but should be treated and observed similarly during the trial, except for receiving the test and control drug. Clinical trials are often ''double-blind'' (or ''double-masked''), meaning that both subjects and investigators (including analysts of data, sponsors, other clinical trial personnel) are unaware of each subject's assigned treatment, to minimize the potential biases resulting from differences in management, treatment, or assessment of patients, or interpretation of results that could arise as a result of subject or investigator knowledge of the assigned treatment. For example:

- Subjects on active drug might report more favorable outcomes because they expect a benefit or might be more likely to stay in a study if they knew they were on active drug.
- Observers might be less likely to identify and report treatment responses in a no-treatment group or might be more sensitive to a favorable outcome or adverse event in patients receiving active drug.
- Knowledge of treatment assignment could affect vigor of attempts to obtain on-study or followup data.
- Knowledge of treatment assignment could affect decisions about whether a subject should remain on treatment or receive concomitant medications or other ancillary therapy.
- Knowledge of treatment assignment could affect decisions as to whether a given subject's results should be included in an analysis.
- Knowledge of treatment assignment could affect choice of statistical analysis.

Double-blinding is intended to ensure that subjective assessments and decisions are not affected by knowledge of treatment assignment.

1.3 Types of Controls

Control groups in clinical trials can be classified on the basis of two critical attributes: (1) The type of treatment received and (2) the method of determining who will be in the control group. The type of treatment may be any of the following four: (1) Placebo, (2) no treatment, (3) different dose or regimen of the study treatment, or (4) different active treatment. The principal methods of determining who will be in the control group are by randomization or by selection of a control population separate from the population treated in the trial (external or historical control). This document categorizes control groups into five types. The first four are concurrently controlled (the control group and test groups are chosen from the same population and treated concurrently), usually with random assignment to treatment, and are distinguished by which of the types of control treatments listed above are received. External (historical) control groups, regardless of the comparator treatment, are considered together as the fifth type because

[1] This draft guidance represents the agency's current thinking on the choice of control group in clincal trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An altenative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

of serious concerns about the ability to ensure comparability of test and control groups in such trials and the ability to minimize important biases, making this design usable only in exceptional circumstances.

It is increasingly common to carry out studies that have more than one kind of control group. Each kind of control is appropriate in some circumstances, but none is usable or adequate in every situation. The five kinds of control are:

1.3.1 Placebo Concurrent Control

In a placebo-controlled study, subjects are randomly assigned to a test treatment or to an identical-appearing inactive treatment. The treatments may be titrated to effect or tolerance, or may be given at one or more fixed doses. Such trials are almost always double-blind, with both subjects and investigator unaware of treatment assignment. The name of the control suggests that its purpose is to control for ''placebo'' effect (improvement in a subject resulting from knowing that he or she is taking a drug), but that is not its only or major benefit. Rather, the placebo concurrent control design, by allowing blinding and randomization and including a group that receives no treatment, controls for all potential influences on the actual or apparent course of the disease other than those arising from the pharmacologic action of the test drug. These influences include spontaneous change (natural history of the disease), subject or investigator expectations, use of other therapy, and subjective elements of diagnosis or assessment. Placebo-controlled trials seek to show a difference between treatments when they are studying effectiveness, but may also seek to show lack of difference (of specified size) in evaluating a safety measurement.

1.3.2 No-Treatment Concurrent Control

In a no-treatment controlled study, subjects are randomly assigned to test treatment or to no (i.e., absence of) test or control therapy. The principal difference between this design and a placebo-controlled trial is that subjects and investigators are not blind to treatment assignment. Because of the advantages of double-blind designs, this design is likely to be needed and suitable only when it is difficult or impossible to double-blind (e.g., medical versus surgical treatment, treatments with easily recognized toxicity) and only when there is reasonable confidence that study endpoints are objective and that the results of the study are unlikely to be influenced by the factors listed in section 1.2.2. Note that it is often possible to blind endpoint assessment, even if the overall trial is not double-blind. This is a valuable approach and should always be considered in studies that cannot be blinded, but it does not solve the other problems associated with knowing the treatment assignment (see section 1.2.2).

1.3.3 Dose-Response Concurrent Control

In a randomized, fixed-dose, dose-response study, subjects are randomized to one of several fixed-dose groups. Subjects may either be placed on their fixed dose initially or be raised to that dose gradually, but the intended comparison is between the groups on their final dose. Dose-response studies are usually double-blind. They may include a placebo (zero dose) and/or active control. In a concentration-controlled trial, treatment groups are titrated to several fixed-concentration windows; this type of trial is conceptually similar to a fixed-dose, dose-response trial.

1.3.4 Active (Positive) Concurrent Control

In an active-control (or positive control) study, subjects are randomly assigned to the test treatment or to an active-control drug. Such trials are usually double-blind, but this is not always possible; many oncology studies, for example, are considered impossible to blind because of different regimens, different routes of administration (see section 1.3.2) and different toxicities. Active-control trials can have two distinct objectives with respect to showing efficacy: (1) To show efficacy of the test drug by showing it is as good as (equivalent, not inferior to) a known effective agent or (2) to show efficacy by showing superiority of the test drug to the active control. They may also be used with the primary objective of comparing the efficacy/safety of the two drugs (see section 1.4). When this design is used to show equivalence/noninferiority or to compare the drugs, it raises the critical question of whether the trial was capable of distinguishing active from inactive treatments (see section 1.5).

1.3.5 External Control (Including Historical Control)

An externally controlled study compares a group of subjects receiving the test treatment with a group of patients external to the study, rather than to an internal control group consisting of patients from the same population assigned to a different treatment. External controls can be a group of patients treated at an earlier time (historical control) or during the same time period but in another setting. The external control may be defined (a specific group of patients) or nondefined (a comparator group based on general medical knowledge of outcome). Use of this latter comparator is particularly treacherous (such trials are sometimes called uncontrolled) because general impressions are so often inaccurate. Baseline-controlled studies, in which subjects' status on therapy is compared with status before therapy (e.g., blood pressure, tumor size), are a variation of this type of control. In this case, the changes from baseline are often compared to a general impression of what would have happened without intervention, rather than to a specific historical experience, although a more defined experience can also be used.

1.3.6 Multiple-Control Groups

As will be described further below (see section 1.5.1), it is often possible and advantageous to use more than one kind of control in a single study, e.g., use of both active drug and placebo. Similarly, trials can use several doses of test drug and several doses of active control, with or without placebo. This design may be useful for active drug comparisons where the relative potency of the two drugs is not well established, or where the purpose of the trial is to establish relative potency.

1.4 Purposes of Clinical Trials

Two purposes of clinical trials should be distinguished: (1) Assessment of the efficacy and/or safety of a treatment and (2) assessment of the relative (comparative) efficacy, safety, benefit/risk relationship or utility of two treatments.

1.4.1 Evidence of Efficacy

In some cases, the purpose of a trial is to demonstrate that a test drug has any clinical effect (or an effect of some specified size). A study using any of the control types may demonstrate efficacy of the test drug by showing that it is superior to the control (placebo, low dose, active drug). An active-control trial may, in addition, demonstrate efficacy in some cases by showing the new drug to be similar in efficacy to a known effective therapy. The known efficacy of the control is then attributed to the new drug. Clinical studies designed to demonstrate efficacy of a new drug by showing that it is similar in efficacy to a standard agent have been called ''equivalence'' trials. Because in this case the finding of interest is one-sided, these are actually noninferiority trials, attempting to show that the new drug is not less effective than the control by more than a defined amount. As the fundamental assumption of such studies is that showing noninferiority is evidence of efficacy, the decision to utilize this trial design necessitates attention to the question of whether the active control can be relied upon to have an effect in the setting of the trial and whether, as a result, the trial can be relied on not to find a truly inferior drug to be noninferior (see section 1.5).

1.4.2 Comparative Efficacy and Safety

In some cases, the focus of the trial is the comparison with another agent, not the efficacy of the test drug per se. Depending on the therapeutic area, these trials may be seen as providing information needed for relative benefit-risk assessment. The active comparator(s) should be acceptable to the region for which the data are meant. Depending on the situation, it may not be necessary to show equivalence or noninferiority; for example, a less effective drug could have safety advantages and thus be considered useful.

Even though the primary focus of such a trial is the comparison of treatments rather than demonstration of efficacy, the cautions described for conducting and interpreting noninferiority trials need to be taken into account (see section 1.5). The ability of the comparative trial to detect a difference between treatments when one exists needs to be established because a trial incapable of distinguishing between treatments that are in fact different cannot provide useful comparative information.

In addition, for the comparative trial to be informative concerning relative benefit and risk, the trial needs to be fair, i.e., each drug should have an opportunity to perform well. In practice, an active-control equivalence/noninferiority trial offered as evidence of efficacy also almost always should provide a fair comparison with the control, because any

doubt as to whether the control in the study had its usual effect would undermine assurance that the trial had assay sensitivity (see section 1.5). Note that fairness is not an issue when the purpose of the trial is to show efficacy by demonstrating superiority to the control (i.e., the trial will show such efficacy even if the comparator is poorly used; such a trial will not, however, show an advantage over the control).

Among aspects of study design that could unfairly favor one treatment group are choice of dose or patient population and selection and timing of endpoints.

1.4.2.1 *Dose*. In comparing the test drug with an active control for the purpose of assessing relative benefit/risk, it is important to choose an appropriate dose and dose regimen of the control. In examining the results of a comparison of two drugs, it is important to consider whether an apparently less effective control drug has been used at too low a dose or whether the apparently less well tolerated control drug has been used at too high a dose. In some cases, to show superior efficacy or safety convincingly it will be necessary to study several doses of the control and perhaps of the test agent, unless the dose of test agent chosen is superior to any dose (or the only recommended dose) of the control and at least as well tolerated.

1.4.2.2 *Patient population*. Selection of subjects for an active-control trial can affect outcome; the population studied should be carefully considered in evaluating what the trial has shown. For example, if subjects are drawn from a population of nonresponders to the standard agents, there would be a bias in favor of the new agent. The results of such a study could not be generalized to the entire population of previously untreated patients. The result is, however, still good evidence of the efficacy of the new drug. Moreover, a formal study of a new drug in nonresponders to other therapy, in which treatment failures are randomized to either the new or failed therapy (so long as this does not place the patients at risk), can provide an excellent demonstration of the value of the new agent in such nonresponders, a clinically valuable observation (see appendix).

Similarly, it is sometimes possible to identify patient subsets more or less likely to have a favorable response or to have an adverse response to a particular drug. For example, blacks respond poorly to the blood pressure effects of beta blockers and angiotensin-converting enzyme inhibitors, so that a comparison of a new antihypertensive with these drugs in these patients would tend to show superiority of the new drug. It would not be appropriate to conclude that the new drug is generally superior. Again, however, a planned study in a subgroup, with recognition of its limitations and of what conclusion can properly be drawn, could be informative. See the appendix for a general discussion of ''enrichment'' study designs, studies that choose a subset of the overall population to increase sensitivity of the study or to answer a specific, but narrow, question.

1.4.2.3 *Selection and timing of endpoints*. When two treatments are used for the same disease or condition, they may differentially affect various outcomes of interest in that disease, particularly if they represent different classes or modalities of therapy. Therefore, when comparing them in a clinical trial, the choice and timing of endpoints may favor one therapy or the other. For example, thrombolytics in patients with acute myocardial infarction can reduce mortality but increase stroke risk. If a new, more active thrombolytic were compared with an older thrombolytic, the more active drug might look better if the endpoint were mortality, but worse if the endpoint were a composite of mortality and disabling stroke. Similarly, in comparing two analgesics in the management of dental pain, assigning a particularly heavy weight to pain at early time points would favor the agent with more rapid onset over an agent that provides greater or longer lasting relief.

1.5 Sensitivity-to-Drug-Effects and Assay Sensitivity of Studies Intended to Show Noninferiority/Equivalence

As noted in section 1.4.1, use of an active-control noninferiority/equivalence design to demonstrate efficacy poses a particular problem, one not found in trials intended to show a difference between treatments. A demonstration of efficacy by showing noninferiority/equivalence of the new therapy to the established effective treatment or, more accurately, by showing that the difference between them is no larger than a specified size (margin), rests on a critical assumption: that if there is a true difference between the treatments, i.e., if the new drug has a much smaller effect or no effect, the study would not have concluded there was no such difference. This assumption, in turn, rests on the assumption that the active-control drug will have had an effect of a defined size in the study. If these assumptions are incorrect, an erroneous conclusion that a drug is effective may be reached because a trial seeming to support noninferiority will not in fact have done so.

The ability of a specific trial to detect differences between treatments if they exist has been called, and is here termed, ''assay sensitivity.'' In the noninferiority trial setting, assay sensitivity requires that there be an effect of the control drug in the trial of at least a specified size and that, because of the presence of that effect, the trial has an ability not to declare noninferiority of a new drug when the new drug is in fact inferior. As noted, because the actual effect size of the control in the trial is not measured, the presence of assay sensitivity must be deduced. In this document, the term assay sensitivity, a property of a particular trial, is distinguished from sensitivity-to-drug-effects. Sensitivity-to-drug-effects is defined as the ability of appropriately designed and conducted trials in a specific therapeutic area, using a specific active drug (or other drugs with similar effects), to reliably show a drug effect of at least a minimum size under the conditions of the trial. Sensitivity-to-drug-effects is determined from historical experience; it will usually be established by a determination that such trials, when adequately powered, regularly distinguish active drugs from placebo. Sensitivity-to-drug-effects, established in this way, will imply that, in a similarly well-designed and conducted noninferiority trial, there will be an ability not to find an ineffective agent to be noninferior. Assay sensitivity, in contrast, applies to a specific trial and requires the actual presence of a control drug effect and thus the actual ability of the trial not to declare an inferior drug noninferior. This ability depends on the details of the design and conduct of a specific trial, as well as the presence of sensitivity-to-drug-effects.

1.5.1 Need to Ensure Assay Sensitivity in Noninferiority (Equivalence) Trials; Difference–Showing Versus Noninferiority Studies

When designing a noninferiority study, study designers need to consider the fundamental distinction between two kinds of clinical trials: (1) Those that seek to demonstrate efficacy by showing superiority of a treatment to a control (superiority trials) and (2) those that seek to show efficacy by demonstrating that a new treatment is as good as (not inferior by some specified amount to) a treatment known to be effective. In the difference-showing trial, the finding of a difference itself documents the assay sensitivity of the trial and documents the efficacy of the superior treatment, so long as the inferior treatment, if an active drug, is known to be no worse than a placebo. In the noninferiority situation, in contrast, a finding of noninferiority leaves unanswered the question: Would the study have led to a conclusion of noninferiority even if the study drug were inferior? In a noninferiority trial without a placebo group, there is no internal standard (that is, a showing of an active drug-placebo difference) to measure/ensure assay sensitivity. The existence of assay sensitivity of the trial therefore needs to be deduced or assumed based on past experience (''historically'') with the control drug, generally from placebo-controlled trials, establishing the sensitivity-to-drug-effects of well-designed and conducted trials, together with evidence that the trial was in fact well conducted.

The question of assay sensitivity, although particularly critical in noninferiority studies, actually arises in any trial that fails to detect a difference between treatments, including a placebo-controlled trial. If a drug fails to show superiority to placebo, for example, it means either that the drug was ineffective or that the study was not capable of detecting the effect of the drug. A straightforward solution to the problem of assay sensitivity is the three-arm study, including both placebo and a known active treatment, a study design with several advantages. Such a study measures effect size (test drug versus placebo) and allows comparison of test drug and active control in a setting where assay sensitivity is established by the active control-placebo comparison. The design is also particularly informative when the test drug and placebo give similar results in the study. In that case, if the active control is superior to placebo, the study did have assay sensitivity and the study provides some evidence that the test drug has little or no efficacy. On the other hand, if neither drug, including the known effective active control, can be distinguished from placebo with

respect to efficacy, the clinical study lacks assay sensitivity and does not provide evidence that the drug is ineffective.

1.5.2 Choosing the Noninferiority Margin

As noted earlier, most active-control ''equivalence'' trials are really noninferiority trials intended to establish the efficacy of a new drug. Analysis of the results of noninferiority trials is discussed in the ICH guidances E9 and E3. Briefly, in such a trial, new and established therapies are compared. Prior to the trial, an equivalence or noninferiority margin, sometimes called a ''delta,'' is selected. This margin is the degree of inferiority of the test drug compared to the control that the trial will attempt to exclude statistically. If the confidence interval for the difference between the test and control treatments excludes a degree of inferiority of the test drug as large as, or larger than, the margin, the test drug can be declared noninferior and thus effective; if the confidence interval includes a difference as large as the margin, the test drug cannot be declared noninferior and cannot be considered effective.

The margin chosen for a noninferiority trial cannot be greater than the smallest effect size that the active drug would be reliably expected to have compared with placebo in the setting of the planned trial, but may be smaller based on clinical judgment. If a difference between active control and new drug favors the control by as much as or more than that amount, the new drug might have no effect at all. The margin generally is identified based on past experience in placebo-controlled trials of adequate design under conditions similar to those planned for the new trial. Note that exactly how to calculate the margin is not described in this document, and there is little published experience on how to do this. The determination of the margin is based on both statistical reasoning and clinical judgment, should reflect uncertainties in the evidence on which the choice is based, and should be suitably conservative. If this is done properly, a finding that the confidence interval for the difference between new drug and the active control excludes a suitably chosen margin could provide assurance that the drug has an effect greater than zero. In practice, the margin chosen usually will be smaller than that suggested by the smallest expected effect size of the active control because of interest in ensuring that some particular clinically acceptable effect size (or fraction of the control drug effect) was maintained. This would also be true in a trial whose primary focus is the therapeutic equivalence of a test drug and active control (see section 1.4.2), where it would be usual to seek assurance that the test and control drug were quite similar, not simply that the new drug had any effect at all.

The fact that the choice of the margin to be excluded can only be based on past experience gives the noninferiority trial an element in common with a historically controlled (externally controlled) study. This study design is appropriate and reliable only when the historical estimate of an expected drug effect can be well supported by reference to the results of previous studies of the control drug. These studies should lead to the conclusion that the active control can consistently be distinguished from placebo in trials of design similar to the proposed trial (patient population, study size, study endpoints, dose, concomitant therapy, etc.) and should identify an effect size that represents the smallest effect that the control can reliably be expected to have. If placebo-controlled trials of a design similar to the one proposed more than occasionally show no difference between the proposed active control and placebo, and this cannot be explained by some characteristic of the study, only superiority of the test drug would be interpretable. Note that it is the estimated difference from placebo, not the total change from baseline, that needs to be used to calculate the expected effect of the control.

1.5.3 Sensitivity-to-Drug-Effects Is Difficult to Support in Many Situations

Whether the historically based assurance of sensitivity-to-drug-effects of a trial is supported in any given case is to some degree a matter of judgment. There are many conditions, however, in which drugs considered effective cannot regularly be shown superior to placebo in well-controlled studies, and one therefore cannot reliably determine a minimum effect the drug will have in the setting of a specific trial. Such conditions tend to include those in which there is substantial improvement and variability in placebo groups, and/or in which the effects of therapy are small, or variable, such as depression, anxiety, dementia, angina, symptomatic congestive heart failure, seasonal allergies, and symptomatic gastroesophageal reflux disease.

In all these cases, there is no doubt that the standard treatments are effective because there are many well-controlled studies of each of these drugs that have shown an effect. Based on available experience, however, it would be difficult to describe study conditions in which the drug would reliably have at least a minimum effect (i.e., conditions in which there is sensitivity-to-drug-effects) and that, therefore, could be used to identify an appropriate margin. In some cases, the experience on which the expectation of sensitivity-to-drug-effects is based may be of questionable relevance, e.g., if standards of treatment and diagnosis have changed substantially over time. If someone proposing to use an active-control noninferiority design cannot provide acceptable support for the sensitivity-to-drug-effects of the study with the chosen inferiority margin, a finding of noninferiority cannot be considered informative with respect to efficacy or to a showing of clinical comparability/equivalence.

1.5.4 Assay Sensitivity and Study Quality in Noninferiority Designs

Even where historical experience indicates that studies in a particular therapeutic area are likely to have sensitivity-to-drug-effects, this likelihood can be undermined by the particular circumstances under which the study was conducted. Great attention therefore needs to be paid to how the trial was designed and conducted to determine whether it actually did have assay sensitivity. There are many factors that can reduce a trial's assay sensitivity, such as:

1. Poor compliance with therapy
2. Poor responsiveness of the study population to drug effects
3. Use of concomitant medication or other treatment that interferes with the test drug or that reduces the extent of the potential response
4. A population that tends to improve spontaneously, leaving no room for further drug-induced improvement
5. Poor diagnostic criteria (patients lacking the disease to be studied)
6. Inappropriate (insensitive) measures of drug effect
7. Excessive variability of measurements
8. Biased assessment of endpoint because of knowledge that all patients are receiving a potentially active drug, e.g., a tendency to read blood pressure responses as greater than they actually are, reducing the difference between test drug and control

Clinical researchers and trial sponsors intend to perform high quality studies, and the publication of the Good Clinical Practices guidance will enhance study quality. Nonetheless, it should be appreciated that in trials intended to show a difference between treatments there is a strong imperative to utilize a good study design and minimize study errors, because trial imperfections increase the likelihood of failing to show a difference between treatments when one exists. In placebo-controlled trials, for example, there is often a withdrawal period to be sure study subjects actually have the disease for which treatment is intended, and great care is taken in defining entry criteria to be sure patients have an appropriate stage of the disease. It is common to have a single-blind placebo run-in period to discover and eliminate subjects who recover spontaneously, whose measurements are too variable, or who are likely to comply poorly with the protocol. There is close attention to trial conduct, including administration of the correct treatments to patients, encouraging compliance with medication use, controlling (or at least recording) concomitant drug use and other concomitant illness, and use of standard procedures for measurement (technique, timing, training periods). All of these efforts will help ensure that an effective drug will be distinguished from placebo. Nonetheless, in many clinical settings, despite the strong stimulus and extensive efforts to ensure study excellence and assay sensitivity, clinical studies are often unable to reliably distinguish effective drugs from placebo.

In contrast, in trials intended to show that there is not a difference of a particular size (noninferiority) between two treatments, there is a much weaker stimulus to engage in many of these efforts, which help ensure that differences will be detected, i.e., ensure sensitivity, because failure to show a difference greater than the margin is the desired outcome of the study. Although some kinds of study error diminish observed differences between treatments, it is noted that some kinds of study errors can increase variance, which would decrease the likelihood of showing noninferiority by widening the confidence interval so that a

test drug control difference greater than the margin cannot be excluded. There would therefore be a strong stimulus in these trials to reduce variance, which might be caused, for example, by poor measurement technique. Many errors of the kind described, however, reduce the observed difference between treatments (and thus assay) without necessarily increasing variance. They therefore increase the likelihood that an inferior drug will be found noninferior.

When a noninferiority study is offered as evidence of effectiveness of a new drug, both the sponsor and regulatory authority need to pay particularly close attention to study quality. Whether a given study has assay sensitivity often cannot be determined, but the known reasons for failure to have such sensitivity should be monitored. The design and conduct of the study need to be shown to be similar to studies of the active control that were successful in the past. To ensure that sensitivity-to-drug-effects seen in past studies is likely to be present in the new study, there should be close attention to critical design characteristics such as the entry criteria and characteristics of the study population (severity of medical condition, method of diagnosis), the specific endpoint measured and timing of assessments, and the use of washout periods to exclude patients without disease or to exclude patients with spontaneous improvement. Similarly, aspects of study conduct that could decrease assay sensitivity should also be examined, including such characteristics as compliance with therapy, monitoring of concomitant therapy, enforcement of entry criteria, and prevention of study dropouts.

One other possibility should be considered. Even where a study seems likely to have sensitivity-to-drug-effects based on prior studies, the population studied or other aspects of study design or conduct in a noninferiority study may be so different that results with the active-control treatment are visibly atypical (e.g., cure rate in an antibiotic trial that is unusually high or low). In that case, the results of a noninferiority trial may not be persuasive.

2.0 Detailed Consideration of Types of Control

2.1 Placebo Control

2.1.1 Description (See Section 1.3.1)

In a placebo-controlled study, subjects are assigned, almost always by randomization, to either a test drug or to a placebo. A placebo is a ''dummy'' medication that appears as identical as possible to the investigational or test drug with respect to physical characteristics such as color, weight, taste and smell, but that does not contain the test drug. Some trials may study more than one dose of the test drug or include both an active control and placebo. In these cases, it may be easier for the investigator to use more than one placebo (''double-dummy'') than to try to make all treatments look the same. The use of placebo facilitates, and is almost always accompanied by, double-blinding (or double-masking). The difference in measured outcome between the active drug and placebo groups is the measure of drug effect under the conditions of the study. Within this general description there is a wide variety of designs that can be used successfully: Parallel or cross-over designs (see ICH E9), single fixed dose or titration in the active drug group, several fixed doses. Several designs meriting special attention will be described below. Note that not every study that includes a placebo is a placebo-controlled study. For example, an active-control study could use a placebo for each drug (double-dummy) to facilitate blinding; this is still an active-control trial, not a placebo-controlled trial. A placebo-controlled trial is one in which treatment with a placebo is compared with treatment with an active drug.

2.1.2 Ability to Minimize Bias

The placebo-controlled trial, using randomization and blinding, generally reduces subject and investigator bias maximally, but such trials are not impervious to blind-breaking through recognition of pharmacologic effects of one treatment (perhaps a greater concern in cross-over designs); blinded outcome assessment can enhance bias reduction in such cases.

2.1.3 Ethical Issues

When a new agent is tested for a condition for which no effective treatment is known, there is usually no ethical problem with a study comparing the new agent to placebo. Use of a placebo control may raise problems of ethics, acceptability, and feasibility, however, when an effective treatment is available for the condition under study in a proposed trial. In cases where an available treatment is known to prevent serious harm, such as death or irreversible morbidity in the study population, it is generally inappropriate to use a placebo control. There are occasional exceptions, however, such as cases in which standard therapy has toxicity so severe that many patients will refuse therapy.

In other situations, when there is no major health risk associated with withholding or delay of effective therapy, it is considered ethical to ask patients to participate in a placebo-controlled trial, even if they may experience discomfort as a result, provided the setting is noncoercive and they are fully informed about available therapies and the consequences of delaying treatment. Such trials, however, may pose important practical problems. For example, deferred treatment of pain or other symptoms may be unacceptable to patients or physicians and they may not want to participate in such a study. Whether a particular placebo-controlled trial of a new agent will be acceptable to subjects and investigators when there is known effective therapy is a matter of investigator, patient, and institutional review board (IRB)/independent ethics committee (IEC) judgment, and acceptability may differ among ICH regions. Acceptability could depend on the specific design of the study and the patient population chosen, as will be discussed below (see section 2.1.5).

Whether a particular placebo-controlled trial is ethical may, in some cases, depend on what is believed to have been clinically demonstrated and on the particular circumstances of the trial. For example, a short term placebo-controlled study of a new antihypertensive agent in patients with mild essential hypertension and no end-organ disease might be considered generally acceptable, while a longer study, or one that included sicker patients, probably would not be.

It should be noted that use of a placebo or no-treatment control does not imply that the patient does not get any treatment at all. For instance, in an oncology trial, when no active drug is approved, patients in both the placebo/no-treatment group and the test drug group will receive needed palliative treatment, such as analgesics.

2.1.4 Usefulness of Placebo–Controlled Trials and Quality/Validity of Inference in Particular Situations

When used to show effectiveness of a treatment, the placebo-controlled trial is as free of assumptions and need for external (extra-study) information as it is possible to be. Most trial design problems and careless errors result in failure to demonstrate a treatment difference (and thereby establish efficacy), so that the trial contains built-in incentives for study excellence. Even when the primary purpose of a trial is comparison of two active agents or assessment of dose-response, the addition of a placebo provides an internal standard that enhances the inferences that can be drawn from the other comparisons.

Placebo-controlled trials also provide the maximum ability to distinguish adverse effects due to drug from those due to underlying disease or intercurrent illness. Note that where they are used to show similarity, for example, to show the absence of an adverse effect, placebo-controlled trials have the same assay sensitivity problem as any equivalence or noninferiority trial (see section 1.5.1). To interpret the result, one must know that if the study drug caused an adverse event, it would have been observed.

2.1.5 Modifications of Design and Combinations With Other Controls That Can Resolve Ethical, Practical, or Inferential Issues

It is often possible to address the ethical or practical limitations of placebo-controlled trials by using modified study designs that still retain the inferential advantages of these trials. In addition, placebo-controlled trials can be made more informative by inclusion of additional treatment groups, such as multiple doses of the test agent or a known active-control treatment.

2.1.5.1 *Additional control groups.*

2.1.5.1.1 *Three-arm study; placebo and active control.* As noted in section 1.5.1, three-arm studies including an active-control as well as a placebo-control group can readily assess whether a failure to distinguish test drug from placebo implies ineffectiveness of the test drug or simply a study that lacked the ability to identify an active drug. The placebo-standard drug comparison in such a trial provides internal evidence of assay sensitivity. It is possible to make the active groups larger than the placebo group in order to improve the precision of the active drug comparison, if this is considered important. This may also make the study more

appealing to patients, as there is less chance of being randomized to placebo.

2.1.5.1.2 *Additional doses.* Randomization among several fixed doses of the test drug in addition to placebo allows assessment of dose-response and may be particularly useful in a comparative trial to ensure a fair comparison of treatments (see ICH E4: Dose–Response Information to Support Drug Registration).

2.1.5.1.3 *Factorial/combination studies.* Factorial/ combination (response-surface) designs may be used to explore several doses of the investigational drug as monotherapy and in combination with several doses of another agent proposed for use in combination with it. A single study of this type can define the properties of a wide array of combinations. Such studies are common in the evaluation of new antihypertensive therapies, but can be considered in a variety of settings where more than one treatment is used simultaneously. For example, the independent additive effects of aspirin and streptokinase in preventing mortality after a heart attack were shown in such a trial.

2.1.5.2 *Changes in study design.*

2.1.5.2.1 *Add-on study, placebo-controlled; replacement study.* An ''add-on'' study is a placebo-controlled trial of a new agent conducted in people also receiving standard therapy. Such studies are useful when standard therapy is known to decrease mortality or irreversible morbidity, so that the therapy cannot be withheld from a patient population known to benefit from it, and when a noninferiority trial with standard treatment as the active control cannot be carried out or would be difficult to interpret (see section 1.5). It is common to study anticancer, antiepileptic, and anti-heart-failure drugs this way. This design is useful only when standard therapy is not fully effective (which, however, is almost always the case), and it has the advantage of providing evidence of improved clinical outcomes (rather than ''mere'' noninferiority). Efficacy is, of course, established by such studies only for combination therapy, and the dose in a monotherapy situation might be different from the dose found to be effective in combination. In general, this approach is likely to succeed only when the new and standard therapies utilize different pharmacologic mechanisms, although there are exceptions. For example, AIDS combination therapies may show a beneficial effect of pharmacologically-related drugs because of delays in development of resistance.

A variation of this design that can sometimes give information on monotherapy and that is particularly applicable in the setting of chronic disease, is the replacement study, in which the new drug or placebo is added by random assignment to conventional treatment given at an effective dose and the conventional treatment is then withdrawn, usually by tapering. The ability to maintain the subjects' baseline status is then observed in the drug and placebo groups using predefined success criteria. This approach has been used to study steroid-sparing substitutions in steroid-dependent patients without need for initial steroid withdrawal and recrudescence of symptoms in a wash-out period, and has also been used to study antiepileptic drug monotherapy.

2.1.5.2.2 *''Early escape''; rescue medication.* It is possible to design a study to plan for ''early escape'' from ineffective therapy. Early escape refers to prompt removal of subjects whose clinical status worsens or fails to improve to a defined level (blood pressure not controlled by a prespecified time, seizure rate greater than some prescribed value, blood pressure rising to a certain level, angina frequency above a defined level, liver enzymes failing to normalize by a preset time in patients with hepatitis), who have a single event that treatment was intended to prevent (first recurrence of unstable angina, grand mal seizure, paroxysmal supraventricular arrhythmia), or who otherwise require added therapy. In such cases, the need to change therapy becomes a study endpoint. The criteria for deciding whether these endpoints have occurred should be well specified, and the timing of measurements should ensure that patients will not remain untreated with an active drug while their disease is poorly controlled. The primary difficulty with this trial design is that it may give information only on short-term effectiveness. The randomized withdrawal trial (see section 2.1.5.2.4), however, which can also incorporate early-escape features, can give information on long-term effectiveness. It should be noted that formal use of rescue medication in response to clinical deterioration could be utilized similarly.

2.1.5.2.3 *Limited placebo period.* In a longer term active-control trial, the addition of a placebo group treated for a short period may establish assay sensitivity (at least for short-term effects). The trial would then continue without the placebo group.

2.1.5.2.4 *Randomized withdrawal.* In a randomized withdrawal study, subjects receiving an investigational therapy for a specified time are randomly assigned to continued treatment with the investigational therapy or to placebo (i.e., withdrawal of active therapy). Subjects for such a trial could be derived from an organized open single-arm study, from an existing clinical cohort (but usually with a formal ''wash-in'' phase to establish the initial on-therapy baseline), from the active arm of a controlled trial, or from one or both arms of an active-control trial. Any difference that emerges between groups receiving continued treatment and placebo would demonstrate the effect of the active treatment. The prerandomization observation period on drug can be of any length; this approach can therefore be used to study long-term persistence of effectiveness when long-term placebo treatment would not be acceptable. The postwithdrawal observation period could be of fixed duration or could use early escape or time to event (e.g., relapse of depression) approaches. As with the early-escape design, procedures for monitoring patients and assessing study endpoints need careful attention to ensure that patients failing on an assigned treatment are identified rapidly.

The randomized withdrawal approach is suitable in several situations. First, it may be suitable for drugs that appear to resolve an episode of recurring illness (e.g., antidepressants), in which case the withdrawal study is in effect a relapse-prevention study. Second, it may be used for drugs that suppress a symptom or sign (chronic pain, hypertension, angina), but where a long-term placebo-controlled trial would be difficult; in this case, the study can establish long-term efficacy. Third, the design can be used to determine how long a therapy should be continued (e.g., postinfarction treatments with a beta-blocker).

The general advantage of randomized withdrawal designs, when used with an early-escape endpoint, such as return of symptoms, is that the period of placebo exposure with poor response that a patient would have to undergo is short.

Dosing issues can be addressed by this type of design. After all patients had received an initial fixed dose, they could be randomly assigned in the ''withdrawal'' phase to several different doses (as well as placebo), a particularly useful approach when there is reason to think the initial and maintenance doses might be different, either on pharmacodynamic grounds or because there is substantial accumulation of active drug resulting from a long half life of parent drug or active metabolite. Note that the randomized withdrawal design could be used to assess dose-response after an initial placebo-controlled titration study. The titration study is an efficient design for establishing effectiveness, but does not give good dose-response information. The randomized withdrawal phase, with responders randomly assigned to several fixed doses and placebo, will study dose-response rigorously while allowing the efficiency of the titration design.

In utilizing randomized withdrawal designs, it is important to appreciate the possibility of withdrawal phenomena, suggesting the wisdom of relatively slow tapering. A patient may develop tolerance to a drug such that no benefit is being accrued, but the drug's withdrawal may lead to disease exacerbation, resulting in an erroneous conclusion of persisting efficacy. It is also important to realize that treatment effects observed in these studies may be larger than those seen in the general population because randomized withdrawal studies are ''enriched'' with responders (see appendix). This phenomenon results when the study explicitly includes only subjects who appear to have responded to the drug or includes only people who have completed a previous phase of study (which is often an indicator of a good response).

2.1.5.2.5 *Other design considerations.* In any placebo-controlled study, unbalanced randomization (e.g., 2:1, study drug to placebo) may enhance the safety data base and may also make the study more attractive to patients and/or investigators.

2.1.6 Advantages of Placebo-Controlled Trials

2.1.6.1 *Ability to demonstrate efficacy credibly.* Like other difference-showing trials, the interpretation of the placebo-controlled study relies on no externally based

assumptions of sensitivity-to-drug-effects nor an assessment of assay sensitivity. These may be the only credible study designs in situations where it is not possible to conclude that noninferiority studies would have assay sensitivity (see section 1.5).

2.1.6.2 *Measures ''absolute'' effectiveness and safety*. The placebo-controlled trial measures the absolute effect of treatment and allows a distinction between adverse events due to the drug and those due to the underlying disease or ''background noise.'' The absolute effect size information is valuable in a three-group trial (test, placebo, active), even if the primary purpose of the trial is the test versus active control comparison.

2.1.6.3 *Efficiency*. Placebo-controlled trials are efficient in that they can detect treatment effects with a smaller sample size than any other type of concurrently controlled study. Active-control trials intended to show superiority of the new treatment are generally seeking smaller differences than the active-placebo difference sought in a placebo-controlled trial, resulting in need for a larger sample size. Noninferiority active-control trials also need larger sample sizes because they must use conservative assumptions about the effect size of the control drug to ensure that noninferiority of the test drug would in fact demonstrate efficacy. Designers of dose-response studies need to guess at the shape and position of the dose-response curve and may wastefully assign some subjects to several doses that have no effect or are on a response plateau.

2.1.6.4 *Minimizing the effect of subject and investigator expectations*. Use of a blinded placebo control may decrease the amount of improvement resulting from subject or investigator expectations because both are aware that some subjects will receive no active drug. This may increase the ability of the study to detect true drug effects.

2.1.7 Disadvantages of Placebo-Controlled Trials

2.1.7.1 *Ethical concerns (see sections 2.1.3 and 2.1.4)*. When effective therapy that is known to prevent harm exists for a particular population, that population cannot usually be ethically studied in placebo-controlled trials; the particular conditions and populations for which this is true may be controversial. Ethical concerns may also direct studies toward less ill subjects or cause studies to examine short-term endpoints when long-term outcomes are of greater interest. Where a placebo-controlled trial is unethical and an active-control trial would not be credible, it may be very difficult to study new drugs at all. For example, it would not be considered ethical to carry out a placebo-controlled trial of a beta blocker in postinfarction patients; yet it would be difficult to conclude that a noninferiority trial would have sensitivity-to-drug-effects. The designs described in section 2.1.5 may be useful in some of these cases.

2.1.7.2 *Patient and physician practical concerns*. Physicians and/or patients may be reluctant to accept the possibility that the patient will be assigned to the placebo treatment, even if there is general agreement that withholding or delaying treatment will not result in harm. Subjects who sense they are not improving may drop out of trials because they attribute lack of effect to having been treated with placebo, complicating the analysis of the study. With care, however, drop-out for lack of effectiveness can sometimes be used as a study endpoint. Although this may provide some information on drug effectiveness, such information is less precise than actual information on clinical status in subjects receiving their assigned treatment.

2.1.7.3 *Generalizability*. It is sometimes argued that any controlled trial, but especially a placebo-controlled trial, represents an artificial environment that gives results different from true ''real world'' effectiveness. If study populations are unrepresentative in placebo-controlled trials because of ethical or practical concerns, questions about the generalizability of study results can arise. For example, patients with more serious disease may be excluded by protocol, investigator, or patient choice from placebo-controlled trials. In some cases, only a limited member of patients or centers may be willing to participate in studies. Whether these concerns actually (as opposed to theoretically) limit generalizability has not been established.

2.1.7.4 *No comparative information*. Placebo-controlled trials lacking an active control give little useful information about comparative effectiveness, information that is of interest and importance in many circumstances. Such information cannot reliably be obtained from cross-study comparisons, as the conditions of the studies may have been quite different.

2.2 No-Treatment Concurrent Control (See Section 1.3.2)

The randomized no-treatment control is similar in its general properties and its advantages and disadvantages to the placebo-controlled trial. Unlike the placebo-controlled trial, however, it cannot be fully blinded, and this can affect all aspects of the trial, including subject retention, patient management, and all aspects of observation (see section 1.2.2). This design is appropriate in circumstances where a placebo-controlled trial would be performed, except that blinding is not feasible because the treatments themselves are so different, e.g. radiation therapy versus surgery, or because the treatment side effects are so different. When this design is used, it is desirable to have critical decisions, such as eligibility and endpoint determination or changes in management, made by an observer blinded to treatment assignment. Decisions related to data analysis, such as inclusion of patients in analysis sets, should also be made by individuals without access to treatment assignment (See ICH E9 for further discussion).

2.3 Dose-Response Concurrent Control (See Section 1.3.3)

2.3.1 Description

A dose-response study is one in which subjects are randomly assigned to one of several dosing groups, with or without a placebo group. Dose-response studies are carried out to establish the relation between dose and efficacy/adverse effects and/or to demonstrate efficacy. The first use is considered in ICH E4; the latter is the subject of this guidance. Evidence of efficacy could be based on significant differences in pair-wise comparisons between dosing groups or between dosing groups and placebo, or on evidence of a significant positive trend with increasing dose, even if no two groups are significantly different. In the latter case, however, further study may be needed to assess the effectiveness of the low doses. As noted in ICH E9, the particular approach for the primary efficacy analysis should be prespecified.

There are several advantages to inclusion of a placebo (zero-dose) group in a dose-response study. First, it avoids studies that are uninterpretable because all doses produce similar effects so that one cannot assess whether all doses are equally effective or equally ineffective. Second, the placebo group permits an estimate of absolute size of effect, although the estimate may not be very precise if the dosing groups are relatively small. Third, as the drug-placebo difference is generally larger than inter-dose differences, use of placebo may permit smaller sample sizes. The size of various dose groups need not be identical; e.g., larger samples could be used to give more precise information about the effect of smaller doses or be used to increase the power of the study to show a clear effect of what is expected to be the optimal dose. Dose-response studies can include one or more doses of an active-control agent. Randomized withdrawal designs can also assign subjects to multiple dosage levels.

2.3.2 Ability to Minimize Bias

If the dose-response study is blinded, it shares with other blinded designs an ability to minimize subject and investigator bias. When a drug has pharmacologic effects that could break the blind for some patients or investigators, it may be easier to preserve blinding in a dose-response study than in a placebo-controlled trial. Masking treatments may necessitate multiple dummies or preparation of several different doses that look alike.

2.3.3 Ethical Issues

The ethical and practical concerns related to a dose-response study are similar to those affecting placebo-controlled trials. Where there is therapy known to be effective in preventing death or irreversible morbidity, it is no more ethically acceptable to randomize deliberately to subeffective therapy than it is to randomize to placebo. Where therapy is directed at less serious conditions or where the toxicity of the therapy is substantial relative to its benefits, dose-response studies that use low, potentially subeffective doses or placebo may be acceptable to patients and investigators.

2.3.4 Usefulness of Dose-Response Studies and Quality/Validity of Inference in Particular Situations

In general, a blinded dose-response study is useful for the determination of efficacy and safety in situations where a placebo-controlled trial would be useful and has similar credibility (see section 2.1.4).

2.3.5 Modifications of Design and Combinations With Other Controls That Can Resolve Ethical, Practical, or Inferential Problems

In general, the sorts of modification made to placebo-controlled studies to mitigate ethical, practical, or inferential problems are also applicable to dose-response studies (see section 2.1.5).

2.3.6 Advantages of Dose-response Trials, Other Than Those Related to Any Difference-Showing Study

2.3.6.1 *Efficiency.* Although a comparison of a large, fully effective dose to placebo is maximally efficient for showing efficacy, this design may produce unacceptable toxicity and gives no dose-response information. When the dose-response is monotonic, the dose-response trial is reasonably efficient in showing efficacy and also yields dose-response information. If the optimally effective dose is not known, it may be more prudent to study a range of doses than to choose a single dose that may prove to be suboptimal or toxic.

2.3.6.2 *Possible ethical advantage.* In some cases, notably those in which there is likely to be dose-related efficacy and dose-related important toxicity, the dose-response study may represent a difference-showing trial that can be ethically or practically conducted even where a placebo-controlled trial could not be, because there is reason for patients and investigators to accept lesser effectiveness in return for greater safety.

2.3.7 Disadvantages of Dose-Response Study

A potential problem that needs to be recognized is that a positive dose-response trend (i.e., a significant correlation between the dose and the efficacy outcome), without significant pair-wise differences, can establish efficacy, but may leave uncertainty as to which doses (other than the largest) are actually effective. But, of course, a single-dose study poses a similar problem with respect to doses below the one studied, giving no information at all about such doses.

It should also be appreciated that it is not uncommon to show no difference between doses in a dose-response study; if there is no placebo group to provide a clear demonstration of an effect, this is a very costly ''no test'' outcome.

If the therapeutic range is not known at all, the design may be inefficient, as many patients may be assigned to sub-therapeutic or supratherapeutic doses.

Dose-response designs may be less efficient than placebo-controlled titration designs for showing the presence of a drug effect; they do, however, in most cases provide better dose-response information (see ICH E4).

2.4 Active Control

2.4.1 Description (See Section 1.3.4)

An active-control (positive-control) trial is one in which an investigational drug is compared with a known active drug. Such trials are usually randomized and usually double-blind. The most crucial design question is whether the trial is intended to show a difference between the two drugs or to show noninferiority/equivalence. A sponsor intending to demonstrate effectiveness by means of a trial showing noninferiority of the test drug to a standard agent needs to address the issue of the sensitivity-to-drug-effects and assay sensitivity of the trial, as discussed in section 1.5. In a noninferiority/equivalence trial, the active-control agent needs to be of established efficacy at the dose used and under the conditions of the study (see ICH E9: Statistical Principles for Clinical Trials). In general, this means it should be an agent acceptable in the region to which the studies will be submitted for the same indication at the dose being studied. A superiority study favoring the test drug, on the other hand, is readily interpretable as evidence of efficacy, even if the dose of active control is too low or the active control is of uncertain benefit (but not if it could be harmful). Such a result, however--superiority in the trial of the test agent to the control--is interpretable as actual superiority of the test drug to the control treatment only when the active control is used in appropriate patients at an optimal dose and schedule (see section 1.4.2). Lack of appropriate use of the control drug would also make the study unusable as a noninferiority study if superiority of the test drug is not shown, because assay sensitivity of the study would not be ensured (see section 1.5.4).

2.4.2 Ability to Minimize Bias

A randomized and blinded active-control trial generally minimizes subject and investigator bias, but a note of caution is warranted. In a noninferiority trial, investigators and subjects know that all subjects are getting active drug, although they do not know which one. This could lead to a biased interpretation of results in the form of a tendency toward categorizing borderline cases as successes in partially subjective evaluations, e.g., in an antidepressant study. Such biases may decrease variance and/or treatment differences and thus can increase the likelihood of an incorrect finding of equivalence.

2.4.3 Ethical Issues

Active-control trials are generally considered to pose fewer ethical and practical problems than placebo-controlled trials because all subjects receive active treatment. It should be appreciated, however, that subjects getting a new agent are not getting standard therapy (just as a placebo group is not) and may be receiving an ineffective or harmful drug. This is an important matter if the active-control therapy is known to improve survival or decrease the occurrence of irreversible morbidity. There should therefore be a sound rationale for the investigational agent. If there is not strong reason to expect the new drug to be at least as good as the standard, an add-on study (see section 2.1.5.2.1) may be more appropriate, if the conditions allow such a design.

Using a very low dose, either of the active control or of the test drug, may provide a de facto placebo that can be shown inferior to the full dose of the test drug. This, however, is only considered ethical where a placebo would also be ethical, unless there is a legitimate reason to study such low doses.

2.4.4 Usefulness of Active-Control Trials and Quality/Validity of Inference in Particular Situations

When a new drug shows an advantage over an active control, the study has inferential properties regarding the presence of efficacy equivalent to any other difference-showing trial, assuming that the active control is not actually harmful. When an active-control trial is used to show noninferiority/equivalence, there is the special consideration of sensitivity-to-drug-effects and assay sensitivity, which are considered above in section 1.5. If assay sensitivity is established, either historically (by reference to past experience with the control drug) or by including a placebo control as well as active control, the active-control trial can assess comparative efficacy.

2.4.5 Modifications of Design and Combinations With Other Controls That Can Resolve Ethical, Practical, or Inferential Issues

As discussed earlier (section 2.1.5), active-control studies can include a placebo group, multiple-dose groups of the test drug, and/or other dose groups of the active control. Comparative dose-response studies, in which there are several doses of both test and active control, are typical in analgesic trials. The doses in active-control trials can be fixed or titrated, and both cross-over and parallel designs can be used. The assay sensitivity of a noninferiority trial can sometimes be supported by a randomized placebo-controlled withdrawal phase at the end (see section 2.1.5.2.4). Active-control superiority studies in selected populations (nonresponders to other therapy) can be very useful and are generally easy to interpret (see appendix), although the results may not be generalizable.

2.4.6 Advantages of Active-Control Trials

2.4.6.1 *Ethical/practical advantages.* The active-control design, whether intended to show noninferiority/equivalence or superiority, reduces ethical concerns that arise from failure to use drugs with documented important health benefits. It also addresses patient and physician concerns about failure to use documented effective therapy. Recruitment and IRB/IEC approval may be facilitated, and it may be possible to study larger samples. There may be fewer dropouts due to lack of effectiveness.

2.4.6.2 *Information content.* Where superiority to an active treatment is shown, active-control studies are readily interpretable regarding evidence of efficacy. The larger sample sizes needed are sometimes more achievable and acceptable in active-control trials and can provide more safety information. Active-control trials also can, if properly designed, provide information about relative efficacy.

2.4.7 Disadvantages of Active-Control Trials

2.4.7.1 *Information content.* See section 1.5 for discussion of the problem of assay sensitivity and the ability of the trial to support an efficacy conclusion in noninferiority/equivalence trials. Even when assay sensitivity is supported and the study is suitable for detecting efficacy, there is no

direct assessment of absolute effect size and greater difficulty in quantitating safety outcomes as well.

2.4.7.2 *Large sample size.* Generally, in noninferiority trials, the margin of difference that needs to be excluded is chosen conservatively, first, because the smallest effect of the active control expected in trials will ordinarily be used as the estimate of its effect and, second, because there will usually be an intent to rule out loss of more than some reasonable fraction (see section 1.5.2) of the control drug effect, leading to a still smaller margin. Because of the need for conservative assumptions about control drug effect size, sample sizes may be very large. In a difference-showing active-control trial, the difference between two drugs is always smaller, often much smaller, than the expected difference between drug and placebo, again leading to large sample sizes.

2.5 External Control (Historical Control)

2.5.1 Description

An externally controlled trial is one in which the control group consists of patients who are not part of the same randomized study as the group receiving the investigational agent, i.e., there is no concurrently randomized comparative group. The control group is thus not derived from exactly the same population as the treated population. Usually, the control group is a well-documented population of patients observed at an earlier time (historical control) at another institution, or even at the same institution but outside the study. An external-control study could be a superiority study or an equivalence study. Sometimes certain patients from a larger experience are selected as a control group on the basis of particular characteristics that make them similar to the treatment group; there may even be an attempt to ''match'' particular control and treated patients.

So-called ''baseline-controlled studies'' are a variety of externally controlled trials; these are sometimes thought to use ''the patient as his own control,'' but that is logically incorrect. In fact, the comparator group is an estimate of what would have happened in the absence of therapy to the patients. Both baseline-controlled trials and studies that use a more complicated on-off-on (cross-over) design, but that do not include a concurrently randomized control group, are of this type. As noted, in these studies the observed changes from baseline or between study periods are always compared, at least implicitly, to some estimate of what would have happened without the intervention. Such estimates are generally made on the basis of ''general knowledge,'' without reference to a specific control population. Although in some cases this is plainly reasonable, e.g., when the effect is dramatic, occurs rapidly following treatment, and is unlikely to have occurred spontaneously (e.g., general anesthesia, cardioversion, measurable tumor shrinkage), in most cases it is not so obvious and a specific historical experience should be sought. Designers and analysts of such trials need to be aware of the risks of this type of control and should be prepared to support its use.

2.5.2 Ability to Minimize Bias

Inability to control bias is the major and well-recognized limitation of externally controlled trials and is sufficient in many cases to make the design unsuitable. It is always difficult, in many cases impossible, to establish comparability of the treatment and control groups and thus to fulfill the major purpose of a control group (see section 1.2). The groups can be dissimilar with respect to a wide range of factors, other than the study drug, that could affect outcome, including demographic characteristics, diagnostic criteria, stage or duration of disease, concomitant treatments, and observational conditions (such as methods of assessing outcome, investigator expectations). Blinding and randomization are not available to minimize bias when external controls are used. It is well documented that untreated historical-control groups tend to have worse outcomes than an apparently similar control group in a randomized study, primarily because of selection bias. Control groups in a randomized study should meet certain criteria to be entered into the study, criteria that are generally more stringent and identify a less sick population than is typical of external-control groups. The group is often identified retrospectively, leading to potential bias in its selection. A consequence of the recognized inability to control bias is that the persuasiveness of findings from externally controlled trials depends on obtaining much more extreme levels of statistical significance and much larger estimated differences between treatments than would be considered persuasive in concurrently controlled trials.

The inability to control bias restricts use of the external-control design to situations in which the effect of treatment is dramatic and the usual course of the disease highly predictable. In addition, use of external controls should be limited to cases in which the endpoints are objective and the impact of baseline and treatment variables on the endpoint is well characterized.

As noted, the lack of randomization and blinding, and the resultant problems with lack of assurance of comparability of test group and control group, make the likelihood of substantial bias inherent in this design and impossible to quantitate. Nonetheless, some approaches to design and conduct of externally controlled trials could lead them to be more persuasive and potentially less biased. A control group should be chosen for which there is detailed information, including, where needed, individual patient data regarding demographics, baseline status, concomitant therapy, and course on study. The control patients should be as similar as possible to the population expected to receive the test drug in the study and should have been treated in a similar setting and in a similar manner, except with respect to the study therapy. Study observations should utilize timing and methodology similar to those used in the control patients. To reduce selection bias, selection of the control group should be made before performing comparative analyses; this may not always be feasible, as outcomes from these control groups may have been published. Any matching on selection criteria or adjustments made to account for population differences should be specified prior to selection of the control and performance of the study. Where no obvious single ''optimal'' external control exists, it may be advisable to study multiple external controls, providing that the analytic plan specifies conservatively how each will be utilized in drawing inferences (e.g., study group should be substantially superior to the most favorable control to conclude efficacy). In some cases, it may be useful to have an independent set of reviewers reassess endpoints in the control group and in the test group in a blinded manner according to common criteria.

2.5.3 Ethical Issues

When a drug is intended to treat a serious illness for which there is no satisfactory treatment, especially if the new drug is seen as promising on the basis of theoretical considerations, animal data, or early human experience, there may be understandable reluctance to perform a comparative study with a concurrent control group of patients who would not receive the new treatment. At the same time, it is not responsible or ethical to carry out studies that have no realistic chance of credibly showing the efficacy of the treatment. It should be appreciated that many promising therapies have had less dramatic effects than expected or have shown no efficacy at all when tested in controlled trials. Investigators may, in these situations, be faced with very difficult judgments. It may be tempting in exceptional cases to initiate an externally controlled trial, hoping for a convincingly dramatic effect, with a prompt switch to randomized trials if this does not materialize.

Alternatively, and generally preferably, in dealing with serious illnesses for which there is no satisfactory treatment, but where the course of the disease cannot be reliably predicted, even the earliest studies should be randomized. This is usually possible when studies are carried out before there is an impression that the therapy is effective. Studies can be monitored by independent data monitoring committees so that dramatic benefit can be detected early. Despite the use of a single-treatment group in an externally controlled trial, a placebo-controlled trial is usually a more efficient design (needing fewer subjects) in such cases, as the estimate of control group outcome generally needs to be made conservatively, causing need for a larger sample size. Great caution (e.g., applying a more stringent significance level) is called for because there are likely to be both identified and unidentified or unmeasurable differences between the treatment and control groups, often favoring treatment. The concurrently controlled trial can detect extreme effects very rapidly and, in addition, can detect modest, but still valuable, effects that would not be credibly demonstrated by an externally controlled trial.

2.5.4 Usefulness of Externally Controlled Trials and Quality/Validity of Inference in Particular Situations

An externally controlled trial should generally be considered only when prior belief in the superiority of the test therapy to

all available alternatives is so strong that alternative designs appear unacceptable and the disease or condition to be treated has a well-documented, highly predictable course. It is often possible, even in these cases, to utilize alternative, randomized, concurrently controlled designs (see section 2.1.5 and appendix).

Externally controlled trials are most likely to be persuasive when the study endpoint is objective, when the outcome on treatment is markedly different from that of the external control and a high level of statistical significance for the treatment-control comparison is attained, when the covariates influencing outcome of the disease are well characterized, and when the control closely resembles the study group in all known relevant baseline, treatment (other than study drug), and observational variables. Even in such cases, however, there are documented examples of erroneous conclusions arising from such trials.

When an external-control trial is considered, appropriate attention to design and conduct may help reduce bias (see section 2.5.2).

2.5.5 Modifications of Design and Combinations With Other Controls That Can Resolve Ethical, Practical or Inferential Problems

The external-control design can incorporate elements of randomization and blinding through use of a randomized placebo-controlled withdrawal phase, often with early-escape provisions, as described earlier (see section 2.1.5.2.4). The results of the initial period of treatment, in which subjects who appear to respond are identified and maintained on therapy, are thus ''validated'' by a rigorous, largely assumption- and bias-free study.

2.5.6 Advantages of Externally Controlled Trials

The main advantage of an externally controlled trial is that all patients can receive a promising drug, making the study more attractive to patients and physicians.

The design has some potential efficiencies (smaller sample size) because all patients are exposed to test drug, of particular importance in rare diseases.

2.5.7 Disadvantages of Externally Controlled Trials

The externally controlled study cannot be blinded and is subject to patient, observer, and analyst bias, major disadvantages. It is possible to mitigate these problems to a degree, but even the steps suggested in section 2.5.2 cannot resolve such problems fully, as treatment assignment is not randomized and comparability of control and treatment groups at the start of treatment, and comparability of treatment of patients during the trial, cannot be ensured or well assessed. It is well documented that externally controlled trials tend to overestimate efficacy of test therapies.

3.0 Choosing the Control Group

Figure 1 and Table 1 provide a decision tree for choosing among different types of control groups. Although the table and figure focus on the choice of control to demonstrate efficacy, some designs also allow comparisons of test and control agents. The choice of control can be affected by the availability of therapies and by medical practices in specific regions.The potential usefulness of the principal types of control (placebo, active, and dose-response) in specific situations and for specific purposes is shown in Table 1. The table should be used with the text describing the details of specific circumstances in which potential usefulness can be realized. In all cases, it is presumed that studies are appropriately designed. External controls are so distinct a case that they are not included in the table. In the table, a P notation refers to the need to make a convincing case that the study has assay sensitivity.

In general, evidence of efficacy is most convincingly demonstrated by showing superiority to a concurrent control treatment. If a superiority trial is not feasible or is inappropriate for ethical or practical reasons, and if a defined treatment effect of the active control is regularly seen (e.g., as it is for antibiotics in most situations), a noninferiority/equivalence study can be utilized and can be persuasive. Use of this design calls for close attention to the issue of sensitivity to drug effects in active-control noninferiority trials of the condition being studied and to the assay sensitivity of the particular study carried out (see section 1.5).

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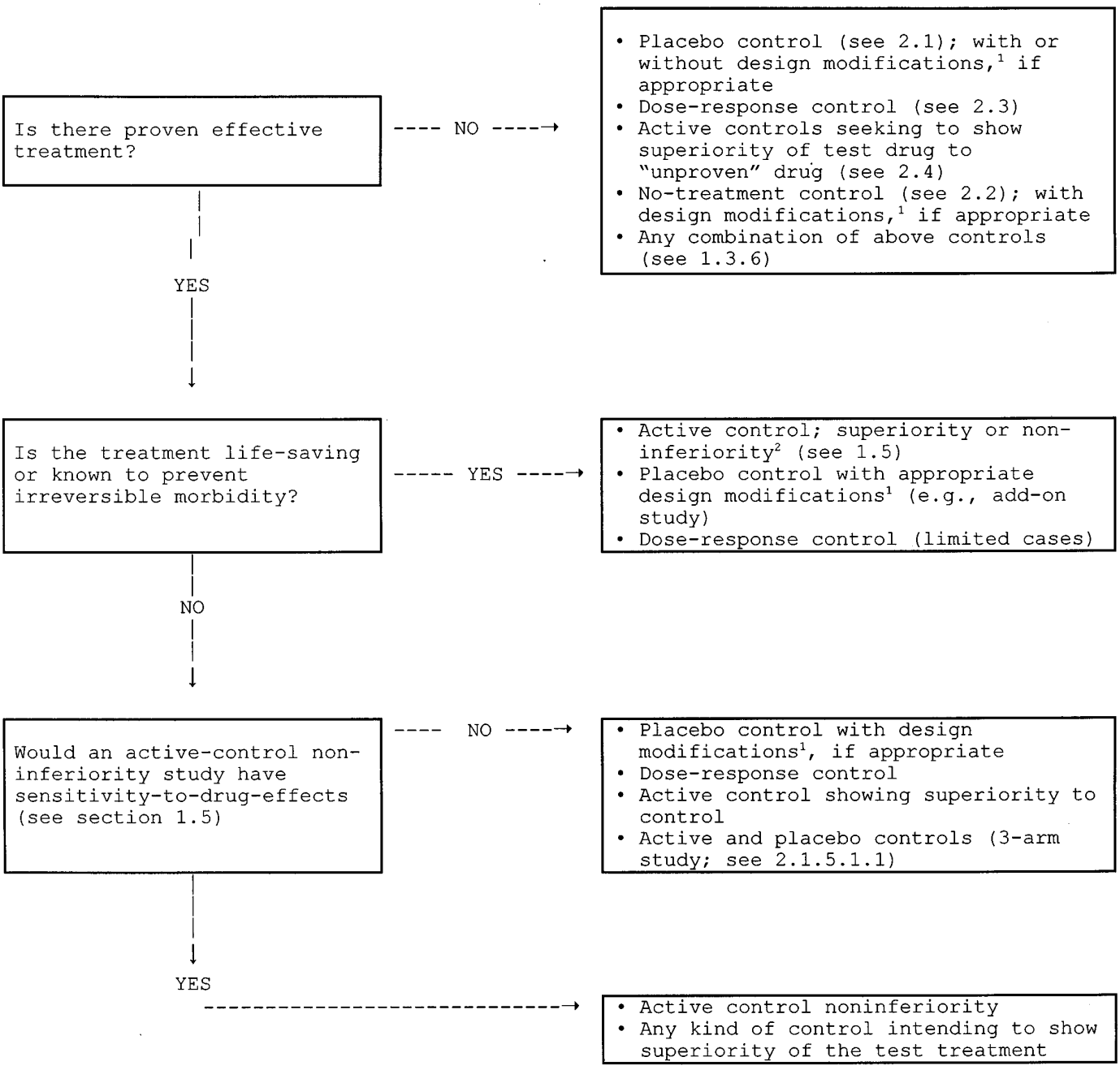
Table 1.--Usefulness of Specific Control Types in Various Situations

	Type of Control							
Trial Objective	Placebo	Active non-inferiority	Active Superiority	Dose Response (D/R)	Placebo + Active	Placebo + D/R	Active + D/R	Placebo + Active + D/R
Measure absolute effect size	Y	N	N	N	Y	Y	N	Y
Show existence of effect	Y	P	Y	Y	Y	Y	Y	Y
Show Dose Response relationship	N	N	N	Y	N	Y	Y	Y
Compare therapy (show superiority, show non-inferiority)	N	P	Y	N	Y	N	P	Y
Show assay sensitivity[1]	Y	N	Y	Y	Y	Y	Y	Y

Y=Yes, N=No, P=Possible, depending on a showing that this type of trial will have sensitivity-to-drug-effect.
[1] Through the direct demonstration within the trial of the ability to demonstrate differences between treatments.

Figure 1 Choosing the Concurrent Control for Demonstrating Efficacy

This figure shows the basic logic for choosing the control group; the decision may depend on the available drugs or medical practices in the specific region.



[1] Add-on, replacement, early escape, brief placebo period, and randomized withdrawal (see section 2.1.5.2).
[2] If known sensitivity-to-drug-effects (see section 1.5).

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APPENDIX

Studies of Efficacy in Subsets of the Whole Population; Enrichment

1.0 Introduction

Ideally, the effect of a drug should be known in general and in relevant demographic and other subsets of the population, such as those defined by disease severity or other disease characteristics. To the extent study patients are not a random sample of the patients who will be treated with the drug once it is marketed, the generalizability of the results can be questioned. Even if the overall result is obtained in a representative sample, however, that does not suggest the result is the same in all people. If subject selection criteria can identify people more likely to respond to therapy (e.g., high renin hypertensives to beta blockers), we consider therapy more rational and the drug more useful.

Subjects entering clinical studies are in fact almost never a random sample of the potential treatment population, and they are not treated exactly as a nonstudy patient would be treated. They must give informed consent, be able to follow instructions, and be able to get to the clinic. They are sometimes assessed for likelihood of complying with treatment. They are usually not very debilitated and generally are without complicated or life-threatening illness, unless those conditions are being studied. They are usually selected using particularly stringent diagnostic criteria that make it very certain they actually have the disease to be treated (more likely than in clinical practice). Lead-in periods are often used to exclude subjects who improve spontaneously or whose relevant functional measures (blood pressure, exercise tolerance) are too variable. Of course, the entire setting of trials is artificial in varying degrees, generally directed toward reducing unwanted variability and increasing study efficiency.

All of these departures from a truly unselected population of people likely to receive the drug are directed at identifying and including subjects likely to make a ''good assay population.'' They can be considered methods of ''enrichment'' of the population, modifications of a truly random sample of potential users to produce a population of subjects more likely to discriminate between an active and an inactive therapy. The kinds of enrichment described above are widely accepted and ''benign,'' i.e., it seems likely that results in such a population will be of general applicability, at least to patients with good compliance. There is a view, however, that in-use ''effectiveness'' may often be different from the artificial ''efficacy'' established in these enriched ''efficacy'' trials.

There are other kinds of enrichment that could also be useful but that would more clearly alter the inference that could be drawn from the results. This should not discourage their use but should encourage attention to what such studies do, and do not, show. Some enrichments of potential value include:

1.1 Studies of Patients Nonresponsive to, or Intolerant of, Other Therapy

In this kind of study, patients failing therapy on a drug, or failing to tolerate it acceptably, are randomized to the failed or poorly tolerated therapy or to the investigational treatment. Greater efficacy (or better tolerance) of the new therapy shows that the drug is useful in failures on the other therapy. This is a valuable showing if, e.g., the drug is relatively toxic and intended for a ''second-line'' use, but it does not show that the new therapy is superior in general, and such studies need to be carefully interpreted. By selecting study patients who will only infrequently respond to the control agent or who are very likely to have a particular adverse effect of the control drug, the design facilitates showing the second drug's advantage in that circumstance. A direct comparison of the two drugs in an unselected population that could contain responders to both drugs would need to be much larger to show a difference between the treatments, even if there was an overall advantage of the new drug. Moreover, it could be that each drug has a similar rate of nonresponders (but the other drug works in some of these), so that no difference could be seen in a direct comparison in unselected subjects.

In this design, it is usually critical to randomize the nonresponders or intolerants to both the new agent and the failed agent, rather than simply place the failures on the new drug. Patients who failed previously may ''respond'' to the failed drug when it is readministered in a clinical trial, or may tolerate the previously poorly tolerated drug in the new circumstance. This can present a problem. In the ''intolerance'' case, although subjects can be randomized to a drug that has caused certain kinds of intolerance, they cannot be randomized to a drug that would endanger them if administered (e.g., if the intolerance was anaphylaxis, liver necrosis). Similarly, in the nonresponder case, patients cannot be restudied on the failed drug if failure would lead to harm. In some cases, the prior experience may be an adequate control (e.g., failure of a tumor to respond), a baseline-controlled study design.

1.2 Studies in Likely or Known Responders

If patients cannot respond to the main pharmacologic effect of the drug, they cannot be expected to show a clinical response. Thus, subjects with no blood pressure response to sublingual nitroglycerin have been excluded from trials of organic nitrates, as they show no ability to respond to the mechanism of action of these drugs and including them would only dilute the drug effect. A similar approach was used in Cardiac Arrhythmia Suppression Trial (CAST). Only subjects responding to encainide or flecainide with a 70 percent reduction in ventricular premature beats (VPB's) were randomized to the mortality phase of the study because there was no reason to include people who could not possibly benefit (i.e., people with no VPB reduction). It is important in such cases to record the number of subjects screened in order to construct the study population so that users of the drug will have a reasonable expectation of what they will encounter. It will often be appropriate to incorporate similar selection criteria in labeling the drug for use.

The nitroglycerin and CAST enrichment approaches were generally accepted. A potentially more controversial enrichment procedure would be to identify responders in an initial open phase, withdraw treatment, then carry out a randomized study in the responders. This could be a useful approach when efficacy has proved difficult to demonstrate. For example, it has been difficult to obtain evidence that gut motility-modifying agents are effective in gastroesophageal reflux disease, perhaps because there are unrecognized pathophysiologic subsets of patients, some of which can respond and some of which cannot. It seems possible that identifying apparent responders clinically, then randomizing the apparent responders to drug and placebo treatments, would best utilize both clinical observation and rigorous design.

In seeking dose-response information, little is to be learned from studying the drug in a population of nonresponders (although one would want to know the proportion of the population that is nonreponsive). Such studies might better be carried out in known responders to the drug. Similarly, in evaluating a drug of a particular class, studies including only known responders to the class might be more likely to detect an effect of the drug or to show differences between members of the class.

Finally, it should be appreciated that randomized withdrawal studies (see section 2.1.5.2.4), and studies of maintenance treatment in general, are often studies in known responders and can therefore be expected to show greater effect than studies in an unselected population.

Dated: September 16, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy

[FR Doc. 99–24855 Filed 9–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4442–N–12]

Notice of Proposed Information Collection for Public Comment; Housing Condition Assessment (Pilot Study)

AGENCY: Office of the Assistant Secretary for Policy Development and Research.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 23, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: William E. Freeborne, Program Analyst, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8134, Washington, DC 20410–6000, telephone (202) 708–4370 ext. 5725. (This is not a toll-free number). A copy of the proposed forms and other available documents to be submitted to OMB may be obtained from Mr. Freeborne.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public concerning proposed collection information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Title of Proposal: Housing Condition Assessment (Pilot Study).

Description of the Need for Information and Proposed Use: Housing is the most basic and important part of the infrastructure in the United States and worldwide. Its direct and indirect impact on the economy and public welfare is far reaching. While increasing homeownership opportunities has benefits, it presents certain challenges to the future of housing in the United States. For example, housing production and resource utilization is stretched to meet the housing demand of a diverse and growing population. To continue to meet this demand, conventional methods need to be improved while innovative materials and methods need to rise to meet the challenge in a responsible, but competitive manner. This challenge can only be effectively met by better understanding the performance of the existing housing stock and developing improved technologies, including both design and construction practices that lead to better and more affordable homes for all Americans.

This study will help fill critical knowledge gaps to develop more durable products for single-family home construction. The work will help to establish a baseline of housing performance from which defects can be rationally identified and future improvements and innovations can be cost-effectively directed. The objectives are as follows:

(1) Pilot test and define the data collection methodology for potential use as a national housing condition assessment instrument.

(2) Establish a baseline of housing condition (durability), based on the pilot test data.

(3) Evaluate the housing condition assessment data to identify trends related to durability performance.

The housing performance assessment protocol will be implemented on a pilot scale. The focus will be on documenting conditions including products, homeowner maintenance, history of any damage, etc. The study will obtain a random selection (representative sample) of about 200 homes for site inspections and occupant/owner interviews in a pilot study region (Anne Arundel County, MD). Homes will be single-family detached, selected from property tax records according to the following age brackets: 5 to 10 years old and 25–30 years old. A data collection form will be created with detailed information to be collected from the sampled homes by field inspectors operating under contract to HUD.

Assessment teams will contact owners or occupants prior to site visits to conduct a phone interview and to arrange for an on-site assessment. The data will be recorded on field survey forms and then transcribed to a computer database. Homes not receiving voluntary homeowner participation will be subject only to a visual survey from the street.

Agency Form Numbers, if Applicable: None.

Members of Affected Public: A randomly selected group of 200 homeowners will be affected by the information collection.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: Information will be collected by a telephone and a voluntary personal interview with a maximum of 200 randomly selected homeowners in the Mid-Atlantic Region. Each survey will take approximately 30 minutes or less to complete. This means a total of 200 hours of response time for the information collection.

Status of the Proposed Information Collection: Pending submission to the Office of Management and Budget (OMB) for review and clearance.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 10, 1999.

Lawrence L. Thompson,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 99–24947 Filed 9–23–99; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 24, 1999.

FOR FURTHER INFORMATION CONTACT: Cliffort Taffet, Department of Housing and Urban Development, Room 7262 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings, and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 16, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–24601 Filed 9–23–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of intent to establish; request for nominations and comments.

SUMMARY: Pursuant to Executive Order 13112, the U.S. Department of the Interior, on behalf of the new interdepartmental Invasive Species Council, proposes to establish the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: Written nominations must be received within 30 days of the date of publication, October 25, 1999.

ADDRESSES: Nominations should be sent to Gordon Brown, Invasive Species Coordinator, Department of the Interior, Office of the Secretary, 1849 C Street, NW, room 6635, Washington DC, 20240.

FOR FURTHER INFORMATION CONTACT: Gordon Brown, Invasive Species Coordinator, telephone (202) 208–6336; fax (202) 208–2219; e-mail a__gordon__brown@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The purpose and role of the ISAC are to provide advice to the Invasive Species Council (Council), as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The Council will coordinate Federal agency activities concerning invasive species; prepare and issue a national Invasive Species Management Plan; encourage planning and action at local, tribal, State, regional and ecosystem-based levels to achieve the goals and objectives of the management plan; develop recommendations for international cooperation in addressing invasive species; develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on invasive species matters; facilitate development of a coordinated network to document, evaluate, and monitor impacts from invasive species; facilitate establishment of an information-sharing system on invasive species that utilizes, to the greatest extent practicable, the Internet; support long-term continuance and effective implementation of the Management Plan.

The ISAC will maintain an intensive and regular dialogue to actively explore these issues and will draw on the expertise of its members and other sources to provide advice in order to help the Council fulfill these goals. The ISAC will provide advice in cooperation with stakeholders and existing organizations addressing invasive species. The ISAC will meet up to four (4) times per year.

The ISAC will be made up of United States citizens. It will consist of no more than 25 voting members. Members will be appointed by the Secretary of Interior, in consultation with the other members of the Council. Members of ISAC will be knowledgeable in and represent one or more of the following communities of interests: weed science; fisheries science; rangeland management; forest science; entomology; nematology; plant pathology; veterinary medicine; the broad range of farming or agricultural practices; biodiversity issues; applicable laws and regulations relevant to invasive species policy; risk assessment; biological control of invasive species; public health/epidemiology; industry activities, structure, and international trade; environmental education; ecosystem monitoring; natural resource database design and integration; internet-based management of conservation issues.

Members should also have practical experience in one or more of the following areas: representing sectors of the national economy that are significantly threatened by biological invasions (*e.g.* agriculture, fisheries, public utilities, recreational users, tourism, etc.); representing sectors of the national economy whose routine operations may pose risks of new or expanded biological invasions (*e.g.* shipping, forestry, horticulture, aquaculture, pet trade, etc.); developing natural resource management plans on regional or ecosystem-level scales; addressing invasive species issues, including prevention, control and monitoring, in multiple ecosystems and on multiple scales; integrating science and the human dimension in creating effective solutions to complex conservation issues; coordinating diverse groups of stakeholders to resolve complex environmental issues and conflicts; complying with NEPA and other federal requirements for public involvement in major conservation plans. Members will be selected in order to achieve a balanced representation of viewpoints to effectively address invasive species issues under consideration. No member may serve on the ISAC for more than three (3) consecutive terms of two years. Reappointment terms will be staggered within stakeholder groups (2 or 3 years) to avoid turnover.

Members of the ISAC and its subcommittees will serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code.

Submitting Nominations

Nominations should be typed and should include the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.

2. A resume or curriculum vitae.

3. Letters of reference.

Nominations should be sent, no later than September 24, 1999, to Gordon Brown, Department of the Interior, Office of the Secretary, 1849 C Street, NW, Room 6635, Washington DC, 20240.

To ensure that recommendations of the ISAC take into account the needs of the diverse groups served, Department of the Interior is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations.

Dated: September 21, 1999.

William Y. Brown,

Science Advisor to the Secretary of the Interior.

[FR Doc. 99–25012 Filed 9–23–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–1430–01; CACA–37102]

Modification of Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Modification of Recreation and Public Purposes Classification, Kern County, CA.

SUMMARY: This notice modifies the existing Recreation and Public Purposes Classification published 62 FR 45267, August 26, 1997.

EFFECTIVE DATE: September 24, 1999.

FOR FURTHER INFORMATION CONTACT: Peter Graves, Ridgecrest Field Office, BLM, 300 So. Richmond Road, Ridgecrest, CA 93555, (760) 384–5429.

SUPPLEMENTARY INFORMATION: On August 26, 1997, the land described below was classified as suitable for sale pursuant to the Recreation and Public Purposes (R&PP). The publication and classification are hereby modified to conform the buffer zone description to aliquot parts and to correctly state the segregative effect. The following lands listed in B. 2. Buffer Zone are conformed to aliquot parts as follows:

Mount Diablo Meridian, California

T. 27 S., R. 39 E.,
Sec. 1, S½SW¼SW¼, SW¼SE¼SW¼;
Sec. 2, SE¼SE¼SE¼;
Sec. 11, E½ E½NE¼, E½NE¼SE¼, NE¼SE¼SE¼;
Sec. 12, W½E½NW¼, W½NE¼SW¼, N½SW¼SW¼, NW¼SE¼SW¼.
Containing 200.00 acres.

The paragraph immediately following the total acreage statement is corrected as follows:

In accordance with the regulations at 43 CFR 2741.5(h)(2), said lands are hereby segregated from appropriation under the public land laws, including the mining laws. This segregation will not terminate until a termination order is issued and published in the **Federal Register**.

Dated: September 15, 1999.

Linn Gum,

Acting Field Manager.

[FR Doc. 99–24823 Filed 9–23–99; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 930–1430–01; NMNM 92938]

Order Providing for the Opening of Public Land in Catron County, NM; Correction

In the notice document 99–20740 appearing on page 43712 in the issue of Wednesday, August 11, 1999, make the following correction:

On page 43712, in the second column, in the land description, in ''T. 10 N., R. 13 W.,'', should read ''T. 1 N., R. 13 W''.

Dated: September 13, 1999.

Stephen A. Jordan,

Acting State Director.

[FR Doc. 99–24871 Filed 9–23–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–1430–00; WYW–50280–02]

Realty Action; Sale for Recreation and Public Purposes; Washakie County, Worland Field Office, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Washakie County, Wyoming have been examined and found suitable for classification for conveyance to the city of Worland under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The city of Worland proposes to continue to use the lands for a public shooting range.

Sixth Principal Meridian

T. 47 N. R. 93 W.
Section 14, S½ SW¼NE¼, E½E½SW¼, W½SE¼, W½E½SE¼; Section 23, W½NE¼NE¼, NW¼NE¼.
Containing 240 acres more or less.

The lands are not needed for federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Worland Field Office, 101 South 23rd Street, Worland, Wyoming.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Worland Field Office, P.O. Box 119, Worland WY 82401.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a public shooting range. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public shooting range.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Comments, including names and street addresses of respondents will be available for public review at the Worland District Office, 101 South 23rd Street, Worland, Wyoming during regular business hours (7:30 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent

allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: September 15, 1999.

Robert B. Ross,

Acting Worland Field Manager.

[FR Doc. 99–24876 Filed 9–23–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service has filed an application to withdraw approximately 27,299.50 acres of National Forest System land to protect the Guadalupe Cave Resource Protection Area. This notice segregates the land for 2 years from location and entry under the United States mining laws, and from mineral leasing, subject to valid existing rights. The land will remain open to all other uses which may by law be made of National Forest System land. This application replaces withdrawal application NMNM 92089 which has been canceled.

DATES: Comments should be received on or before December 23, 1999.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Lincoln National Forest, 1101 New York Avenue, Alamogordo, NM 88310.

FOR FURTHER INFORMATION CONTACT: Johnny Wilson, Lincoln National Forest, (505) 434–7230.

SUPPLEMENTARY INFORMATION: On August 31, 1999, the United States Department of Agriculture filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, and from mineral leasing, subject to valid existing rights:

New Mexico Principal Meridian

T. 25 S., R. 21 E.,
  Sec. 36, lot 4, S½SW¼ and SW¼SE¼.
T. 26 S., R. 21 E.,
  Sec. 1, all;
  Sec. 2, E½;
  Sec. 10, SE¼SE¼;
  Sec. 11, E½ and SW¼;
  Sec. 12, all;
  Sec. 13, all;
  Sec. 14, all;
  Sec. 15, E½, S½NW¼, and SW¼;
  Sec. 16, S½SE¼;
  Sec. 20, SE¼;
  Sec. 21, all;
  Sec. 22, all;
  Sec. 23, all;
  Sec. 24, all;
  Sec. 25, all;
  Sec. 26, all;
  Sec. 27, all;
  Sec. 28, all;
  Sec. 29, E½;
  Sec. 32, lots 1, 2, and N½NE¼;
  Sec. 33, lots 1 to 4, inclusive, and N½N½;
  Sec. 34, lots 1 to 4, inclusive, and N½N½;
  Sec. 35, lots 1 to 4, inclusive, and N½N½;
  Sec. 36, lots 1 to 4, inclusive, and N½N½.
T. 25 S., R. 22 E.,
  Sec. 13, S½;
  Sec. 14, S½;
  Sec. 15, S½ and NW¼;
  Sec. 16, S½ and NE¼;
  Sec. 20, SE¼SW¼ and SE¼;
  Sec. 21, all;
  Sec. 22, all;
  Sec. 23, all;
  Sec. 26, all;
  Sec. 27, all;
  Sec. 28, all;
  Sec. 29, all;
  Sec. 31, E½, E½W½, and SW¼SW¼;
  Sec. 32, all;
  Sec. 33, all;
  Sec. 34, all.
T. 26 S., R. 22 E.,
  Sec. 3, all;
  Sec. 4, all;
  Sec. 5, all;
  Sec. 6, lots 1 to 4, inclusive, E½, and E½ W½;
  Sec. 7, lots 1 to 4, inclusive, E½, and E½ W½;
  Sec. 8, all;
  Sec. 9, all;
  Sec. 10, all;
  Sec. 15, all;
  Sec. 16, all;
  Sec. 17, all;
  Sec. 18, lots 1 to 4, inclusive, E½, and E½ W½.

The area described contains approximately 27,299.50 acres in Eddy County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections, in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor, Lincoln National Forest, at the above address.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

The application, NMNM 92089 published in **Federal Register**, 59 FR 4096, of January 28, 1994, has been canceled.

Dated: September 14, 1999.

Stephen A. Jordan,

State Director.

[FR Doc. 99–24872 Filed 9–23–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1820–01; GP9–0324; OR–55334]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 40 acres of National Forest System lands to protect the rehabilitation work being performed on the White King/Lucky Lass uranium mines in the Fremont National Forest. This notice closes the land for up to 2 years from mining. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

DATES: Comments and requests for a public meeting must be received by December 23, 1999.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, 503–952–6155.

SUPPLEMENTARY INFORMATION: On August 11, 1999, the Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)) but not the mineral leasing laws subject to valid existing rights:

Willamette Meridian

Fremont National Forest

T. 37 S., R. 19 E.,
  Sec. 30, NW¼NE¼.

The area described contains 40.00 acres in Lake County, Oregon.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard with respect to the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set fourth in 43 CFR 2300. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during the segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining law.

Dated: September 17, 1999.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Record Services.

[FR Doc. 99–24873 Filed 9–23–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and an Associated Funerary Object from Dry Lagoon State Park, CA in the Possession of the Anthropological Studies Center, Archeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the Control of the California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and an associated funerary object in the possession of the Anthropological Studies Center (ASC), Archeological Collections Facility (ACF), Sonoma State University, Rohnert Park, CA; and in the control of the California Department of Parks and Recreation, Sacramento, CA.

A detailed assessment of the human remains was made by ASC and California Department of Parks and Recreation professional staff in consultation with representatives of the Yurok Tribe of California.

In 1976, human remains representing four individuals were recovered from site CA-HUM-129 in Stone Lagoon, Dry Lagoon State Park, CA during salvage excavations conducted for bluff stabilization by Dr. David A. Fredrickson, Sonoma State University. These human remains were accessioned into the collections of the Archaeological Colletions Facility at Sonoma State University. No known individuals were identified. The one associated funerary object is an acorn.

In 1978, human remains representing five individuals were recovered from site CA-HUM-129 in Stone Lagoon, Dry Lagoon State Park, CA during salvage excavations conducted for bluff stabilization by Dr. David A. Fredrickson, Sonoma State University. These human remains were accessioned into the collections of the Archaeological Collections Facility at Sonoma State University. No known individuals were identified. No associated funerary objects were present.

Based on material culture and C14 dates, these human remains have been identified as Native American dating to between 1490 and 215 B.P. Geographical, ethnographical, linguistic, and historical evidence indicates that this archeological site is located within the traditional Coast Yurok territory. Based on archeological evidence, continuity of occupation, ethnographic accounts, and consultation with representatives of the Yurok Tribe of California, site CA-HUM-129 has been affiliated with the present-day Yurok Tribe of California.

Based on the above mentioned information, officials of Somoma State University and the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of nine individuals of Native American ancestry. Officials of Somoma State University and the California Department of Parks and Recreation have also determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Somoma State University and the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary object and the Yurok Tribe of California.

This notice has been sent to officials of the Yurok Tribe of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, California Department of Parks and Recreation, 1416- 9th Street, Room 1431, Sacramento, CA 95814; telephone: (916) 653-7976, before October 25, 1999. Repatriation of the human remains and associated funerary object to the Yurok Tribe of California may begin after that date if no additional claimants come forward.

Dated: September 14, 1999.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 99–24857 Filed 9–23–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of The Children's Museum, Boston, MA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of The Children's Museum, Boston, MA which meet the definition of ''sacred objects'' under Section 2 of the Act.

The four cultural items are Hopi Katsina kwatsi (masks): Cloud, Spruce Boy, Chaqwina, and Mudhead.

In 1966, two of the kwatsi were purchased by The Children's Museum from McGee's Art Gallery in Keams Canyon, AZ. In 1970, the other two

kwatsi were purchased by The Children's Museum from William Bailey of New Mexico.

Museum records indicate these cultural items are all Katsina kwatsi (masks). Museum documentation indicates two of the kwatsi are Zuni. However, consultation with representatives of the Zuni Tribe of the Zuni Reservation in 1982 indicated that the two kwatsi are not Zuni. Museum documentation for the remaining two kwatsi indicates they are Hopi. Consultation with representatives of the Hopi Tribe indicate that all four Katsina kwatsi are Hopi; and the kwatsi are regarded as sacred objects needed by the Katsinmomngwit (Katsina Chiefs) of the Hopi Tribe in the Hopi villages for the practice of traditional Hopi religion.

Based on the above-mentioned information, officials of The Children's Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), these four cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the The Children's Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe and the Zuni Tribe of the Zuni Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Joan Lester, Native American Curator, The Children's Museum, 300 Congress Street, Boston, MA 02210-1034; telephone: (617) 426-6500 before October 25, 1999. Repatriation of these objects to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: September 14, 1999.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 99–24856 Filed 9–23–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES 99–31]

Contra Costa Water District's Future Use and Operation of Contra Loma Reservoir Project, Contra Costa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the final environmental impact report/final environmental impact statement (FEIR/FEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and Contra Costa Water District (CCWD) prepared a joint FEIR/FEIS for CCWD's Future Use and Operation of Contra Loma Reservoir Project. In 1997, the California State Department of Health Services (DOHS) issued a compliance order to CCWD requiring either that recreational body contact activities in Contra Loma Reservoir (Reservoir) cease, or that CCWD stop using the Reservoir for domestic water supply storage. The proposed action is to continue to use the Reservoir for its historic domestic water supply purposes and to construct a separate swimming lagoon within the existing Reservoir footprint to allow swimming and wading to continue. Action taken by Reclamation would allow CCWD to construct the swimming lagoon on lands owned by the United States at the Reservoir.

DATES: Reclamation will not make a decision on the proposed action until 30 days after release of the FEIR/FEIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: Copies of the FEIR/FEIS may be requested from Ms. Frances I. Garland, Principal Planner, CCWD, 2300 Stanwell Drive, Concord CA 94524; telephone: (925) 688–8312.

Copies of the FEIR/FEIS are available for public inspection and review. These locations are listed in the ''Supplementary Information'' section.

FOR FURTHER INFORMATION CONTACT: Ms. Frances I. Garland, CCWD, 2300 Stanwell Drive, Concord CA 94524; telephone: (925) 688–8312; or Mr. Robert B. Eckart, Environmental Specialist, Bureau of Reclamation, 2800 Cottage Way, Sacramento CA 95825; telephone: (916) 978–5051.

SUPPLEMENTARY INFORMATION: The proposed action is to continue to use the Reservoir for its historic domestic water supply purposes and to construct a separate swimming lagoon within the existing Reservoir footprint to allow swimming and wading to continue. A concrete-covered earthen berm would physically separate the lagoon from the main portion of the 80-acre reservoir. Water in the lagoon would be pumped, filtered and treated to appropriate water quality standards for recreation use. This project would allow existing drinking water and swimming uses to continue at the Reservoir. The proposed action does not affect other existing recreation uses at the Reservoir such as fishing, boating, hiking, and picnicking.

Contra Loma Reservoir was built as part of the Contra Costa Canal unit of the Central Valley Project in 1967. The purpose of the Reservoir was to provide peaking and stand-by storage. CCWD has used the Reservoir for these purposes since 1967. A secondary purpose of the Reservoir is recreation. Recreation facilities at the Reservoir are operated by the East Bay Regional Park District under an agreement with Reclamation.

The FEIR/FEIS evaluates in detail five alternatives, including two no-action alternatives, and also describes the existing environment and environmental consequences of the proposed action. The FEIR/FEIS considers the environmental effects of the five alternatives in all topical areas required under NEPA and CEQA. Of particular importance for this project are the following topics: public health, surface-water quality, recreation, biological resources, aesthetics, socioeconomic environment, and cumulative impacts. Both Reclamation and CCWD have selected the proposed action as their preferred alternative. The proposed action was determined to provide a public health benefit and to minimize the impacts on recreation of complying with the DOHS order.

Notice of the draft environmental impact report/draft environmental impact statement (DEIR/DEIS) was published in the **Federal Register** on January 26, 1999 (64 FR 3974). A public hearing was held on February 18, 1999. The written comment period closed on March 25, 1999. The FEIR/FEIS contains responses to all comments received and changes made to the text of the DEIR/DEIS as a result of those comments.

Locations for Inspecting/Reviewing the FEIR/FEIS

- Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street, NW, Washington DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, at the Denver Federal Center, 6th and Kipling in Denver CO 80225; telephone: (303) 445–2064.
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way in Sacramento CA 95825–1898; telephone: (916) 978–5100.
- Contra Costa Water District, Public Reading Room at 1331 Concord Ave in Concord CA 94524; telephone: (925) 688–8312.
- Antioch Branch Library at 501 W. 18th Street in Antioch CA 94509.
- Bay Point Branch Library at 205 Pacifica Avenue in Pittsburg CA 94565.
- Pittsburg Branch Library at 80 Power Avenue in Pittsburg CA 94565.
- Oakley Branch Library at 118 East Ruby in Oakley CA 94561.
- Concord Branch Library at 2900 Salvio in Concord CA 94519.
- Contra Costa County Public Library at 1750 Oak Park Boulevard in Pleasant Hill CA 94523.

Dated: September 9, 1999.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 99–24963 Filed 9–23–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 99–37]

Draft Environmental Impact Statement for Elephant Butte/Caballo New Mexico Reservoirs Resource Management Plan

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of Draft Environmental Impact Statement.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA) as amended, the Bureau of Reclamation (Reclamation) announces the availability of the Draft Environmental Impact Statement (DEIS) for the Elephant Butte/Caballo Resource Management Plan (RMP). The DEIS analyzes the environmental consequences of proposed management activities through a conceptual framework of conservation, protection, development, use, and resource enhancement. The project area encompasses approximately 78,000 acres of Federal lands and water and is located near the towns of Truth or Consequences and Williamsburg, in south-central New Mexico. Elephant Butte Reservoir was constructed primarily for irrigation and flood control with power generation added later, and Caballo Reservoir for flood control and re-regulation of water releases from Elephant Butte Dam. Activities such as fishing, camping, boating and other recreational activities have become important secondary uses of the available resources. Public hearings will be held to receive comments from interested individuals and organizations on the environmental impact of the proposal.

DATES: A 60-day public review period will commence with the publication of this notice. The Public hearings are scheduled as follows:

Date: October 26.
Time: 7:00 p.m.
Location: NM Farm & Ranch, Heritage Museum, 4100 Dripping Springs Road, Las Cruces, NM.

Date: October 27.
Time: 7:00 p.m.
Location: Civic Center, 400 West 4th Street, Truth or Consequences, NM.

ADDRESSES: Written comments may be sent to Bureau of Reclamation, Attn: ALB–156, Albuquerque Area Office, 505 Marquette NW, Suite 1313, Albuquerque, NM 87102–2162. If you wish to have your name and/or home address withheld from public documents related to the DEIS, please indicate that with your written comments and we will honor your request to the extent allowable by law. For a complete copy of the DEIS, contact Ms. Rosemary Romero, Public Involvement Specialist, Western Network, 811 St. Michaels Drive, Suite 106, Santa Fe, NM 87505, telephone 1–800–326–9805. A summary of the DEIS is also available to download or view online at http://uc.usbr.gov. The DEIS may be inspected and reviewed at the at the following locations:

- Santa Fe Public Library, 145 Washington Ave., Santa Fe, NM 87501.
- Rio Grande Valley Library, 501 Cooper Ave. NW, Albuquerque, NM 87102.
- Socorro Public Library, 401 Park Street, Socorro, NM 87801.
- Truth or Consequences Public Library, 325 Library Lane, Truth or Consequences, NM 87901.
- Las Cruces Public Library, 200 East Picacho, Las Cruces, NM 88001.
- El Paso Public Library, 501 North Oregon Street, El Paso, Texas 79901.
- Bureau of Reclamation, Elephant Butte Field Division, HC–32, Box 312, Truth or Consequences, NM 87901, Telephone 505–894–6661.
- Bureau of Reclamation, El Paso Field Division, 700 E. San Antonio Ave., Room B318, El Paso, TX 79901, Telephone 915–534–6300.
- Bureau of Reclamation, Albuquerque Area Office, 505 Marquette NW, Suite 1313, Albuquerque, NM 87102, Telephone 505–248–5357.

FOR FURTHER INFORMATION CONTACT: Clay McDermeit, telephone (505) 248–5391.

SUPPLEMENTARY INFORMATION: In recent years, the project area has experienced a sharp increase in recreation-oriented visitation and adjacent private land development that has subsequently increased demands on Project Area recreational and natural resources. The DEIS project proposes management guidelines and analyzes the impacts of such actions through the identification of the following alternatives: (A) No Action—Existing facilities maintained without expansion and with minimal improvement; (B) Resource Conservation Emphasis—Significant emphasis placed on conservation, protection, and enhancement of natural and cultural resources; (C) Multi-Purpose Emphasis—Allows for a variety of uses including expanded developed recreation areas, improved primitive recreation areas, adjustment of grazing, and establishment of wildlife management areas; and (D) Recreation Development Emphasis—Expansion of recreation opportunities by maximizing development on Project Area.

Based upon issues and concerns identified during the scoping process, this DEIS includes an assessment of lease lots, grazing, recreation development, wildlife and endangered species, cultural resources, socioeconomics, and other related concerns. The preferred alternative identifies a course of action with minimal environmental impact, increased resource protection, and an acceptable level of recreational use.

Dated: August 31, 1999.

Charles A. Calhoun,

Regional Director.

[FR Doc. 99–24964 Filed 9–23–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 16, 1999.

The Department of Labor (DOL) has submitted the following public

information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Local Area Unemployment Statistics (LAUS) Program.

OMB Number: 1220–0017.

Freqency: Monthly; Annually.

Affected Public: State, Local or Tribal Government.

Form No.	Annual frequency	Number of respondents	Average time per response (hours)
LAUS 3040	12	52	1.6
LAUS 8	15	52	1
LAUS 15	0.5	52	2
LAUS 16	2	52	1
LAUS 17	4	52	0.5

Total Burden Hours: 131,600.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Local Area Unemployment Statistics (LAUS) manual provides the theoretical basis and essential technical instructions and guidance which States require to prepare State and area labor force estimates, while the reports ensure and/or measure the timeliness, quality, consistency, and adherence to LAUS program directives and research.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–24935 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 16, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E–Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Unemployment Insurance Quality Benefits Accuracy Measurement Program (formerly Benefits Quality Control).

OMB Number: 1205–0245.

Frequency: Weekly.

Affected Public: Individuals or household; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local, or Tribal govt.

Number of Respondents: 52.

Estimated Time Per Respondent: 3.17 hours.

Total Burden Hours: 75,319.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $22 million.

Description: The Benefits Accuracy Measurement (BAM) program provides reliable estimates of the accuracy of the benefit payments in the UI program and identifies the sources of mispayments so that their causes can be eliminated. This proposes extending BAM program for 3 years while reducing average samples sizes and permitting States more flexibility in how they verify information pertinent to the sampled payments.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–24936 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 20, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Request for Examination and/or Treatment.

OMB Number: 1215–0066.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 16,500.

Estimated Time Per respondent: 1.08.

Total Burden Hours: 124,740.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $42,000.

Description: This form is used by employers to authorize medical treatment for injured workers and by physicians to report findings of physical examinations and treatment recommended.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–24937 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 20, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({292} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training.

Title: Application for Alien Employment Certification.

OMB Number: 1205–0015.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local, or Tribal govt.

Form No.	Respondents	Frequency	Average time per response (hours)	Total manhours
Permanent	67,500	Quarterly	2.8	189,000
H–2A	3,500	Quarterly	1	3,500
H–2B	2,500	Quarterly	1.4	3,500

Total Burden Hours: 196,000 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information provided on the labor certification application by employers seeking to employ foreign workers for permanent or temporary employment in the U.S. will permit the Department to meet federal responsibilities for program administration, management, and oversight.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–24938 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,240 and NAFTS–3145]

Consolidated Papers, Inc., Niagara Division, Niagara, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated July 27, 1999, the company requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA). The denial notices applicable to workers of the subject firm located in Niagara, Wisconsin, were signed on June 7, 1999 and published in the **Federal Register** on June 30, 1999 (64 FR 35183) and (64 FR 35185), respectively.

The company has provided a list of additional declining customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–24930 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,817]

Dynegy, Inc., Houston, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 23, 1999 in response to a worker petition which was dated June 14, 1999, and filed on behalf of workers at Dynegy, Inc., Houston, Texas.

Further review of the petition shows that it does not comply with the requirements of 29 CFR 90.11. In summary, 29 CFR 90.11 specifies that a petition may be signed by at least three individuals of the petitioning worker group. In this case, the three petitioners were employed in different subdivisions of Dynegy and are therefore members of separate worker groups. Only a union representative or a company official may file a petition on behalf of all workers of a firm.

Therefore, this petition is deemed invalid, and the investigation has been terminated.

Signed in Washington, DC, this 10th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–24934 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 4, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 4, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 16th day of August, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 08/16/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,680	Fairfield Machine (Co.)	Columbiana, OH	08/04/1999	Capital Equipment for Tube Industry.
36,681	Ganes Chemicals (Wkrs)	Carlstadt, NJ	08/03/1999	Chemicals.
36,682	S. Schwab Co (Wkrs)	Cumberland, MD	07/21/1999	Infants Wear.
36,683	Honeywell (CO.)	Phoenix, AZ	07/12/1999	Digital Control Systems.
36,684	Pacific Scientific (Wkrs)	Yorba Linda, CA	08/03/1999	Safety Equipment of Aircrafts.
36,685	AMP, Inc (CO.)	Lowell, NC	07/27/1999	Electronic Connectors.
36,686	CTI Communications (Wkrs)	Piqua, OH	08/03/1999	Antennas.
36,687	Fahnes Apparel, Inc (Co.)	El Paso, TX	07/28/1999	Men's, Ladies' & Children's Jeans.
36,688	Flynt Fabrics (Wkrs)	Wadesboro, NC	08/04/1999	Fabric Dyeing, Printing & Finishing.
36,689	Magliano Pants (UNITE)	Cincinnati, OH	07/30/1999	Tailored Men's Trousers.
36,690	Globe Tailoring (UNITE)	Cincinnati, OH	07/30/1999	Men's Tailored Suit Jackets.
36,691	Hirsch Company (Wkrs)	Skokie, IL	07/29/1999	Metal and Wood Shelving Products.

APPENDIX—Continued

[Petitions instituted on 08/16/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,692	Smith Tool, Inc (Co.)	Ponca City, OK	07/26/1999	Drill Bits—Petroleum and Mining.
36,693	Rexell Industries (Wkrs)	Gaylord, MI	07/29/1999	Permanent Molds and Dies.
36,694	Weathervane Windows (Wkrs)	Brighton, MI	07/21/1999	Residential Windows and Doors.
36,695	Karina (Wkrs)	Wayne, NJ	07/27/1999	Hair Ornaments.
36,696	Kesu Systems & Services (Wkrs)	Tempe, AZ	08/05/1999	Burn-In Service for Semi Conductors.
36,697	Henry Silverman Jewlers (Wkrs)	El Paso, TX	08/07/1999	Fine Jewelry.
36,698	Contract Apparel Inc (Co.)	El Paso, TX	07/12/1999	Clothing.
36,699	Talismon Sugar Corp. (Wkrs)	Belle Glade, FL	08/03/1999	Sugar Cane.
36,700	Downing Wellhead Equip. (Co.)	Oklahoma City, OK	08/04/1999	Oilfield Equipment.
36,701	Monark Egg—Michael Food (IBT)	Kansas City, MO	07/30/1999	Dried Powdered Egg.
36,702	Biltrite Corp. (The) (Co.)	Ripley, MS	08/04/1999	Rubber Molded Heels and Soles.
36,703	Fabrico Manufacturing (Wkrs)	Chicago, IL	08/03/1999	Flexible and Synthetic Fabrics.
36,704	Logos Neckwear (Co.)	Paulsboro, NJ	07/26/1999	Neckwear.
36,705	Getchell Gold Corp. (Co.)	Golconda, NV	08/03/1999	Gold Bars.
36,706	J and J Flock Products (Co.)	Easton, PA	08/04/1999	Textile Fabrics.
36,707	Consolidation Coal (UMW)	Fairview, WV	08/04/1999	Bituminous Coal.
36,708	Invensys Appliance (Co.)	New Stanton, PA	07/23/1999	Appliance Controls.
36,709	AMP, Inc (Wkrs)	Loganville, PA	08/04/1999	Terminals and Connectors.
36,710	American Eagle Well (Co.)	Wichita Falls, TX	08/02/1999	Analysis of Oil and Gas Wells.
36,711	Petroplex Aadizung (Wkrs)	Midland, TX	07/28/1999	Oil and Gas Well Services.
36,712	Harken Engery Corp. (Wkrs.)	Houston, TX	08/01/1999	Oil and Gas.
36,713	Ranger Oil Co. (Co.)	Houston, TX	07/29/1999	Oil and Gas Exploration.

[FR Doc. 99–24931 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,142]

Voyager Apparel Tallmadge, Ohio; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 3, 1999 in response to a worker petition which was filed by the company behalf of workers at Voyager Apparel, Tallmadge, Ohio.

The petitioner is a company official who has refused to provide information and has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 13th day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–24933 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03224 and 03224A]

Lincoln Automotive Company, Jonesboro, AR and St. Louis, MO; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on July 14, 1999, applicable to workers of Lincoln Automotive Company, including leased workers of Staffmark and Manpower, Jonesboro, Arkansas. The notice was published in the **Federal Register** on August 11, 1999 (62 FR 43725).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations are occurring at the St. Louis, Missouri location of Lincoln Automotive Company and will continue until its closing in October, 1999. The St. Louis, Missouri location is the headquarters office, where workers provide sales, marketing and customer service to support the production of 4 ton service jacks, 10 ton service jacks, ¾ ton wheel dolly, ½ ton transmission jacks and 1 ton transmission jacks at the Jonesboro, Arkansas facility of Lincoln Automotive Company.

Accordingly, the Department is amending the certification to cover workers at Lincoln Automotive Company, St. Louis, Missouri.

The intent of the Department's certification is to include all workers of Lincoln Automotive Company adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–03224 is hereby issued as follows:

All workers of Lincoln Automotive Company including leased workers of Staffmark and Manpower, Jonesboro, Arkansas producing 4 ton service jacks, 10 ton service jacks, ¾ ton wheel dolly, ½ ton transmission jacks and 1 ton transmission jacks for Lincoln Automotive Company, Jonesboro, Arkansas (NAFTA–03224) and all workers of Lincoln Automotive Company, St. Louis, Missouri who became totally or partially separated from employment on or after May 17, 1998 through July 14, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–24932 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decision shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

New York
NY990002 (Mar. 12, 1999)
NY990008 (Mar. 12, 1999)
NY990040 (Mar. 12, 1999)
NY990042 (Mar. 12, 1999)
NY990049 (Mar. 12, 1999)
NY990050 (Mar. 12, 1999)

Volume II:

Pennsylvania
PA990029 (Mar. 12, 1999)
Virginia
VA990011 (Mar. 12, 1999)

Volume III:

Florida
FL990017 (Mar. 12, 1999)

Volume IV:

Indiana
IN990010 (Mar. 12, 1999)
Michigan
MI990007 (Mar. 12, 1999)
Wisconsin
WI990015 (Mar. 12, 1999)
WI990018 (Mar. 12, 1999)
WI990027 (Mar. 12, 1999)

Volume V:

Arkansas
AR990008 (Mar. 12, 1999)
AR990023 (Mar. 12, 1999)
AR990027 (Mar. 12, 1999)
Kansas
KS990006 (Mar. 12, 1999)
KS990013 (Mar. 12, 1999)
KS990015 (Mar. 12, 1999)
KS990018 (Mar. 12, 1999)
KS990020 (Mar. 12, 1999)

Volume VI:

Idaho
ID990001 (Mar. 12, 1999)
ID990003 (Mar. 12, 1999)
ID990013 (Mar. 12, 1999)
ID990014 (Mar. 12, 1999)
Oregon
OR990001 (Mar. 12, 1999)
OR990017 (Mar. 12, 1999)
Washington
WA990001 (Mar. 12, 1999)
WA990002 (Mar. 12, 1999)

Volume VII:

California
CA990001 (Mar. 12, 1999)
CA990028 (Mar. 12, 1999)
CA990029 (Mar. 12, 1999)
CA990030 (Mar. 12, 1999)
CA990033 (Mar. 12, 1999)
CA990035 (Mar. 12, 1999)
CA990036 (Mar. 12, 1999)
CA990038 (Mar. 12, 1999)
CA990040 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual

edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 16th day of September, 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–24643 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground coal. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before November 23, 1999.

ADDRESSES: Send comments to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to tomalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at TOMalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The rule addresses three major areas: Diesel engine design and testing requirements; safety standards for the maintenance and use of this equipment; and exhaust gas sampling provisions to protect miners' health.

First, the rule requires that diesel engines and their critical components meet design specifications and tests to show that they are explosion-proof and will not cause a fire in a mine. Second, the safety requirements for diesel equipment include many proven features required in existing standards for electric-powered equipment. The rule also sets safety requirements for fuel handling and storage and fire suppression. Finally, the rule requires sampling of diesel exhaust emissions to protect miners from overexposure to carbon monoxide and nitrogen dioxide contained in diesel exhaust.

II. Current Actions

The recordkeeping requirements contained in the rule are the minimum necessary to ensure the safe and healthful operation of diesel-powered equipment in underground coal mines; to verify compliance with the regulations, and provide important information to mine operators and miners' representatives about safety and health conditions in miners' workplaces. Reduction of these recordkeeping requirements increase the likelihood that unsafe and unhealthy conditions would go undetected and uncorrected in underground coal mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground coal.

OMB Number: 1219–0119.

Recordkeeping: Indefinitely.

Affected Public: Business or other for-profit.

Total Respondents: 199.

Frequency: On occasion.

Total Responses: 234,308.

Average Time per Response: 0.24 hours.

Estimated Total Burden Hours: 56,339.

Total Burden Cost (capital/startup): $45,094.

Total Burden Cost (operating/maintaining): $617,238.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 20, 1999.

Theresa M. O'Malley,

Chief, Records Management Group.

[FR Doc. 99–24957 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10688, et al.]

Proposed Exemptions; Bankers Trust Company (BTC)

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

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, 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, N.W., Washington, D.C. 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, N.W., Washington, D.C. 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.

Bankers Trust Company (BTC), Located in New York, New York

[Application Nos. D–10688 through D–10691]

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 section 406(a) 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 (D) of the Code, shall not apply to the proposed execution by certain employee benefit plans (the Plans) investing in Transwestern Office Partners II, L.P. (the LP) of a partner agreement and estoppel (the Estoppel) under which the Plans agree to honor capital calls made to the Plans by BTC as the representative of certain lenders (the Lenders) that will fund a so-called ''credit facility'' providing credit to the LP in connection with the Plans'' capital commitments to the LP where the LP has granted to BTC security interests in the capital commitments, and where the Lenders are parties in interest with respect to the Plans; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the LP and to execute such grants and agreements in favor of BTC are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; (c) with respect to Plans that have invested or may invest in the LP in the future, such Plans have or will have assets of not less than $100 million and not more than 5% of the assets of any such Plan are or will be invested in the LP. For purposes of this condition (c), in the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis, (e.g., through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans; and d) the general partner of the LP must be independent of BTC, the Lenders and the Plans.

Summary of Facts and Representations

1. The LP is a Delaware limited partnership, the sole general partner of which is Transwestern Office GP II, L.L.C. (the General Partner), a Delaware limited liability company. The General Partner is a separate affiliate of Transwestern Investment Company, L.L.C. (TWIC), a Delaware limited liability company. The General Partner is an entity unrelated to BTC, the Lenders and the Plans. The LP shall exist for five years from the end of its acquisition period (which is expected to last up to 30 months), but may be extended for an additional three years. The LP was formed by the General Partner (as sole General Partner), with the intent of seeking capital commitments from a limited number of prospective investors who would become limited partners (the Partners) of the LP. There are 17 current and prospective Partners having, in the aggregate, irrevocable, unconditional capital commitments of at least $150,000,000.

2. The LP has been organized to establish an integrated, self-administered and self-managed real estate operating company (see paragraph 11, below) to acquire real property assets primarily used for office purposes. The LP will make acquisitions and provide leasing and property management services. As described in the Private Placement Memorandum, the LP believes that significant opportunities exist to achieve superior risk-adjusted returns on its investments in excess of 15% over a five-year period. The LP will identify and commit to all investments within thirty months of closing (the Acquisition Period). Strategies to maximize proceeds and create liquidity for the LP include single asset sales, portfolio transactions, formation and exchange of assets for equity and a public market offering.

3. The LP will distribute to the Partners any revenue that exceeds current and anticipated cash needs as determined by the General Partner. Proceeds from the sale or financing of properties will generally be distributed in this manner. However, invested capital returned from investments sold or financed by the LP within 30 months

of the final closing date will be subject to reinvestment, provided that such amounts do not exceed a Partner's capital commitment (as discussed below).

4. The agreement dated May 1, 1997, under which the LP is organized (the Agreement) requires each Partner to execute a subscription agreement that obligates the Partner to make contributions of capital up to a specified maximum. The Agreement requires Partners to make capital contributions to fulfill this obligation upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make calls for cash contributions (Capital Calls) up to the total amount of a Partner's capital commitment upon 10 business days' notice, subject to certain limitations. The Partners' capital commitments are structured as unconditional, binding commitments to contribute capital when Capital Calls are made by the General Partner. In the event of a default by a Partner, the LP may exercise any of a number of specific remedies.

The Partners constituting over 90% of the equity interests and their investments in the LP are:

Name of partner	Capital commitment (millions)
The General Partner	$7.175
The Northwestern Mutual Life Ins. Co.	10
ERI Trans Inc.	15
Allstate Insurance Company	30
State Street Bank and Trust as Master Trustee of the Northrop Employees Benefit Plans Master Trust	20
Mayo Foundation	5
Mayo Foundation Pension Fund	5
Greenwood Properties, Inc.	7.5
New York Life Insurance Company	15
Pew Memorial Trusts	10.5
J.H. Pew Freedom Trust	2.1
J.N. Pew, Jr. Trust	1.05
Mabel Pew Myrin Trust	1.35
Northwestern Memorial Hospital	1.5
Northwestern Memorial Hospital Employees' Pension Plan Trust	1.5
Fruit of the Loom Pension Trust, for the Benefit of Union Underwear Pension Plan	3
Northwestern University	15

5. The applicant states that the LP will incur indebtedness in connection with many of its investments. In addition to mortgage indebtedness, the LP will incur short-term indebtedness for the acquisition of particular investments. The indebtedness for the LP will be no more than 75% of the acquisition cost of the investments and no more than 70%, on a portfolio basis, of the aggregate book value of all properties of the LP. This indebtedness will be non-recourse except in connection with a Credit Facility, described in representation 6, below, secured by, among other things, a pledge and assignment of each Partner's capital commitment. This type of facility will allow the LP to consummate investments quickly without having to finalize the debt/equity structure for an investment or having to arrange for interim or permanent financing prior to making an investment, and will have additional advantages to the Partners and the LP. Under the Agreement, the General Partner may encumber Partners' capital commitments, including the right to call for capital contributions, to one or more financial institutions as security for the Credit Facility. Each of the Partners has appointed the General Partner as its attorney-in-fact to execute all documents and instruments of transfer necessary to implement the provisions of the Agreement. In connection with this Credit Facility, each of the Partners is required to execute documents customarily required in secured financings, including an agreement to honor Capital Calls unconditionally.

6. BTC will become agent for a group of Lenders providing a
37 revolving Credit Facility to the LP. BTC will also be a participating Lender. Some of the Lenders may be parties in interest with respect to some of the Plans that invest in the LP by virtue of such Lenders' (or their affiliates') provisions of fiduciary or other services to such Plans with respect to assets other than the Plans' interests in the LP. BTC is requesting an exemption to permit the Plans to enter into security agreements with BTC, as the representative of the Lenders, whereby such Plans' capital commitments to the LP will be used as collateral for loans made under the Credit Facility to the LP, when such loans are funded by Lenders who are parties in interest to one or more of the Plans. However, BTC represents that neither it nor any Lender will act in any fiduciary capacity for the decision made by any of the Plans to invest in the LP (as discussed in Paragraph 13, below).

The Credit Facility will be used to provide immediate funds for real estate acquisitions made by the LP, as well as for the payment of LP expenses. Repayments will be secured generally by the LP from the Partners' capital contributions, and Capital Calls on the Partners' capital commitments. The Credit Facility is intended to be available until November 1, 1999. The LP can use its credit under the Credit Facility either by direct or indirect borrowings or by requesting that letters of credit be issued. All Lenders will participate on a pro rata basis with respect to all cash loans and letters of credit up to the maximum of the Lenders' respective commitments. All such loans and letters of credit will be issued to the LP or an entity in which the LP owns a direct or indirect interest (a Qualified Borrower), and not to any individual Partner. All payments of principal and interest made by the LP or a Qualified Borrower will be allocated pro rata among all Lenders.

7. The Credit Facility will be a recourse obligation of the LP, the repayment of which is secured primarily by the grant of a security interest to BTC, as agent under the Credit Facility for the benefit of the Lenders, from the LP, in both: (a) The Partners' capital commitments and (b) a collateral account (the Borrower Collateral Account) under which the LP must deposit all Partners' capital contributions when paid. In addition, the LP and the General Partner will grant BTC, as agent under the Credit Facility for the benefit of the Lenders, a security interest in: (a) The right to call capital under the Agreement; (b) Capital Call notices; and (c) the Partners' capital commitments. The Borrower Collateral Account will be assigned to BTC to secure repayment of the indebtedness incurred under the Credit Facility. BTC has the right to apply any or all funds in the Borrower Collateral Account toward payment of the indebtedness in any manner it may elect. The capital commitments are fully recourse to all the Partners and to the General Partner. In the event of default under the Credit Facility, the agent (i.e., BTC) has the right to make capital calls unilaterally on the Partners to pay their unfunded capital commitments, and will apply cash received from such capital calls to any outstanding debt.

8. Under the Credit Facility, each Partner that is a Plan will execute an Estoppel pursuant to which it acknowledges that the LP and the General Partner have pledged and assigned to BTC, for the benefit of each Lender which may be a party in interest (as defined in Act section 3(14)) of such Partner, all of their rights under the Agreement relating to capital commitments and Capital Call notices. The Estoppel will include an acknowledgment and covenant by the Plan that, if an event of default exists, such Plan will unconditionally honor

any capital call made by BTC in accordance with the Agreement up to the unfunded capital commitment of such Plan to the LP.

9. BTC is requesting an exemption to permit each trust to enter into an Estoppel under the terms and conditions described herein. The trusts which hold assets of the Plans (the Trusts) are Partners in the LP and therefore own limited partnership interests. Some of the Lenders are parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' (or their affiliates') provisions of fiduciary (or other) services to such Plans. These services are provided with respect to Trust assets other than the LP interests. Thus, BTC states that there is an immediate need for each Trust to enter into the Estoppel under the terms and conditions described herein. The Trusts owning limited partnership interests in the LP and the extent of their respective capital commitments to the LP are described as follows:

(a) The Northrop Employee Benefit Plans Master Trust (the Northrop Trust), Located in New York, New York; State Street Bank and Trust as Master Trustee. This Trust holds the assets of nine defined benefit plans sponsored by the Northrop Grumman Corporation and two defined benefit plans sponsored by Northrop Grumman Norden Systems, Inc. (the Northrop Plans), which own interests in the LP. The total number of participants in the eleven Northrop Plans is approximately 122,976, and the approximate fair market value of the total assets of the Northrop Plans held in the Northrop Trust as of December 31, 1997 was $10.25 billion. The Northrop Trust has made a capital commitment of $20 million to the LP. The fiduciary responsible for reviewing and authorizing the investment in the LP by the Northrop Trust is Forstmann-Leff International, Inc. (FLI). FLI was organized in 1968 as an investment counseling firm. It is a multi-asset class, global investment management firm. FLI manages approximately $7 billion in domestic and international equity, fixed income and private markets' accounts.

(b) The Fruit of the Loom Pension Trust (the Fruit of the Loom Trust), Located in Chicago, Illinois; The Northern Trust Company, Trustee. This Trust holds the assets of one defined benefit plan (the Union Underwear Plan), which owns interests in the LP. The total number of participants in the Union Underwear Plan is approximately 20,935, and the approximate fair market value of the total assets of the Union Underwear Plan held in the Fruit of the Loom Trust as of December 31, 1997 is $161 million. The Fruit of the Loom Trust has made a capital commitment of $3 million to the LP. The fiduciary responsible for reviewing and authorizing the investment in the LP by the Fruit of the Loom Trust is William Farley, Pension Investment Committee of the Fruit of the Loom, Inc. Board of Directors.

(c) The Mayo Foundation Master Retirement Trust (the Mayo Trust), Located in New York, New York; BTC, Trustee. This Trust holds the assets of one defined benefit plan (the Mayo Plan), which owns interests in the LP. The total number of participants in the Mayo Plan is approximately 25,028, and the approximate fair market value of the total assets of the Mayo Plan held in the Mayo Trust as of December 31, 1997 is $1.283 billion. The Mayo Trust has made a capital commitment of $5 million to the LP. The fiduciary responsible for reviewing and authorizing the investment in the LP by the Mayo Plan is John H. Herrell, Vice President of the Mayo Foundation.

(d) The Northwestern Memorial Hospital Employees Pension Plan Trust (The Memorial Hospital Trust) holds the assets of one defined benefit plan, the Northwestern Memorial Hospital Employees Pension Plan (the Memorial Hospital Plan), which owns interests in the LP. The total number of participants in the Memorial Hospital Plan is approximately 7,804, and the approximate fair market value of the total assets of the Memorial Hospital Plan held in the Memorial Hospital Trust as of December 31, 1997 is $213 million. The Memorial Hospital Trust has made a capital commitment of $1.5 million to the LP. The fiduciary responsible for reviewing and authorizing the investment in the LP by the Memorial Hospital Trust is Thomas M. Satkus, Jr., Assistant Treasurer, Northwestern Memorial Hospital.

10. The applicant represents that the Northrop Plans, the Union Underwear Plan, the Mayo Plan and the Memorial Hospital Plan are currently the only employee benefit plans subject to the Act that are Partners of the LP. However, the applicant states that it is possible that one or more other Plans will become Partners of the LP in the future. Thus, the applicant requests relief for any such Plan under this proposed exemption, provided the Plan meets the standards and conditions set forth herein. In this regard, such Plan must be represented by a fiduciary independent of the General Partner, the Lenders and BTC. Furthermore, the General Partner, who also must be independent of the Lenders and BTC, must receive from the Plan one of the following:

(1) A representation letter from the applicable fiduciary with respect to such Plan substantially identical to the representation letter submitted by the fiduciaries of the Northrop, Fruit of the Loom, Mayo and Memorial Hospital Trusts, in which case this proposed exemption, if granted, will apply to the investments made by such Plan if the conditions required herein are met; or

(2) Evidence that such Plan and its responsible fiduciaries are eligible for relief under Prohibited Transaction Exemption 96–23 (PTE 96–23, 61 FR 15975, April 10, 1996), the class exemption for transactions by a plan with certain parties in interest where such plan's assets are managed by an in-house asset manager (INHAM) that has total assets under its management, attributable to plans maintained by its affiliates, in excess of $50 million (see Part IV(a) of PTE 96–23); or

(3) Evidence that an insurance company which is investing general account funds is eligible for relief under Prohibited Transaction Exemption 95–60 (PTE 95–60, 60 FR 35925, July 12, 1995), the class exemption for insurance companies; or

(4) Evidence that such Plan is eligible for another class exemption [1] or has obtained an individual exemption from the Department covering the potential prohibited transactions which are the subject of this proposed exemption.

11. BTC represents that the LP will obtain an opinion of counsel that the LP will constitute an ''operating company'' under the Department's plan asset regulations [see 29 CFR 2510.3–101(c)] if the LP is operated in accordance with the Agreement and the private placement memorandum distributed in connection with the private placement of the LP Partnership interests.[2]

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[1] For example, PTE 84–14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are managed by a ''qualified professional asset manager'' (QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

[2] The Department notes that the term ''operating company'' as used in the Department's plan asset regulation cited above includes an entity that is considered a ''real estate operating company'' as described therein (see 29 CFR 2510.3–101(e)). However, the Department expresses no opinion in this proposed exemption regarding whether the LP would be considered either an operating company or a real estate operating company under such regulations. In this regard, the Department notes that it is providing no relief for either internal transactions involving the operation of the LP or for transactions involving third parties other than the specific relief proposed herein. In addition, the Department encourages potential Plan investors and their independent fiduciaries to carefully examine

12. BTC represents that the Estoppel constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships or limited liability companies, wherein the financing institutions do not obtain security interests in the real property assets of the partnership or limited liability companies. BTC also represents that the obligatory execution of the Estoppel by the Partners for the benefit of the Lenders was fully disclosed in the Private Placement Memorandum as a requisite condition of investment in the LP during the private placement of the Partnership interests. BTC represents that the only direct relationship with respect to the LP between any of the Partners and any of the Lenders is the execution of the Estoppel. All other aspects of the transaction, including the negotiation of all terms of the Credit Facility, are exclusively between the Lenders and the LP. BTC represents that the proposed execution of the Estoppel will not affect the abilities of the Trusts to withdraw from investment and participation in the LP.[3] The only Plan assets to be affected by the proposed transactions are any funds which must be contributed to the LP in accordance with requirements under the Agreement to make Capital Calls to honor a Partner's capital commitments.

13. BTC represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to any of the Trusts' investments in the LP and that BTC is independent of and unrelated to those fiduciaries (the Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the LP. Each of the Fiduciaries represents independently that its authorization of Trust investments in the LP was free of any influence, authority or control by the Lenders, including BTC. Each of the Fiduciaries represents that the Trust's investments in and capital commitments to the LP were made with the knowledge that each Partner would be required subsequently to grant a security interest in Capital Calls and capital commitments to the Lenders and to honor requests for cash contributions, also known as ''drawdowns'', made on behalf of the Lenders without recourse to any defenses against the General Partner. Each of the Trust Fiduciaries individually represents that it is independent of and unrelated to BTC and the Lenders and that the investment by the Trust for which that Fiduciary is responsible continues to constitute a favorable investment for the Plan(s) participating in that Trust and that the execution of the Estoppel is in the best interests and protective of the participants and beneficiaries of such Plan(s). In the event another Plan proposes to become a Partner, the applicant represents that it will require similar representations to be made by such Plan's independent fiduciary. Any Plan proposing to become a Partner in the future and needing to avail itself of the exemption proposed herein will have assets of not less than $100 million[4], and not more than 5% of the assets of such Plan will be invested in the LP. As noted in paragraph 9 above, the Northrop Plans, the Union Underwear Plan, the Mayo Plan and the Memorial Hospital Plan all have total assets which exceed $100 million and have committed amounts to the LP which are less than 5% of their total assets.

14. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' investments in the LP were authorized and are overseen by the Fiduciaries, which are independent of the Lenders and BTC, and other Plan investments in the LP from other employee benefit plans subject to the Act will be authorized and monitored by independent Plan fiduciaries; (2) None of the Lenders (including BTC) has any influence, authority or control with respect to any of the Trusts' investment in the LP or the Trusts' execution of the Estoppel; (3) Each Fiduciary invested in the LP on behalf of a Plan with the knowledge that the Estoppel is required of all Partners investing in the LP, and all other Plan fiduciaries that invest their Plan's assets in the LP will be treated the same as other Partners are currently treated with regard to the Estoppel; (4) Any Plan which has invested or may invest in the LP in the future, which needs to avail itself of the exemption proposed herein, has or will have assets of not less than $100 million,[5] and not more than 5% of the assets of any such Plan are or will be invested in the LP; and (5) the General Partner of the LP is independent of BTC, the Lenders and the Plans.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Donaldson, Lufkin & Jenrette Securities Corporation (DLJ), Located in New York, NY

[Exemption Application No. D–10772]

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).[6]

Section I. Covered Transactions

A. The restrictions of section 406(a)(1))(A) through (D) 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 (D) of the Code, shall not apply to any purchase or sale of a security between certain affiliates of DLJ which are foreign broker-dealers (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, DLJ or a Foreign Affiliate provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer;

(2) The terms of any transaction are at least as favorable to the Plan as those which the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the 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, and the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason

all aspects of the LP's proposed real estate investment program in order to determine whether the requirements of the Department's regulations will be met.

[3] In this regard, the Department cautions Plan fiduciaries to fully understand all aspects of the Agreement, including the terms of the Estoppel, prior to making any capital commitments to the LP. The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently when making investment decisions for the plan.

[4] In the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis, (e.g., through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans.

[5] See footnote 4, *ibid.*

[6] For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

of a relationship to a person described in such sections. For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(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 (D) of the Code, shall not apply to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to any Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder if such Act, rules or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) 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 (D) of the Code, shall not apply to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of 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;

(2) The Plan receives from the Foreign Affiliate (by physical delivery or by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day on which the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either (a) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made 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 that the Plan would have received (net of tax withholdings)[7] had it remained the record owner of such securities.

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change;

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively such period as permitted by Prohibited Transaction Class Exemption (PTCE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded.[8]

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (9), the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan, the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as

[7] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not lent the securities.

[8] PTCE 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 a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein).

described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b–1. However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of section 404(b) of the Act, the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code.

If the Foreign Affiliate fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

Section II. *General Conditions*

A. The Foreign Affiliate is a registered broker-dealer subject to regulation by a governmental agency, as described in Section III. B., and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (the SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements.

C. Prior to the transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions.

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E, to determine whether the conditions of this exemption have been met except that—

(1) A party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination, as required by paragraph E.; and

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of the Foreign Affiliate, such records are lost or destroyed prior to the end of such six year period;

E. Notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to above in paragraph D., unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(1) The Department, the Internal Revenue Service or the SEC;

(2) Any fiduciary of a Plan;

(3) Any contributing employer to a Plan;

(4) Any employee organization any of whose members are covered by a Plan; and

(5) Any participant or beneficiary of a Plan. However, none of the persons described above in paragraphs (2)–(5) of this paragraph E. shall be authorized to examine trade secrets of the Foreign Affiliate, or any commercial or financial information which is privileged or confidential.

F. Prior to any Plan's approval of any transaction with a Foreign Affiliate, the Plan is provided copies of the proposed and final exemption with respect to the exemptive relief granted herein.

Section III. Definitions

For purposes of this proposed exemption,

A. The term ''DLJ'' as referred to in Parts A., B., and C. of Section I., means Donaldson, Lufkin & Jenrette Securities Corporation.

B. The term ''affiliate'' of another person shall include:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

C. The term ''Foreign Affiliate,'' shall mean a current or future affiliate of DLJ that is subject to regulation as a broker-dealer by—

(1) The Securities and Futures Authority (the SFA), in the United Kingdom; or

(2) The Australian Securities & Investments Commission (ASIC) in Australia.

C. The term ''security'' shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

Summary of Facts and Representations

1. DLJ is a broker-dealer registered with the SEC, a full-line investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States, and a member of the National Association of Securities Dealers. DLJ is one of the largest investment services firms in the United States. DLJ is the principal operating subsidiary of Donaldson, Lufkin & Jenrette, Inc. (DLJ, Inc.) which is currently owned by The Equitable Companies Incorporated as well as public shareholders. As of March 31, 1999, DLJ, Inc. had total assets of $90,254,264,000 and $3,069,124,000 in stockholders' equity.

DLJ has several foreign affiliates that are broker-dealers or banks. The proposed exemption would cover the Foreign Affiliates listed below, any current or future affiliates that meet the requirements of the exemption and their respective regulating entities as follows:

(a) *London Global Securities,* located in London, England, is subject to regulation in the United Kingdom by the SFA; and

(b) *DLJ Australia Pty. Ltd.*, located in Melbourne, Victoria, Australia will be subject to regulation by ASIC.

DLJ requests an individual exemption to permit the Foreign Affiliates identified above, as well as those others which, in the future, may be subject to governmental regulation in the United Kingdom and Australia,[9] to engage in

[9] For a description of the SFA, see Representations 5 and 6 of the Notice of Proposed Exemption for Barclays Bank PLC (63 FR 53714,

Continued

the securities transactions described below with Plans. The proposed exemption is necessary because the Foreign Affiliates may be parties in interest with respect to the Plans under the Act, by virtue of being a fiduciary (for assets of the Plans other than those involved in the transactions) or a service provider to such Plans, or by virtue of a relationship to such fiduciary or service provider.

2. DLJ represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country. DLJ further represents that registration of a foreign broker-dealer with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: the protection of the investor by the regulation of the securities market.

The United Kingdom and Australia both have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

DLJ represents that in connection with the transactions covered by this proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act (as discussed further in Representation 6, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

Principal Transactions

3. DLJ represents that the Foreign Affiliates operate as traders in dealers' markets wherein they customarily purchase and sell securities for their own account in the ordinary course of their business as broker-dealers and engage in purchases and sales of securities, including options on securities, with their clients. Such trades are referred to as principal transactions. DLJ represents that the role of a broker-dealer in a principal transaction in the subject foreign countries is virtually identical to that of a broker-dealer in a principal transaction in the United States.

DLJ requests an individual exemption to permit the Foreign Affiliates to engage in principal transactions with the Plans under terms and conditions equivalent to those required in PTCE 75–1 (40 FR 50845, October 31, 1975), Part II.[10] DLJ states that because PTCE 75–1 provides an exemption only for U.S. registered broker-dealers, the principal transactions at issue would fall outside the scope of relief provided by PTCE 75–1.[11]

4. DLJ represents that like the U.S. dealer markets, international equity and debt markets, including the options markets, are not less dependent on a willingness of dealers to trade as principals. Over the past decade, Plans have increasingly invested in foreign equity and debt securities, including debt securities issued by foreign governments. Thus, Plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with the Foreign Affiliates.

5. Under the conditions of this proposed exemption, as in PTCE 75–1, Part II, the Foreign Affiliate must customarily purchase and sell securities for its own account in the ordinary course of its business as a broker-dealer. The terms of any principal transaction will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm' length transaction with an unrelated party. Neither the Foreign Affiliate nor an affiliate thereof will have discretionary authority or control with respect to the investment of the Plan assets involved in the principal transaction or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. In addition, the Foreign Affiliate will be a party in interest or disqualified person with respect to the Plan assets involved in a principal transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code (i.e., a service provider to the Plan), or by reason of a relationship to such a person as described in such sections.

6. DLJ represents that Rule 15a–6 of the 1934 Act provides an exemption from U.S. registration requirements 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 ''major U.S. institutional investor,'' provided that the foreign broker dealer, among other things, enters into these transactions through a U.S. registered broker or 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 Act of 1933, as amended.

The term ''major U.S. institutional investor,'' as defined in Rule 15a–6(b)(4), includes a U.S. institutional investor that has total assets in excess of $100 million.[12] DLJ represents that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

DLJ 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 in accordance with Rule 15a-6 must, among other things:

(a) Provide written consent to service of process for any civil action brought by or proceeding before the SEC or a self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody

53717, October 6, 1998). Similarly, for a description of ASIC, see Representation 2 of the Notice of Proposed Exemption for Citibank, N.A. and Salomon Smith Barney, Inc. (64 FR 10493, 10496, March 4, 1999).

[10] PTCE 75–1, Part II, provides an exemption, under certain conditions, from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for principal transactions between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans.

[11] The Department notes that the proposed principal transactions are subject to the general fiduciary responsibility provisions of Part 4 of Title I of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the plan and its participants and beneficiaries, when making investment decisions on behalf of the plan.

[12] Note that a SEC No-Action Letter has expanded the categories of entities that qualify as ''major U.S. institutional investors.'' See SEC No-Action letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

or control, 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 or dealer through which the principal transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effecting the transactions, other than negotiating their terms;

(2) Issuing all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extending or arranging for the extension of credit in connection with the transactions;

(4) Maintaining 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; [13]

(5) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or the major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); [14] and

(6) Participating in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the major U.S. institutional investor) and accompanying the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See the April 9, 1997 No-Action Letter).[15]

Extensions of Credit

7. DLJ represents that a normal part of the execution of securities transactions by broker-dealers on behalf of clients, including Plans, is the extension of credit to clients so as to permit the settlement of transactions in the customary settlement period. Such extensions of credit are customary in connection with the buying and writing of option contracts.

DLJ requests that the proposed exemption include relief for extensions of credit to the Plans by the Foreign Affiliates in the ordinary course of their purchases or sales of securities, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts. In this regard, an exemption for such extensions of credit is provided under PTCE 75–1, Part V, only for transactions between Plans and U.S. registered broker-dealers and banks.[16]

8. Under the conditions of this proposed exemption, as in PTCE 75–1, Part V, the Foreign Affiliate may not be a fiduciary with respect to Plan assets involved in the transaction. However, an exception to such condition would be provided herein, as in PTCE 75–1, if no interest or other consideration were received by the Foreign Affiliate or an affiliate thereof, in connection with any such extension of credit. In addition, the extension of credit must be lawful under the 1934 Act and any rules or regulations thereunder, if the 1934 Act rules or regulations were applicable. If the 1934 Act would not be applicable, the extension of credit must still be lawful under applicable foreign law, in the country where the particular Foreign Affiliate is domiciled.

Securities Lending

9. The Foreign Affiliates, acting as principals, actively engage in the borrowing and lending of securities, typically foreign securities, from various institutional investors, including employee benefit plans.

DLJ requests an exemption for securities lending transactions between the Foreign Affiliates and the Plans under terms and conditions equivalent to those required in PTCE 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987).[17] Because PTCE 81–6 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue would fall outside the scope of relief provided by PTCE 81–6.

10. The Foreign Affiliates utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities that need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that a broker-dealer is required to deliver. DLJ represents that foreign broker-dealers are those broker-dealers most likely to seek to borrow foreign securities. Thus, the requested exemption will increase the lending demand for such securities, providing the Plans with increased securities lending opportunities, which will earn such Plans additional rates of return on the borrowed securities (as discussed below).

11. An institutional investor, such as a pension plan, lends securities in its portfolio to a broker-dealer in order to earn a fee while continuing to enjoy the benefits of owning securities (e.g., from the receipt of any interest, dividends or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash, irrevocable U.S. bank letters of credit issued by a bank other than a Foreign Affiliate, or high quality liquid securities such as U.S. Government or Federal Agency obligations.

12. With respect to the subject securities lending transactions, neither the Foreign Affiliate nor an affiliate of the Foreign Affiliate will have discretionary authority or control with respect to the investment of Plan assets involved in the transaction, or render investment advice, within the meaning of 29 CFR 2510.3–21(c) with respect to those assets.

13. By the close of business on the day the loaned securities are delivered, the Plan will receive from the Foreign Affiliate (by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral will be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and will be held in the United States. The collateral will have, as of the close of business on the business day

[13] DLJ represents that all such requirements relating to recordkeeping of principal transactions would be applicable to any Foreign Affiliate in a transaction that would be covered by this proposed exemption.

[14] 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 a Plan and a Foreign Affiliate. Please note that in such situations (as in other situations covered by Rule 15a-6), 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.

[15] 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 a Plan and a Foreign Affiliate. Please note that in such situations (as in other situations covered by Rule 15a-6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a-6.

[16] PTCE 75–1, Part V, provides an exemption, under certain conditions, from section 406 of the Act and section 4975(c)(1) of the Code, for extensions of credit, in connection with the purchase or sale of securities, between employee benefit plans and U.S. registered broker-dealers that are parties in interest with respect to such plans.

[17] PTCE 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 U.S. registered broker-dealers that are parties in interest with respect to such plans.

preceding the day it is posted by the Foreign Affiliate, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same).

14. The loan will be made pursuant to a written Loan Agreement, which may be in the form of a master agreement covering a series of securities lending transactions between the Plan and the Foreign Affiliate. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Foreign Affiliate pay all transfer fees and transfer taxes relating to the securities loans.

15. In return for lending securities, the Plan will either (a) receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) have the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party.

Earnings generated by non-cash collateral will be returned to the Foreign Affiliate. The Plan will be entitled to at least the equivalent of all distributions on the borrowed securities made during the term of the loan. Such distributions will include cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings) had it remained the record owner of such securities.

16. If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate will deliver additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent.

17. Before entering a Loan Agreement, the Foreign Affiliate will furnish to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

18. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of a reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or alternatively, such period as permitted by PTCE 81–6, as it may be amended or superseded. In the event the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the designated time, the Plan will have certain rights under the Loan Agreement to realize upon the collateral. The Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with replacing the borrowed securities. The Foreign Affiliate is obligated to pay to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate as determined in accordance with an independent market source. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary.

19. The independent Plan fiduciary will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b–1.[18]

20. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) With respect to principal transactions effected by the Foreign Affiliates, the proposed exemption will enable Plans to realize the same benefits of efficiency and convenience which such Plans could derive from principal transactions with U.S. registered broker-dealers pursuant to PTCE 75–1, Part II;

(b) With respect to extensions of credit in connection with purchases or sales of securities, the proposed exemption will enable the Foreign Affiliates and the Plans to extend credit in the ordinary course of the Foreign Affiliate's business to effect agency or principal transactions within the customary settlement period, or in connection with the writing of options contracts, for transactions between plans and broker-dealers, as is possible for U.S. registered broker-dealers pursuant to PTCE 75–1, Part V;

(c) With respect to securities lending transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions executed by Plans and U.S. registered broker-dealers or U.S. banks, pursuant to PTCE 81–6; and

(d) The proposed exemption will provide Plans with virtually the same protections and benefits as those provided by PTCE 75–1 and PTCE 81–6.

Notice to Interested Persons

The applicant represents that because those Plans that will be potentially interested in the transactions cannot be identified at this time, the only practical means of notifying Plan fiduciaries is by the publication of the notice of proposed exemption in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department not later than 30 days from the date of the publication of this 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.)

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

[18] Section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor.

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 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 that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of September 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–24940 Filed 9–23–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–117]

Notice of Prospective Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective copyright license.

SUMMARY: NASA hereby gives notice that Vanguard Integrity Professionals of Orange, CA has applied for an exclusive copyright license described and claimed in NASA Software entitled ''Enforcer'' Version 5.0 and ''CERU'' Version 2.0, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Johnson Space Center.

DATE: Responses to this notice must be received by November 23, 1999.

FOR FURTHER INFORMATION CONTACT: Hardie Barr, National Aeronautics and Space Administration, Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452, telephone (281) 483–1002.

Dated: September 16, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–24942 Filed 9–23–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–118]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that TechConsulting, of South Pasadena, California, has applied for an exclusive license to practice the invention disclosed in U.S. Patent No. 4,975,704 entitled ''Method for Detecting Surface Motions and Mapping Small Terrestrial or Planetary Surface Deformations with Synthetic Aperture Radar,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the NASA Management Office at the Jet Propulsion Laboratory.

DATES: Responses to this notice must be received by November 23, 1999.

FOR FURTHER INFORMATION CONTACT: John H. Kusmiss, Assistant Patent Counsel, NASA Management Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, Mail Station 180–801, Pasadena, CA 91109–8099; (818) 354–7770.

Dated: September 16, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–24943 Filed 9–23–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Change of Subject of Meetings, Sunshine Act Notice

The National Credit Union Administration Board determined that its business requires the deletion of the following items from the previously announced open meeting (**Federal Register,** Vol. 64, No. 177, Page 49823, Tuesday, September 14, 1999) scheduled for Thursday, September 16, 1999.

6. Proposed Rule: Amendments to Parts 724 and 745, NCUA's Rules and Regulations, Individual Retirement Accounts in Puerto Rico Federal Credit Unions.

7. Board Resolution to Clarify Board Policy and Agency Procedures on Community Charter Conversions as per IRPS 99–1.

The Board voted unanimously that agency business requires that these items be deleted from the open agenda and that no earlier announcement of this change was possible.

The National Credit Union Administration Board also determined that its business requires the deletion of the following item from the previously announced closed meeting.

2. One (1) Personnel Matter. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that agency business requires that this item be deleted from the closed agenda and that no earlier announcement of this change was possible.

The previously announced agenda was:

TIME AND DATE: 2:30 p.m., Thursday, September 16, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Amendment to IRPS 99–1: Establishing Low-Income Member Service Requirement.

2. Two (2) Requests from Federal Credit Unions to Convert to Community Charters.

3. Request from a Corporate Federal Credit Union for a National Field of Membership Amendment.

4. Request for a Merger of Two Corporate Federal Credit Unions.

5. Proposed Rule: Amendment to Part 701, NCUA's Rules and Regulations, Share Overdraft Accounts.

6. Proposed Rule: Amendments to Parts 724 and 745, NCUA's Rules and Regulations, Individual Retirement Accounts in Puerto Rico Federal Credit Unions.

7. Board Resolution to Clarify Board Policy and Agency Procedures on Community Charter Conversions as per IRPS 99–1.

RECESS: 3:45 p.m.

TIME AND DATE: 4:00 p.m., Thursday, September 16, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Two (2) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–25039 Filed 9–22–99; 1:01 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Seek Approval to Extend without Revision an Expired Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by November 23, 1999, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x 2017; or send email to splimpto@nsf.gov. 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. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection

An Evaluation of Awards Made under the NSF Design and Manufacturing Research Programs.

OMB Approval Number: 3145–0167.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to reinstate without revision an information collection for three years.

Abstract: An Evaluation of the Outcomes and Impacts of awards made in the Division of Design, Manufacture, and Industrial Innovation (DMII) in FYs 1989–90. The ability of the National Science Foundation to continue a high level of support for university-based research is becoming increasingly dependent on the ability of NSF and its research partners to explain the impact of funded research on the lives of the U.S. citizens who provide those funds. The Foundation has no systematic evidence regarding the frequency of such events among awards made in 1989 and 1990, some of which were from unsolicited proposals and others were from proposals in three special initiative areas: Strategic Manufacturing, Technology Management, and Industrial Internships. Furthermore, nothing is known about the process by which any outcomes may have occurred. A pilot study of DMII research program awards from 1986 using the same instruments was conducted several years ago. To assist DMII in reporting accurately about the results from more recent awards, especially those made in three initiatives areas—Technology Management, Strategic Manufacturing, and Industrial Internships—and managing its present research programs, the Division woud like to reinstate without change data collection 3145–0167.

Some 250 Principal Investigators(PIs) and co-Principal Investigators (co-PIs) who were recipients of DMII research program awards in FY 1989–90 will be asked to provide via e-mail:

(1) A brief one-page narrative regarding the outcomes and impacts of the project;

(2) Citations to 3 to 5 key journal articles, books or patents that resulted from the project, or in which the project played an important role;

(3) the names, addresses and telephone numbers of between 3 and 5 other individuals who are familiar with the work carried out under the project, and who could provide additional insights as to its outcomes and impacts; and

With regard to the narrative materials, the following information will be requested:

(A) Complete project title.

(B) Key project participants and their institutional affiliations.

(C) Time frame during which project was conducted.

(D) Principal outputs or results of the project.

(E) Longer term outcomes and follow-on impacts of the project.

(F) The researcher's best assessment of the impact of this NSF-funded research on the current (1999) state of design and manufacturing technology relevant to the award, including any known commercial implementations.

(G) Any other observations that the researcher wishes to make (e.g., regarding the promotion of a significant discovery, creation of a significant research capability, promotion of new knowledge flowing to society).

The narratives, citations, and names of others knowledgeable about the project may be submitted using the Internet or regular mail.

Technical experts will review and assess the narratives submitted by the awardees, then select a total of examples of awards with outstanding results and awards with limited results. A total of 30 brief case studies will be prepared by the contractor—15 about awards with outstanding results and 15 about awards with limited results—in order to understand better what occurred and factors contributing to or limiting impacts.

DMII has contracted with Abt Associates, Inc. of Cambridge, Massachusetts, to conduct the study and prepare reports following the methodology they used in the pilot project.

Use of Information: The information collected will be used to assist DMII in the evaluation of these programs, and in considering various programs priorities

and selection procedures for future projects in this area. NSF also will use the results to satisfy requirements of the Government Performance and Results Act (GPRA).

Confidentiality: No sensitive information is being requested in the collection.

Estimate of Burden: The Foundation estimates that, on average, two hours will be required to prepare the narratives, or a total of 500 hours for all 250 PIs and co-PIs. In addition, it anticipates 4 hours of interviews of an average of four people for each of 30 case studies, or 120 hours. Thus, total burden is estimated at 620 hours.

Respondents: Individuals.

Estimated Number of Responses: 370.

Estimated Total Annual Burden on Respondents: 620 hours.

Frequency of Responses: Once.

Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 20, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 99–24892 Filed 9–23–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture and Industrial Innovation (1194).

Date & Time: October 6, 7, 8, 14, 15, 18, 19, and 22, 1999. 8:30 a.m.–5:00 p.m.

Place: Rooms 340, 360, 375 and 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Joseph Hennessey, Program Manager, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacture and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, VA 22230, Telephone (703) 306–1395, x 5283.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 21, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–25005 Filed 9–23–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Duke Energy Corporation; (McGuire Nuclear Station, Units 1 and 2); Exemption

[Docket Nos. 50–369 and 50–370]

I

Duke Energy Corporation et al. (the licensee) is the holder of Facility Operating License Nos. NPF–9 and NPF–17, for the McGuire Nuclear Station (MNS), Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized water reactors located at the licensee's site in Mecklenberg County, North Carolina.

II

Title 10 of the Code of Federal Regulations (10 CFR) part 50, appendix A, specifies general design criteria for nuclear power plants. General Design Criterion (GDC) 57, regarding closed system isolation valves, states:

> Each line that penetrates primary reactor containment and is neither part of the reactor coolant pressure boundary nor connected directly to the containment atmosphere shall have at least one containment isolation valve which shall be either automatic, or locked closed, or capable of remote manual operation. This valve shall be outside containment and located as close to the containment as practical. A simple check valve may not be used as the automatic isolation valve.

The Commission may grant an exemption from the requirements of the regulations pursuant to 10 CFR 50.12 if the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are considered to be present under 10 CFR 50.12(a)(2) where application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission or where application of the regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III

By letter dated April 20, 1999, the licensee requested an exemption from GDC–57 for Containment Penetrations M261 and M393, which are main steam penetrations. These lines penetrate the containment and are not part of the reactor coolant pressure boundary, nor are they connected directly to the containment atmosphere. Outside of the containment, these lines branch into various separate, individual lines before reaching the respective main steam isolation valves. From each of these main steam lines, one branch supplies main steam to the turbine-driven auxiliary feedwater (TDCA, using the licensee's abbreviation) pump.

Valves SA–1, SA–2, SA–77, and SA–78 are manual gate valves located in the Interior Doghouse immediately downstream of the respective main steam piping, in the branch lines that supply main steam to the TDCA. These valves are locked open and can only be operated by local manual operation. These valves are required to be open by the Technical Specifications (TS) in order to supply steam to the TDCA, which is part of the engineered safety features. From a probabilistic risk assessment (PRA) perspective, the TDCA is one of the most risk-significant safety system components. Adding motor operators to valves SA–1, SA–2, SA–77, and SA–78, so that they become automatic or capable of remote operation (i.e., meeting GDC–57) would degrade the reliability of the TDCA to mitigate an accident because the motor operators would introduce a new failure mode. Keeping SA–1, SA–2, SA–77, and SA–78 closed (i.e., meeting GDC–57)

during plant operation would violate a TS requirement.

Valves SA–1, SA–2, SA–77, and SA–78 can be manually closed, as needed during certain accidents, to isolate the steam lines they serve. If SA–1, SA–2, SA–77, and SA–78 are inaccessible due to post-accident environmental conditions, the associated stop check valves can be used to isolate these steam lines. The licensee stated that the amount of time needed by operators to isolate steam using SA–1, SA–2, SA–77, and SA–78, or their associated stop check valves SA–5 and SA–6, has been factored into the accident analyses and resultant dose calculations in the Updated Final Safety Analysis Report.

Thus, as stated in the staff's safety evaluation, modifying valves SA–1, SA–2, SA–77, and SA–78 so that they can meet the operational requirement specified by GDC–57 would reduce the reliability of the TDCA and violate an existing TS. The time needed by operators to manually close SA–1, SA–2, SA–77, and SA–78 or their associated stop check valves SA–5 and SA–6, during an accident, has been factored into accident analyses. The applicable design-basis accident scenarios and consequences continue to be bounding. On such bases, the staff concludes that literal compliance with the operational aspect of GDC–57 is not desirable and the proposed exemption is acceptable.

IV

Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). Specifically, the Commission finds that application of GDC–57 with respect to valves SA–1, SA–2, SA–77, and SA–78 conflicts with existing TS and is not necessary to achieve the underlying purpose of the rule. The underlying purpose of GDC–57 is to ensure that reliable means exist to isolate this type of line when isolation is needed. As discussed above, valves SA–1, SA–2, SA–77, and SA–78, or SA–5 and SA–6, can be manually closed to isolate their respective steam lines. Thus, the design of these valves and the existence of appropriate procedures for manually closing these valves provide a reliable method of isolating the steam lines when needed. The Commission hereby grants the licensee an exemption from the requirement of 10 CFR part 50, appendix A, GDC–57. Specifically, this exempts the licensee from having to lock close valves SA–1, SA–2, SA–77, and SA–78 against TS requirements, or having to so modify them that they become automatic, or are capable of remote manual operation.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR 50839).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of September 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–24900 Filed 9–23–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 3104 and SF 3104B

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. SF 3104, Application for Death Benefits/Federal Employees Retirement, is used by persons applying for benefits which may be payable under the Federal Employees Retirement System (FERS) because of the death of an employee, former employee, or retiree who was covered by FERS at the time of his/her death or separation from Federal Service. SF 3104B, Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death, is used by applicants for death benefits under FERS if the deceased was a Federal employee at the time of death.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

It is estimated that approximately 4,873 SF 3104s will be processed annually. This form requires approximately 60 minutes to complete. An annual burden of 4,873 hours is estimated. Approximately 3,188 SF 3104Bs are expected to be processed annually. It is estimated that the form requires approximately 60 minutes to complete. An annual burden of 3,188 hours is estimated. The total annual burden is 8,061.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before November 23, 1999.

ADDRESSES: Send or deliver comments to—John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–24859 Filed 9–23–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 92–19]

Proposed Collection; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 92–19, Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS), is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the

public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1,272 forms are completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual estimated burden is 1,272 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before November 23, 1999.

ADDRESSES: Send or deliver comments to—John Crawford, Chief FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–24860 Filed 9–23–99; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to amend two systems of records.

SUMMARY: OPM proposes to amend two systems of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency (5 U.S.C. 552a(e)(4)).

DATES: The changes will be effective without further notice on November 3, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: This notice covers OPM/INTERNAL–4 and OPM/INTERNAL–9. The location and manager for OPM/INTERNAL–4 have been updated to reflect the realignment of the Health Unit from the Office of Contracting and Administration Services to the Office of Human Resources and EEO. OPM/INTERNAL–9 has been amended to reflect the agency's current organizational structure and to delete references to obsolete internal publications.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

OPM/INTERNAL–4

SYSTEM NAME:

Health Program Records.

SYSTEM LOCATION:

Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 for individuals receiving health services at the central office. Other OPM employees receive health services from other agencies, such as the Public Health Service or the General Services Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received health services from OPM's Health Unit at 1900 E Street NW.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of an individual's utilization of services provided by the OPM Health Unit. These records contain the following information:

a. Medical history and other biographical data on those individuals requesting employee health maintenance physical examinations.

b. Test reports and medical diagnoses based on employee health maintenance physical examinations or health screening programs (tests for medical conditions or diseases).

c. History of complaint(s), assessment, and treatment of injuries and illness presented to Health Unit staff.

d. Immunization records.

e. Medication administered by Health Unit staff.

f. Referrals to other health care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 7901, as further defined in OMB Circular No. A–72.

PURPOSE(S):

These records document utilization of health services provided by OPM's Health Unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 3, 4, and 7 of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To refer information required by applicable law to be disclosed to a Federal, State, or local public health service agency, concerning individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition.

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority.

c. To disclose to the Office of Workers' Compensation Programs in connection with a claim for benefits filed by an employee.

Note: Disclosure of these records beyond officials of OPM having a bona fide need for them or to the person to whom they pertain, is rarely made, as disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restriction of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations 42 CFR part 2. Records pertaining to the physical and mental fitness of employees are, as a matter of OPM policy, afforded the same degree of confidentiality and are generally not disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained as hard copy records.

RETRIEVABILITY:

These records are retrieved by the name, date of birth, or Social Security Number of the individual to whom they pertain.

SAFEGUARDS:

These records are maintained in lockable file cabinets in a room with access limited to Health Unit personnel whose duties require access.

RETENTION AND DISPOSAL:

Records of the central office Health Unit are maintained up to six years from the date of the last entry. Employees are given their records on request upon separation. Otherwise, the records are burned approximately three months after separation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Health Unit, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full Name.
b. Any former name.
c. Date of birth.
d. Social Security Number.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Any former name.
c. Date of birth.
d. Social Security Number.

Any individual requesting access must also follow OPM's Privacy Act regulation regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Any former name.
c. Date of birth.
d. Social Security Number.

An individual requesting amendment must also follow OPM's Privacy Act regulation verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual to whom the information pertains.
b. Laboratory reports and test results.
c. OPM Health Unit physicians, nurses and other medical technicians who have examined, tested, or treated the individual.
d. The individual's coworkers or supervisors.
e. The individual's personal physician.
f. Other Federal employee health units.

OPM/INTERNAL–9

SYSTEM NAME:

Employee Locator Card Files.

SYSTEM LOCATION:

Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of OPM.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location and telephone extension of individual OPM employees. The system also contains the home address and telephone number of the employee and the name, address, and telephone number of an individual to contact in the event of a medical or other emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 301.

PURPOSE(S):

Information is collected for this system in order to identify an individual for OPM officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job. These records may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1 through 11 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. There are no routine uses unique to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards or in an automated format.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in secured areas and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an employee of OPM. Expired records are destroyed by burning, shredding, or erasure of tapes/disks.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

OPM employees wishing to inquire whether this system contains information about them should contact the system manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

RECORD ACCESS PROCEDURE:

OPM employees wishing to request access to records about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

OPM employees may amend information in these records at any time by resubmitting updated information. Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

Individuals requesting amendment must also follow OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information is provided by the individual who is the subject of the record.

[FR Doc. 99–24861 Filed 9–23–99; 8:45 am]
BILLING CODE 6325–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 12:30 p.m., Monday, October 4, 1999; 8:30 a.m., Tuesday, October 5, 1999.

PLACE: Kansas City, Missouri, at the Ritz-Carlton Hotel, 401 Ward Parkway, in Salon III Room.

STATUS: October 4 (Closed); October 5 (Open).

MATTERS TO BE CONSIDERED:

Monday, October 4–12:30 p.m. (Closed)

1. Financial Performance.
2. Rate Case Briefing.
3. Los Angeles, California, Terminal Annex.
4. Fiscal Year 2000 EVA Program.
5. Compensation Issues.
6. Personnel Matters.

Tuesday, October 5–8:30 p.m. (Open)

1. Minutes of the Previous Meeting, August 30–31, 1999.
2. remarks of the Postmaster General/Chief Executive Officer.
3. Board of Governors Year 2000 Meeting Schedule.
4. Office of the Governors FY 2000 Budget.
5. Report on the Mid-America Performance Cluster.
6. Tentative Agenda for the November 1–2, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone: (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–25056 Filed 9–22–99; 2:24 pm]

BILLING CODE 7710–12–M

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:* Request for Review of Part B Medicare Claim.

(2) *Form(s) submitted:* G–790, G–791.

(3) *OMB Number:* 3220–0100.

(4) *Expiration date of current OMB clearance:* 11/30/1999.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or Households.

(7) *Estimated annual number of respondents:* 4,000.

(8) *Total annual responses:* 4,100.

(9) *Total annual reporting hours:* 1,025.

(10) *Collection description:* The Railroad Retirement Board administers the Medicare program for persons covered by the Railroad Retirement system. The request provides the means for obtaining reviews by the UnitedHealthcare Insurance company on claims for Part B Medicare benefits.

Additional Information or Comments

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. 99–24870 Filed 9–23–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27076]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 20, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by October 12, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 12, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Energy Group, et.al. (70–9491)

Columbia Energy Group ("Columbia"), 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, a registered holding company, and its nonutility subsidiary companies, Columbia Energy Group Service Corporation ("CES"), Columbia LNG Corporation, CLNG Corporation, Cove Point LNG Limited Partnership, Columbia Atlantic Trading Corporation, Columbia Energy Services Corporation, Columbia Energy Retail Corporation ("CRC"), Columbia Energy Power Marketing Corporation ("CPM"), Columbia Energy Marketing Corporation ("CEM"), Energy.Com Corporation ("Energy.Com"), Columbia Service Partners, Inc. ("CSP"), Columbia Assurance Agency, Inc. ("CAA"), Columbia Energy Group Capital Corporation, Columbia Transmission Communications Corporation, Tristar Gas Technologies, Inc., Enertek Partners, L.P., Columbia Pipeline Corporation, Columbia Deep Water Services Corporation, Columbia Finance Corporation, Columbia Accounts Receivable Corporation, Columbia Electric Corporation, Columbia Electric Pedrick Limited Corporation, Columbia Electric Pedrick General Corporation, Columbia Electric Binghamton Limited Corporation, Columbia Electric Binghamton General Corporation, Columbia Electric Vineland Limited Corporation, Columbia Electric Vineland General Corporation, Columbia Electric Rumford Limited Corporation, Columbia Electric Limited Holdings Corporation, Columbia Electric Liberty Corporation, Columbia Electric Gregory Remington Corporation, and Columbia Electric Gregory General Corporation, all located at 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600; Columbia Energy Resources, Inc., Columbia Natural Resources, Inc., Alamco-Delaware, Inc., Hawg Hauling & Disposal, Inc., Phoenix-Alamco Ventures, L.L.C., and Columbia Natural Resources Canada, Ltd., all

located c/o 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Gas Transmission Corporation and Millennium Pipeline, L.P., both located at 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146; Columbia Gulf Transmission Company, Trailblazer Pipeline Company, and CGT Trailblazer, L.L.C., all located at 2603 Augusta, Suite 125, Houston, Texas 77057; Columbia Network Services Corporation, CNS Microwave, Inc., and Energynet, L.L.C., all located at 1600 Dublin Road, Columbus, Ohio 43215–1082; Columbia Propane Corporation and Atlantic Energy, Inc., both located at 9200 Arboretum Parkway, Suite 140, Richmond, Virginia 23236; and Columbia Insurance Corporation, Ltd., Craig Appin House, 8 Wesley Street, Hamilton HM EX, Bermuda, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 42, 43, 45, and 54 under the Act.

In summary, applicants seek increased flexibility to restructure Columbia's nonutility holdings from time to time as may be necessary or appropriate in the furtherance of its authorized nonutility activities. The restructuring could involve the formation of one or more new special-purpose subsidiaries to hold direct or indirect interests in any or all of the Columbia system's existing or future authorized nonutility businesses. The restructuring could also involve the transfer of existing subsidiaries, or portions of existing businesses, among Columbia associates and/or the reincorporation of existing subsidiaries in a different state.[1] This flexibility would enable the Columbia system to consolidate similar businesses and to participate effectively in authorized nonutility activities, without the need to apply for or receive additional Commission approval.

These direct or indirect subsidiaries might be corporations, partnerships, limited liability companies or other entities in which Columbia, directly or indirectly, might have a 100% interest, a majority equity or debt position, or a minority debt or equity position. These subsidiaries would engage only in businesses to the extent the Columbia system is authorized, whether by statute, rule regulation or order.

As an example, Columbia intends to restructure the interests held by its wholly-owned gas marketing subsidiary, CES. Currently, CES has several subsidiaries engaged in various nonutility businesses. These subsidiaries include CEM, CPM,[2] CRC, CSP, CAA, and Energy.Com. CEM is engaged in the marketing of gas produced by its associate company Columbia Energy Resources, Inc. (formerly named Columbia Natural Resources, Inc.). CPM is an energy products company that markets and brokers various forms of energy, including electric energy, natural gas, manufactured gas, propane, natural gas liquids, oil, refined petroleum and petroleum products, coal and/or wood products and emissions allowances. CRC is engaged in retail electric and gas marketing activities within the United States. CSP provides energy-related services to industrial commercial and residential customers nationwide. CAA, a wholly-owned subsidiary of CSP, was formed to comply with the requirements of state law in connection with bill insurance activities. Energy.Com is an exempt telecommunications company that provides energy consumers access to information on products of affiliated and non-affiliated companies offering energy and energy related products and services, as well as educational information on the energy industry in general.

Specifically, Columbia would reorganize CES and its subsidiaries under a new, first-tier subsidiary (''CES Holdings''). Applicants currently contemplate that CES Holding will own all of the outstanding voting securities of CES, CEM, CPM, CRC, CSP, CAA, and through CES, Energy.COM. Applicants state that each of CES Holdings' subsidiaries will continue to engage in their current activities. CAA will serve as a licensed broker in connection with authorized bill insurance activities.

The proposed restructuring would be accomplished by CEG contributing the stock of CES to a newly-formed, special-purpose subsidiary, CES Holdings, followed by the sale by CES of all the outstanding stock of its subsidiaries, other than Energy.Com, to CES Holdings.[3] However Columbia may, under the proposed authority, adopt a different structure or employ a different method of reorganization, to accomplish the reorganization of CES' nonutility interests.

Columbia will obtain funds for initial and subsequent investments in its new subsidiaries from internally generated funds and/or the proceeds of otherwise authorized financing transactions. Should Columbia provide funds to its new subsidiaries which are then applied to investments in exempt wholesale generators, foreign utility companies, or companies formed in accordance with rule 58, the amount of such funds will be included in the investment limitations imposed by rule 53 or rule 58, as applicable.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24913 Filed 9–23–99; 8:45 am]

BILLING CODE 8010–01–M

[1] This reincorporation could take place by merging an existing subsidiary with a new successor incorporated in the desired state.

[2] Columbia announced its intention to sell its wholesale gas and electric trading operations in an August 30, 1999 press release.

[3] Columbia also intends, under the requested authority, to reincorporate CES in the state of Delaware.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24017; 812–11508]

Pacific Select Fund, et al.; Notice of Application

September 17, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the 'Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: The order would permit applicants to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval.

APPLICANTS: Pacific Select Fund (the ''Fund'') and Pacific Life Insurance Company (''Pacific Life'').

FILING DATES: The application was filed on February 9, 1999, and amended on May 26, 1999 and on September 15, 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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, Pacific Life Insurance

Company, 700 Newport Center Drive, Newport Beach, CA 92660.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526, 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 at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Fund, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Currently, the Fund has eighteen separate portfolios (''Portfolios). The Fund currently serves only as an investment medium for variable life insurance policies and variable annuity contracts issued or administered by Pacific Life, and its affiliates, but may, in the future, sell shares directly to qualified retirement plans.

2. Pacific Life serves as the investment adviser for each of the Portfolios and is registered under the Investment Advisers Act of 1940 (''Advisers Act''). Pacific Life provides investment advisory services and administrative services to the Fund under an Investment Advisory Agreement with the Fund (the ''Advisory Contract''). In its capacity as investment adviser to the Fund, Pacific Life recommends the selection or termination of sub-advisers (''Managers'') to the Fund's board of trustees (''Board''). In addition, Pacific Life oversees and monitors the performance of the Managers and may reallocate a Portfolio's assets among Managers. Each Manager recommended by Pacific Life is approved by the Board, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund (''Independent Trustees''). Each Portfolio pays Pacific Life a fee for its services based on the Portfolio's average daily net assets.

3. Pacific Life has entered into subadvisory agreements (''Subadvisory Agreements'') with eleven Managers, each of which is registered or exempt from registration as an investment adviser under the Advisers Act. One of the Managers, Pacific Investment Management Company, is an affiliate of Pacific Life. Currently, two Portfolios of the Fund are advised by Pacific Life and sixteen Portfolios of the Fund each are advised by one Manager. Subject to general supervision by Pacific Life and the Board, each Manager is responsible for the day-to-day management of the portion of the Portfolio it advises. The Manager's duties consist of making discretionary investment decisions on behalf of its Portfolio and conducting any research that may be necessary to formulate investment decisions. Pacific Life pays the Managers' fees out of the fees Pacific Life receives from each Portfolio.

4. Applicants request an order to permit Pacific Life to enter into Subadvisory Agreements without obtaining shareholder approval.[1] The requested relief will not extend to a Subadvisory Agreement with a Manager that is an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of either the Fund or Pacific Life other than by reason of serving as a Manager to one or more of the Portfolios (''Affiliated Manager'').[2]

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act 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. Applicants request relief under section 6(c) from section 15(a) of the Act and rule 18f–2 under the Act. For the reasons discussed below, applicants state that the requested relief meets the standard of section 6(c).

3. Applicants assert that the Fund's Shareholders, in effect, hire Pacific Life to manage a Portfolio's assets by using external Managers, rather than using Pacific Life's own employees to manage assets directly. Applicants believe that Shareholders expect that Pacific Life, under the overall authority of the Board, will take responsibility for overseeing the Managers and for recommending their hiring, termination, and replacement. Applicants argue that the requested relief will reduce Portfolio expenses associated with Shareholder meetings and proxy solicitations, and enable the Portfolios to operate more efficiently. Applicants also not that the Advisory Contract will remain fully subject to the requirements of section 15 of the Act and rule 18f–2 under the Act, including the requirements for Shareholder approval.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before applicants may rely on the requested order as to any Portfolio, the operation of the Fund and each Portfolio in the manner described in the application will be approved by a majority of its Shareholders or by its initial shareholder, provided that, in the case of approval by the initial shareholder, the pertinent Portfolio's Shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below. Similarly, before a Future Fund may rely on the order requested in the application, the operation of the Future Fund in the manner described in the application will be approved by its initial shareholder before a public offering of shares of such Future Fund, provided that Shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below.

2. The prospectus for the Fund and for each Portfolio will disclose the existence, substance, and effect of any order granted pursuant to the application. In addition, the Fund and each Portfolio will hold itself out as employing the management structure described in the application. The prospectus for the Fund and each Portfolio will prominently disclose that Pacific Life, subject to review of the Board, has ultimate responsibility to oversee the Managers and recommend their hiring, termination, and replacement.

[1] The term ''Shareholders'' includes variable life and annuity contract owners having the voting interest in a separate account for which the Portfolio serves as a funding medium.

[2] Applicants also request relief for (a) any series of the Fund, now existing or organized in the future; and (6) any registered open-end management investment companies, including those that serve as funding vehicles for variable insurance products offered by Pacific Life and its affiliates, that in the future are (i) advised by Pacific Life or any entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with Pacific Life, (ii) use the manager of managers' strategy as described in the application, and (iii) comply with the terms and conditions contained in the application (''Future Funds''). The Fund is the only existing investment company that currently intends to rely on the order.

3. Within 90 days of the hiring of any new Manager, Shareholders of the affected Portfolio will be sent all information about the new Manager that would be included in a proxy statement. Pacific Life will meet this condition by sending to such Shareholders an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934. The Fund will send the information statement to contract owners with contract assets allocated to any subaccount of a registered separate account which invests its assets in the Portfolio undergoing the change in Manager.

4. Pacific Life will not enter into a Subadvisory Agreement with any Affiliated Manager without such agreement, including the compensation to be paid under it, being approved by the Shareholders of the applicable Portfolio.

5. At all times, a majority of the Board of each Fund shall consist of Independent Trustees. The nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

6. Pacific Life will provide general management and administrative services to the Fund and its Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio's securities portfolio and, subject to Board review and approval, will (i) set the Portfolio's overall investment strategies; (ii) recommend and select Managers; (iii) when appropriate, allocate and reallocate the Portfolio's assets among multiple Mangers; (iv) monitor and evaluate the performance of Managers; and (v) implement procedures reasonably designed to ensure that the Managers comply with the Portfolio's investment objectives, policies, and restrictions.

7. No trustee or officer of the Fund or director or officer of Pacific Life who participates directly in Pacific Life's investment advisory activities (including the management or administration of the Fund) or otherwise is able to influence the selection of Mangers, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that director or officer) any interest in a Manager except for (i) ownership of interests in Pacific Life or any entity that controls, is controlled by, or is under common control with Pacific Life; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manger or an entity that controls, is controlled by or is under common control with a Manger.

8. When a Manager change is proposed for a Portfolio with an Affiliated Manger, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Portfolio and its Shareholders, and does not involve a conflict of interest from which Pacific Life, its affiliates or the Affiliated Manger derives an inappropriate advantage.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24868 Filed 9–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24018; File No. 812–11698]

Templeton Variable Products Series Fund, et al.

September 17, 1999.

AGENCY: Securities and Exchange Commission (the ''Commission'' or ''SEC'').

ACTION: Notice of application for an amended order of exemption pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Templeton Variable Products Series Fund (the ''Templeton Trust''), Franklin Templeton Variable Insurance Products Trust (formerly Franklin Valuemark Funds) (the ''VIP Trust,'' and together with the Templeton Trust, the ''Funds''), Templeton Funds Annuity Company (''TFAC'') or any successor to TFAC, and any future open-end investment company for which TFAC or any affiliate is the administrator, sub-administrator, investment manager, adviser, principal underwriter, or sponsor (''Future Funds'') seek amended order of the Commission to (1) add as parties to that order the VIP Trust and any Future Funds and (2) permit shares of the Funds and Future Funds to be issued to and held by qualified pension and retirement plans outside the separate account context.

APPLICANTS: Templeton Variable Products Series Fund, Franklin Templeton Variable Insurance Products Trust, Templeton Funds Annuity Company or any successor to TFAC, and any future open-end investment company for which TFAC or any affiliate is the administrator, sub-administrator, investment manager, adviser, principal underwriter, or sponsor (collectively, the ''Applicants'').

FILING DATE: The application was filed on July 14, 1999, and amended and restated on September 17, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on October 12, 1999, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0609. Applicants: Templeton Variable Products Series Fund and Franklin Templeton Variable Insurance Products Trust, 777 Mariners Island Boulevard, San Mateo, California 94404, Attn: Karen L. Skidmore, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0690.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each of the Funds is registered under the 1940 Act as an open-end management investment company and was organized as a Massachusetts business trust. The Templeton Trust currently consists of eight separate series, and the VIP Trust consists of twenty-five separate series. Each Fund's Declaration of Trust permits the Trustees to create additional series of shares at any time. The Funds currently serve as the underlying investment medium for variable annuity contracts

and variable life insurance policies issued by various insurance companies. The Funds have entered into investment management agreements with certain investment managers (''Investment Managers'') directly or indirectly owned by Franklin Resources, Inc. (''Resources''), a publicly owned company engaged in the financial services industry through its subsidiaries.

2. TFAC is an indirect, wholly owned subsidiary of Resources. TFAC is the sole insurance company in the Franklin Templeton organization, and specializes in the writing of variable annuity contracts. The Templeton Trust has entered into a Fund Administration Agreement with Franklin Templeton Services, Inc. (''FT Services''), which replaced TFAC in 1998 as administrator, and FT Services subcontracts certain services to TFAC. FT Services also serves as administrator to all series of the VIP Trust. TFAC and FT Services provide certain administrative facilities and services for the VIP and Templeton Trusts.

3. On November 16, 1993, the Commission issued an order granting exemptive relief to permit shares of the Templeton Trust to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (Investment Company Act Release No. 19879, File No. 812–8546) (the ''Original Order''). Applicants incorporate by reference into the application the Application for the Original Order and each amendment thereto, the Notice of Application for the Original Order, and the Original Order, to the extent necessary, to supplement the representations made in the application in support of the requested relief. Applicants represent that all of the facts asserted in the Application for the Original Order and any amendments thereto remain true and accurate in all material respects to the extent that such facts are relevant to any relief on which Applicants continue to rely. The Original Order allows the Templeton Trust to offer its shares to insurance companies as the investment vehicle for their separate accounts supporting variable annuity contracts and variable life insurance contracts (collectively, the ''Variable Contracts''). Applicants state that the Original Order does not (i) include the VIP Trust or Future Funds as parties, nor (ii) expressly address the sale of shares of the Funds or any Future Funds to qualified pension and retirement plans outside the separate account context including, without limitation, those trusts, plans, accounts, contracts or annuities described in Sections 401(a), 403(a), 403(b), 408(b), 408(k), 414(d), 457(b), 501(c)(18) of the Internal Revenue Code of 1986, as amended (the ''Code''), and any other trust, plan, contract, account or annuity that is determined to be within the scope of Treasury Regulation 1.817.5(f)(3)(iii) (''Qualified Plans'').

4. Separate accounts owning shares of the Funds and their insurance company depositors are referred to in the application as ''Participating Separate Accounts'' and ''Participating Insurance Companies,'' respectively. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.''

Applicants' Legal Analysis

1. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the 1940 Act, adding the VIP Trust and Future Funds to the Original Order and exempting scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such an account) and the Applicants from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) (and any comparable rule) thereunder, respectively, to the extent necessary to permit shares of the Funds and any Future Funds to be sold to and held by qualified Plans. Applicants submit that the exemptions requested are appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act.

2. The Original Order does not include the VIP Trust or Future Funds as parties nor expressly address the sale of shares of the Funds or any Future Funds to Qualified Plans. Applicants propose that the VIP Trust and Future Funds be added as parties to the Original Order and the Funds and any Future Funds be permitted to offer and sell their shares to Qualified Plans.

3. Section 6(c) of the 1940 Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from various provisions of the 1940 Act, including the following: (1) Section 9(a), which makes it unlawful for certain individuals to act in the capacity of employee, officer, or director for a UIT, by limiting the application of the eligibility restrictions in Section 9(a) to affiliated persons directly participating in the management of a registered management investment company; and (2) Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections might be deemed to require ''pass-through'' voting with respect to an underlying fund's shares, by allowing an insurance company to disregard the voting instructions of contractowners in certain circumstances.

5. These exemptions are available, however, only where the management investment company underlying the separate account (the ''underlying fund'') offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' Therefore, Rule 6e–2 does not permit either mixed funding or shared funding because the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers it shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. Rule 6e–2(b)(15) also does not permit the sale of shares of the underlying fund to Qualified Plans.

6. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) also provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions,

however, are available only where the separate account's underlying fund offers its shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Therefore, Rule 6e–3(T) permits mixed funding but does not permit shared funding and also does not permit the sale of shares of the underlying fund to Qualified Plans. As noted above, the Original Order granted the Templeton Trust exemptive relief to permit mixed and shared funding, but did not expressly address the sale of its shares to Qualified Plans.

7. Applicants note that if the Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. Applicants state that the relief provided for under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans.

8. Applicants state that changes in the federal tax law have created the opportunity for each of the Funds to increase its asset base through the sale of its shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts. Treasury Regulations generally require that, to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, Applicants note that the Treasury Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment of Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

9. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of these Treasury Regulations. Thus, Applicants assert that the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

10. Section 9(a) provides that it is unlawful for any company to serve as investment adviser or principal underwrite of any registered open-end investment company if any affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying portfolio investment company.

11. Applicants state that the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals involved in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts.

12. Applicants to the Original Order previously requested and received relief from Section 9(a) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding. Applicants maintain the relief previously granted from Section 9(a) will in way be affected by the proposed sale of shares of the Funds to Qualified Plans. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which Qualified Plans use such Funds. Applicants maintain that more broadly applying the requirements of Section 9(a) because of investment by Qualified Plans would not serve any regulatory purpose. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies and therefore are not subject to Section 9 of the 1940 Act.

13. Applicants state that Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contractowners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in such company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

14. Applicants assert that Qualified Plans, which are not registered as investment companies under the 1940 Act, have no requirement to pass-through the voting rights to plan participants. Applicants state that applicable law expressly reserves voting rights to certain specified persons. Under Section 403(a) of the Employment Retirement Income Security Act (''ERISA''), shares of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (1) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (2) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two above exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applications do not see any potential for material irreconcilable conflicts of interest

between or among variable contract holders and Qualified Plan investors with respect to voting of the respective Fund's shares. According, Applicants state that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

15. Even if a Qualified Plan were to hold a controlling interest in one of the Funds, Applicants believe that such control would not disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

16. Applicants state that some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. In sum, Applicants maintain that the purchase of shares of the Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

17. Applicants do not believe that the sale of the shares of Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners.

18. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

19. Treasury Department Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts (Treas. Reg. 1.817–5(f)(3)(iii). Thus, Applicants believe that the Treasury Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code nor the Treasury Regulations or revenue rulings thereunder presents any inherent conflict of interest.

20. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Funds at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Qualified Plan will make distributions in accordance with the terms of the Qualified Plan.

21. Applicants maintain that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contractowners and to Qualified Plans. In connection with any meeting of shareholders, the Funds will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

22. Applicants have concluded that even if there should arise issues with respect to a state insurance commissioner's veto powers over investment objectives where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Funds. Applicants note that state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

23. Applicants also state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contractowners of Participating Separate Accounts from possible future changes in the federal tax laws that that which already exist between variable annuity contractowners and variable life insurance contractowners.

24. Applicants state that the sale of shares of the Funds to Qualified Plans in addition to separate accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by the Funds. This may benefit variable contractowners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

25. Applicants assert that, regardless of the type of shareholders in each Fund, each Fund's Investment Manager is or would be contractually and otherwise obligated to manage the Fund solely and exclusively in accordance with that Fund's investment objectives,

policies and restrictions as well as any guidelines established by the Board of Trustees of such Fund (the ''Board''). The Investment Manager works with a pool of money and (except in a few instances where this may be required in order to comply with state insurance laws) does not take into account the identify of the shareholders. Thus, each Fund will be managed in the same manner as any other mutual fund. Applicants therefore see no significant legal impediment to permitting the sale of shares of the Funds to Qualified Plans.

26. Applicants state that the Commission has permitted the amendment of a substantially similar original order for the purpose of adding a party to the original order and has permitted open-end management investment companies to offer their shares directly to Qualified Plans in addition to separate accounts of affiliated or unaffiliated insurance companies which issue either or both variable annuity contracts or variable life insurance contracts. Applicants state that the amended order sought in the application is identical to precedent with respect to the conditions Applicants propose should be imposed on Qualified Plans in connection with investment in the Funds.

Applicants' Conditions

If the requested amended order is granted, Applicants consent to the following conditions:

1. A majority of the Board of each Fund shall consists of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any Board Member or Members, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the remaining Board Members; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor their respective Fund for the existence of any material irreconcilable conflict among the interests of the Variable Contract owners of all Separate Accounts investing in the Funds and of the Qualified Plan participants investing in the Funds. The Board will determine what action, if any, shall be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of Qualified Plans; (f) a decision by an insurer to disregard the voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions to Qualified Plan participants.

3. Participating Insurance Companies, the Investment Managers, and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of a Fund (a ''Participating Qualified Plan''), will report any potential or existing conflicts of which it becomes aware to the Board of any relevant Fund. Participating Insurance Companies, the Investment Managers and the Participating Qualified Plans will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever voting instructions of Contract owners are disregarded and, if pass-through voting is applicable, an obligation by each Participating Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Insurance Companies investing in the Funds under their agreements governing participation in the Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Variable Contract owners. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Qualified Plans under their agreements governing participation in the Funds, and such agreements will provide their responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board of a Fund, or by a majority of the disinterested Board Members, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Qualified Plans will, at their own expense and to the extent reasonably practicable as determined by a majority of the disinterested Board Members, take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) In the case of Participating Insurance Companies, withdrawing the assets allocable to some or all of the Separate Accounts from the Fund or any portfolio thereof ad reinvesting such assets in a different investment medium, including another portfolio of an Fund or another Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, Variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Variable Contract owners the option of making such a change; (b) in the case of Participating Qualified Plans, withdrawing the assets allocable to some or all of the Qualified Plans from the Fund and reinvesting such assets in a different investment medium; and (c) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the Fund's election, to withdraw the insurer's Separate Account investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents minority position or would preclude a majority vote, the Participating Qualified Plan may be required, at the Fund's election, to withdraw its investment in such Fund, and no charge or penalty will be

imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by a Board of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Participating Qualified Plans under their agreements governing participation in the Funds, and these responsibilities will be carried out with a view only to the interest of Variable Contract owners and Qualified Plan participants.

5. For purposes of Condition 4, a majority of the disinterested Board Members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or the Investment Managers be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract if any offer to do so has been declined by vote of a majority of the Variable Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Participating Qualified Plan shall be required by Condition 4 to establish a new funding medium for any Participating Qualified Plan if (a) a majority of Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Qualified Plan documents and applicable law, the Participating Qualified Plan makes such decision without a Qualified Plan participant vote.

6. The determination of the Board of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participating Insurance Companies and Participating Qualified Plans.

7. Participating Insurance Companies will provide pass-through voting privileges to Variable Contract owners who invest in registered Separate Accounts so long as and to the extent that the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners. As to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to participants to the extent granted by issuing issuance companies. Each Participating Insurance Company will also vote shares of the Funds held in its Separate Accounts for which no voting instructions from Contract owners are timely received, as well as shares of the Funds which the Participating Insurance Company itself owns, in the same proportion as those shares of the Funds for which voting instructions from contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their registered Separate Accounts participating in the Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with other registered Separate Accounts investing in the Funds will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Funds. Each Participating Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

8. All reports of potential of existing conflicts received by the Board of a Fund and all action by such Board with regard to determining the existence of conflict, notifying Participating Insurance Companies and Participating Qualified Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of such Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. Each Fund will notify all Participating Insurance Companies that separate disclosure in their respective Separate Account prospectuses may be appropriate to advise accounts regarding the potential risks of mixed and shared funding. Each Fund shall disclose in its prospectus that (a) the Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) to differences to tax treatment and other considerations, the interests of various Contract owners participating in the Fund and/or the interests of Qualified Plans investing in the Fund may at some time be in conflict; and (c) the Board of such Fund will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Funds), and, in particular, the Funds will either provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, although the Funds are not the type of trust described in Section 16(c) of the 1940 Act, as well as with Section 16(a) of the 1940 Act and, if and when applicable. Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board Members and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent Rules 6e-2 or 6e-3(T) under the 1940 Act is amended, or proposed Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Funds and/or Participating Insurance Companies and Participating Qualified Plans, as appropriate, shall take such steps as may be necessary to comply with such Rules 6e-2 and 6e-3(T), as amended, or proposed Rule 6e-3, as adopted, to the extent that such Rules are applicable.

12. The Participating Insurance Companies and Participating Qualified Plans and/or the Investment Managers, at least annually, will submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out obligations imposed upon it by the conditions contained in the application. Such reports, materials and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Participating Qualified Plans to provide these reports, materials and data to the Board, when the Board so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies and Participating Qualified Plans under their agreements governing participation in the Funds.

13. If a Qualified Plan should ever become a holder of ten percent or more of the assets of a Fund, such Qualified Plan will execute a participation agreement with the Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Qualified Plan's initial purchase of the shares of any Fund.

Conclusion

Applicants assert that, for the reasons summarized above, the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41882; File No. SR–CBOE–99–54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Revise the Component Selection and Weighting Guidelines That Govern the GSTI Composite Index and Sub-Indexes

September 17, 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 September 9, 1999, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 seeks to revise the component selection and weighting guidelines that currently govern the Goldman Sachs Technology Composite Index (''GSTI™ Composite Index'') and GSTI Sub-Indexes (''Sub-Indexes'') (collectively, the ''GSTI Indexes''). The proposed revisions are based on new criteria that Goldman, Sachs & Co. will use to maintain the GSTI Indexes. The Exchange seeks approval to continue to list and trade options on the GSTI Indexes after the proposed revisions become effective following the close of trading on September 17, 1999.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Exchange currently lists and trades European-style, cash-settled options on the GSTI Indexes pursuant to prior Commission approval.[3] The GSTI Composite Index is a modified capitalization-weighted index that reflects the universe of technology-related company stocks meeting certain objective criteria. The Sub-Indexes are likewise calculated using a modified capitalization-weighting methodology. The components for each of the six Sub-Indexes are selected exclusively from the GSTI Composite Index.[4]

Goldman Sachs recently informed the Exchange that following the close of trading on September 17, 1999, certain guidelines governing the selection of stocks included in the GSTI Composite Index will be modified to clarify the definition of ''technology-related'' and explicitly include Internet-related companies. Specifically, Goldman Sachs intends to introduce a supplemental sector/industry classification method to better identify the universe of technology and Internet-related stocks eligible for inclusion in the GSTI Composite Index. This supplemental classification method, developed and maintained by Goldman Sachs Investment Research, will supplement the current use of SIC and Russell codes to identify technology stocks.[5] Goldman Sachs believes that the supplemental sector/industry classification method will capture those stocks that are commonly considered to be part of the universe of technology-related companies, but lack the appropriate SIC or Russell code. Goldman Sachs expects that the revised GSTI Composite Index will more accurately reflect the technology sector and will be better suited to track future changes in the industry.

In addition, Goldman Sachs informed the Exchange that following the close of trading on September 17, 1999, the weighting criteria for the Sub-Indexes will be revised. Currently, the component weightings for each of the six Sub-Indexes are capped such that the largest stock in a Sub-Index may account for no more than 25% of the index by weight, the second-largest stock may account for no more than 20%, and the third through fifth largest stocks may account for no more than 15% each. Goldman Sachs will revise the weighting criteria for the Sub-Indexes so that all components will be subject to a maximum weight cap of 12.5%. Goldman Sachs expects that this revised weighting methodology will promote portfolio weight diversification and prevent concentration of weighting in the Sub-Indexes in a few large stocks. In particular, Goldman Sachs notes that the revised weighting methodology requires each of the Sub-Indexes to be comprised of at least eight components. Goldman Sachs intends to implement the new weighting criteria after the close of trading on September 17, 1999, rather than at the next semi-annual rebalancing in January 2000.

The Exchange proposes no other changes to the GSTI Indexes at this time and represents that the GSTI Indexes will continue to conform to all conditions and restrictions set forth in the relevant approval orders.[6]

On the Monday following September 17, 1999, the Exchange will introduce a new series of options overlying the GSTI Composite Index and the Sub-Indexes; these new option series will be listed under the ticker symbols currently assigned to options overlying the GSTI Indexes. Those options overlying the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 37693 (Sept. 17, 1996), 61 FR 50362 (Sept. 25, 1996); and 37696 (Sept. 17, 1996), 61 FR 50358 (Sept. 25, 1996).

[4] The six Sub-Indexes include: GSTI Hardware Index, GSTI Internet Index, GSTI Semiconductor Index, GSTI Software Index, GSTI Services Index, and GSTI Multimedia Networking Index.

[5] The Exchange represents that Goldman Sachs will not have any informational advantage concerning modifications to the composition of the GSTI Composite Index and the Sub-Indexes due to Goldman Sachs' role in maintaining such indexes, including the classification of stocks. Goldman Sachs has separately represented that it will make its list of the technology and Internet-related stocks available to interested parties upon request.

[6] *See* note 3 *supra.*

GSTI Indexes that are still outstanding as of the close of trading on September 17, 1999, will continue to settle based on the present guidelines and calculation methodology, but will be listed under new ticker symbols.

The Exchange will notify market participants of the revisions to the GSTI Indexes through a notice to members and member firms, which notice will be disseminated in advance of a changeover. Because the Exchange will provide advance notice of the revisions, and the outstanding option series contracts will not be materially changed (*i.e.*, the outstanding option series contracts will continue to trade and settle under the old methodology, albeit under a new ticker symbol), the Exchange believes that transition problems should not arise. Moreover, the Exchange has successfully used the same procedures for new option series introduced after revisions to index settlement and weighting methodologies.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[8] in that it is designed to perfect the mechanisms of a free and open market, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date; the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

A proposed rule change filed under rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may become operative on September 17, 1999. By accelerating the operative date of the proposal to September 17, 1999, the Commission will enable the Exchange to promptly offer market participants options based on the revised GSTI Composite Index and the Sub-Indexes.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative on September 17, 1999, for the following reasons. The Commission believes that the revisions to the component selection guidelines governing the GSTI Composite Index and Sub-Indexes will strengthen the GSTI Indexes by including components that better reflect the current state of technology. In addition, the changes will help the GSTI Composite Index and Sub-Indexes to better track future changes in the technology industry. Finally, the changes in the component weighting guidelines will ensure greater weight diversification among the component stocks of the Sub-Indexes and will eliminate concentrations in weighting that might cause the Sub-Indexes to be dominated by a few highly-capitalized stocks. The Commission believes that these improvements to the GSTI Composite Index and Sub-Indexes are important and that investors should be permitted to trade options on the improved GSTI Indexes as soon as practicable.

For all of the reasons set forth above, the Commission finds that it is consistent with the protection of investors and the public interest for the proposed rule change to become operative on September 17, 1999. 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 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, N.W., Washington, D.C. 20549–0609. Copies of the submissions, 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 persons, 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, N.W., Washington, D.C. 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–CBOE–99–54 and should be submitted by October 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24916 Filed 9–23–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41883; File No. SR–OCC–99–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Amendments to the Pledge Program

September 17, 1999.

On March 5, 1999, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–99–04) pursuant to Section 19(b)(1) of the Securities Exchange Act

[7] *See* Securities Exchange Act Release Nos. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order permitting the continued listing and trading of Nasdaq 100 options after a change in the exercise settlement value for the Nasdaq 100 index); and 40642 (Nov. 9, 1998), 63 FR 63759 (Nov. 16, 1998) (order permitting the continued listing and trading of Nasdaq 100 options after a change in the weighting methodology for the Nasdaq 100 index).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 200.30–3(a)(12).

of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 17, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change permits OCC clearing members to pledge long positions in non-proprietary cross margin accounts through OCC's pledge program. In addition, the rule change updates OCC's rules to reflect the way that the pledge program currently operates.

OCC designed its market maker pledge program to allow its clearing members to finance their positions by permitting them to pledge excess long market maker options as collateral to obtain loans from banks or from other clearing members.[3] Current eligible account types include, among others, a combined market-makers' account and a separate market-maker's account.

The rule change amends OCC rule 614 to add non-proprietary cross margin accounts to the list of accounts that are eligible for the pledge program.[4] The rule change also revises Rule 614 to reflect the current operation of the pledge program because some of the practices described in the rule are no longer used. For example, OCC's system does not ''transfer'' pledged cleared securities into a separate ''pledge account'' as suggested by the rules. Rather, OCC identifies within the ''primary'' account those long positions in a cleared security that a clearing member has instructed OCC that it desires to pledge. In addition, certain instructions and reports are not submitted or distributed in hard copy form but are electronically inputted or disseminated through OCC's C/MACS system. (Hard copy forms are used as acceptable backups should C/MACS be unavailable.) As a result, the rule change eliminates references to ''transfers,'' ''Transfer Day,'' ''Primary Accounts,'' and certain ''forms,'' and substitutes where appropriate terms like ''identifying'' cleared securities to be pledged. ''Activity Day,'' ''Eligible Account,'' ''pledged and unpledged cleared securities,'' and ''instructions.'' The rule change further amends Rule 614 to reflect that clearing member designations among pledgees can be carried out electronically or through use of the pledgee designation form.

The rule change eliminates references to lock box distribution of reports. Clearing members receive OCC reports electronically through C/MACS, and other pledges receive reports by electronic format from OCC or have other arrangements with OCC for purposes of receiving reports. Under the rule change, report distribution will be accomplished in accordance with procedure agreed to between OCC and each pledge.

Finally, under the rule change OCC is changing the time at which the release of a pledged cleared security is effective. Previously, Rule 614 provided that the release was deemed to be effective as of 9:00 a.m. (central time) on the transfer day and that all rights of a pledgee as to such released cleared security were terminated at that time. However, this effective time comes after OCC nightly processing is completed. During nightly processing, the long positions in cleared securities are released from pledge, included in marginable positions, and used to offset short positions as described in Rules 601 and 602. Pledgee banks have the understanding that when they execute the instructions to release pledged positions, they release their rights in the long positions and take appropriate measures to ensure that the loan is repaid or otherwise secured. As a result, the rule change provides that when a pledgee releases a pledged position, the position is deemed to be released as of the cutoff time for submitting the instructions to release the positions on the day that the instructions are received.

In addition to the amendments described above, the rule change makes conforming changes to Rules 601, 602, 1105, and 1106 and to the pledge account agreement.[5]

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) because the rule change should increase the ability of OCC's clearing members to finance their positions through the use of OCC's pledge program without impairing OCC's overall protection against member default.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. OCC–99–04) be and hereby is approved.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24914 Filed 9–23–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41507 (June 10, 1999) 64 FR 32600.

[3] For a detailed description of the pledge program, refer to Securities Exchange Act Release No. 19956 (July 19, 1983), 48 FR 33956 [File No. SR–OCC–82–25] (order approving proposed rule change).

[4] Market-makers, specialists, and registered traders are the categories of market professionals that re eligible to have their positions included in a clearing members' non-proprietary cross margin account, and many such market professionals participate in cross margining.

[5] OCC attached a copy of the amended pledge account agreement as Exhibit A to its filing, which is available for inspection and copying in the Commission's public reference room and through OCC.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41884; File No. SR–OCC–99–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Purchase of OCC Stock by Participant Exchanges and the Rights of Participant Exchanges on Liquidation of OCC

September 17, 1999.

On March 15, 1999, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–99–06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on May 26, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change updates the provisions of OCC's Certificate of Incorporation, By-Laws, and Stockholders Agreement that relate to the purchase of OCC stock by participant exchanges and the rights of

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41422 (May 18, 1999) 64 FR 28543.

those exchanges in the event of OCC's liquidation. The rule change makes two substantive changes. First, it increases the maximum purchase price for OCC stock from $333,333 to $1,000,00 per exchange. Second, in the event of OCC's liquidation, it limits distributions to exchanges that first became stockholders after December 31, 1998, to the amounts that such exchanges paid for their stock plus a pro rata share of any increase in OCC's retained earnings after December 31, 1998.

Increase in Maximum Purchase Price

Article VII, Section 2 of OCC's By-Laws provides that an options exchange that wishes to become a participant in OCC must purchase 5,000 shares of Class A Common Stock and 5,000 shares of Class B Common Stock of OCC.[3] Previously, the price was an amount equal to book value as of the close of the preceding month but not less than $250,000 nor more than $333,333. As of December 31, 1998, the book value of 10,000 shares of OCC stock was $6,365,100, so the effective purchase price is the maximum price of $333,333.

The $333,333 maximum dates from 1975, when OCC (then named Chicago Board Options Exchange Clearing Corporation) became the common clearing facility for listed options. Recently, OCC engaged Deloitte & Touche, LLP (''Deloitte'') to recommend a fair price for participation in OCC in view of the length of time that had elapsed since the maximum was fixed and the prospect of new options markets becoming participant exchanges of OCC.[4] Deloitte arrived at a value of $1,080,000 for a 20% interest in OCC.

The rule change increases the maximum price for an interest in OCC to $1,00,000, which approximates the amount recommended by Deloitte. According to OCC, the $1,000,000 amount also approximates the value in 1999 dollars of $333,333 in 1975.[5] Therefore, OCC believes that increasing the maximum price to $1,000,000 would tend to equalize the investment required of new exchanges with the investments expressed in 1999 dollars made by OCC's present participant exchanges in the mid-1970's.[6]

In addition, OCC's rules previously specified a minimum purchase price of $250,00 if the book value of a proportionate interest in OCC would be less than that amount. The rule change eliminates the minimum price because OCC believes that the book value of a proportionate interest in OCC greatly exceeds $250,000 today and is likely to continue to do so.

Change in Liquidation Rights

The rule change establishes a new scheme for the distribution of OCC's net assets if OCC were to liquidate. Under the new scheme, holders of Class A Common Stock and Class B Common Stock would first be paid the par value of their shares ($10.00 per share). Next, each holder of Class B Common Stock would receive a distribution of $1,000,000, allowing it to recover the value of its investment in 1998 dollars. Next, an amount equal to OCC's stockholders' equity at December 31, 1998, minus the distributions described in the two preceding sentences would be distributed to those exchanges that acquired their Class B Common Stock before December 31, 1998. Finally, any excess assets (*i.e.* post-1998 retained earnings) would be distributed equally to all holders of Class B Common Stock. OCC's intention is to allow each exchange to recover its investment but to reserve OCC's present retained earnings for those participant exchanges that were stockholders during the period when the retained earnings were being accumulated.

Technical and Conforming Changes

The rule change revises the last sentence of Article VII, Section 2 of the By-Laws. Previously, that provision stated that if OCC fails or is unable to purchase a stockholder's shares when required under the Stockholders Agreement, the stockholder may sell its shares ''to a person who is qualified under Section 1 of this Article VII for participation in [OCC] as an 'Exchange' and who is not then a stockholder of [OCC].'' However, Section 1 of Article VII provides that in order to be qualified for participation in OCC as an exchange, a securities exchange or securities association must already have purchased stock in OCC. The rule change eliminates the circularity of the provision by allowing the stockholder to sell its shares to any national securities exchange or national association that has effective rules for the trading of options and who is not then a stockholder in OCC. The rule change also makes conforming changes to the Stockholders Agreement.

Article VII, Section 3 is amended to reflect previous rule changes providing for public directors and to eliminate an obsolete requirement that the stockholders renew their voting agreement every ten years. Article VII, Section 4 is amended to reflect the fact that the Participant Exchange Agreement between OCC and its participant exchanges now specifically refers to options disclosure documents required under Exchange Act Rule 9b–1.[7]

Section 10(a) of the Stockholders Agreement is amended to increase proportionately with the increase in the purchase price of OCC stock the dollar discounts that OCC will apply if it repurchases a participant exchange's stock within six years of the date when the stock was acquired. Section 12 of the Stockholders Agreement, which governs contributions to capital by the American Stock Exchange and the Chicago Board Options Exchange if another OCC stockholder sells its stock to OCC, is deleted in its entirety because it is obsolete.

II. Discussion

Section 17A(b)(3)(D) of the Act[8] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The Commission believes that the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(D) because the rule change should ensure that the price that participant exchanges are required to pay for OCC stock reflects the value of those shares and that participant exchanges all pay equal amounts for OCC stock after purchase prices are adjusted for inflation. In addition, the rule change should provide for an equitable distribution of assets to OCC's participant exchanges if OCC were to liquidate.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

[3] Class A Common Stock is voted to elect OCC's nine member directors. Class B Common Stock is voted, as a class, to elect OCC's public and management directors. Each participant exchange holds a separate series of Class B Common Stock that entitles it to elect one exchange director.

[4] *See, e.g.,* Securities Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29367 (notice of filing of application for registration as a national securities exchange by the International Securities Exchange LLP).

[5] OCC has informed the Commission that based on the All Urban Consumer CPI, $333,333 on January 1, 1975, would amount of $1,009,932 in 1999, and that using the General Consumer Price Index, $333,333 on January 1, 1975, would amount to $1,056,518 in 1999.

[6] OCC's current participant exchanges (which include the American Stock Exchange, the Chicago Board Options Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange) acquired their stock in OCC between 1973 and 1976.

[7] 17 CFR 240.9b–1.

[8] 15 U.S.C. 78q–1(b)(3)(D).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. OCC–99–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24915 Filed 9–23–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41881; File No. SR–PCX–99–16]

Self-Regulatory Organizations; Pacific Exchange, Inc. (''PCX''); Order Approving Proposed Rule Change and Notice of Filing and Order granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Requiring Qualified Off-Floor Traders for Which PCX Is the Designated Examining Authority To Successfully Complete the General Securities Registered Representative Examination, Test Series 7

September 17, 1999.

On June 1, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend PCX Rule 1.7(b)(9), Denial of and Conditions to Membership, to require off-floor traders[3] of member organizations for which the Exchange is the Designated Examining Authority (''DEA'') to successfully complete the General Securities Registered Representative Examination, Test Series 7 (''Series 7 Exam''), if the primary business of the member organization involves the trading of securities that is unrelated to the performance of the functions of a registered specialist, a registered market maker or a registered floor broker.

Notice of the proposed rule change was published in the **Federal Register** on July 2, 1999.[4] The Commission received no comment letters on the proposal. On September 16, 1999, the Exchange filed Amendment No. 1 with the Commission, which revised the rule text and made technical changes to the proposal.[5] This order approves the proposed rule change, as amended.

I. Background and Summary

PCX Rule 1.7(b)(9) currently provides that the Exchange may deny (or may condition) membership, or may prevent a natural person from becoming associated (or may condition an association) with a member, when an applicant, directly or indirectly, does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for. The Exchange proposes to amend PCX Rule 1.7(b)(9) to expressly require off-floor traders to successfully complete the Series 7 Exam. Specifically, the proposal provides that traders of member organizations for which the Exchange is the DEA must successfully complete the Series 7 Exam if the primary business of the member organization involves the trading of securities which is unrelated to the performance of the functions of a registered specialist, a registered market maker or a registered floor broker. The proposal further provides that the following are exempt from the requirement to successfully complete the Series 7 Exam: Exchange members who perform the function of a registered specialist, registered market maker, or registered floor broker (pursuant to PCX Rules 5.27(a), 6.33 or 6.44, respectively), and associated persons of member firms who facilitate the execution of stock transactions for the accounts of options market makers.[6]

For purposes of PCX Rule 1.7(b)(9), the term ''trader'' is defined as a person who is directly or indirectly compensated by an Exchange member organization or who is any other associated person of an Exchange member organization, and who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities.[7] In addition, the term ''primary business'' is defined as greater than 50% of the member organization's business.

The proposed rule change further provides that each member organization for which the Exchange is the DEA must complete on an annual basis and on a form prescribed by the Exchange a written attestation as to whether the member organization's primary business is performing the function of a registered specialist, a registered market maker, or a registered floor broker (pursuant to PCX Rules 5.27(a), 6.33 or 6.47, respectively).

The proposed rule change also states that the requirement to complete the Series 7 Exam will apply to current traders of member organizations that meet the specified criteria as well as to future traders of member organizations that meet the specified criteria at a later date. It further provides that traders of member organizations that meet the specified criteria at the time of the Commission's approval of the proposed rule must successfully complete the Series 7 Exam within six months of the date of notification by the Exchange.

II. Discussion

Under Section 19(b)(2) of the Act,[8] the Commission is required to approve a proposed rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization (''SRO''). Under the Act, SROs are assigned rulemaking and enforcement responsibilities for regulating the securities industry for the protection of investors and for related purposes. A key requirement for SROs is to assure that associated persons[9] of their members satisfy prescribed standards of

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] According to the Exchange, the proposed rule change is intended to cover persons who are trading from off the trading floor and who are not exempt from having to pass the Series 7 examination under the proposed rule. *See* Letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC (Sept. 15, 1999) (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 41555 (June 24, 1999), 64 FR 36063.

[5] *See supra* n. 3, Amendment No. 1.

[6] The Exchange has represented that no person may perform the function of a registered specialist, registered market maker or registered floor broker on the Exchange trading floors without first passing a specified examination. Specifically, Equity floor members must pass the Equity Member Test and Options floor members must pass the Options Floor Qualification Examination. There are two Equity Member Tests, one for specialists and one for floor brokers. While there is only one Options Floor Qualification Examination, there are separate sections of the exam: one for floor brokers, one for market makers, and one for both floor brokers and market makers. *See supra* n. 3, Amendment No. 1. According to the Exchange, there are a small number of off-floor traders, primarily associated with Options floor members, who will be exempt from the examination requirement. Telephone conversation among Michael D. Pierson, Director, Regulatory Policy, PCX, Nancy Sanow, Senior Special Counsel, Division, SEC and Joseph Morra, Attorney, Division, SEC, September 15, 1999.

[7] *Id.*

[8] 15 U.S.C. 78s(b)(2).

[9] As defined in Section 3(a)(21) of the Act, an associated person of a member is ''any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any persons directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.'' 15 U.S.C. 78c(a)(21). The off-floor traders covered by the Exchange's proposed rule change are associated persons of the member firm.

training, experience, and competence as a condition to membership.[10]

The Commission finds that the Exchange's proposal is consistent with the requirements of Section 6 of the Act, and particularly Sections 6(b)(5)[11] and 6(c)(3) (A) and (B)[12] thereunder, for the reasons discussed below.

A review of the Act and its legislative history, as well as subsequent amendments, reveals that one of the Act's most important objectives is to maintain the integrity and competency of securities industry personnel. To this end, Congress has authorized the Commission to comprehensively regulate the securities activities of member firms and their associated persons by, among other things, ensuring that all natural persons associated with a broker-dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.[13]

Moreover, Section 15(b)(7)(C) of the Act[14] provides that the Commission may rely on the registered securities associations and national securities exchanges to ''require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange.'' To further the goals of Section 15(b)(7) of the Act,[15] the Commission in 1993 adopted Rule 15b7–1, which prohibits registered broker-dealers from effecting any transaction in, or inducing the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees and passing any required examinations) established by the rules of any national securities exchange of which such broker or dealer is a member.[16]

In addition, Section 6(c)(3)(A) of the Act[17] provides that a national securities exchange may deny membership to, or condition the membership of, a registered broker-dealer if any natural persons associated with such broker or dealer do not meet such standards of training, experience and competence as are prescribed by the rules of the exchange.[18] Also, under Section 6(c)(3)(B) of the Act,[19] a national securities exchange may bar a natural person from becoming associated with a member if the person does not meet the exchange's standards of training, experience, or competence, or if the person has engaged and there is a reasonable likelihood the person will engage again in acts or practices inconsistent with just and equitable principles of trade. Under these statutory provisions, the various national securities exchanges, including PCX, are empowered to implement rules establishing the prerequisites to qualify and approve persons associated with member organizations to engage in securities activities.

The Act's legislative history also demonstrates the strong concerns of Congress regarding the expertise and competency of persons associated with the brokerage industry. One of the primary objectives of Congress in amending the Act in 1964 was ''to strengthen the standards of entrance into the securities business, enlarge the scope of self-regulation, and strengthen Commission disciplinary controls over brokers, dealers, and their employees.''[20] The Senate Report further noted that ''[o]ne of the basic purposes of the Securities Exchange Act of 1934 is to regulate the conduct of broker-dealers and persons associated with them, both through direct Commission controls and through self-regulation by industry groups, with appropriate Commission oversight.''[21] The Senate Report emphasized the importance of screening the integrity and competence of those persons involved in the securities industry.[22]

The Commission finds that the Exchange's proposal is a well-established and accepted practice in the securities industry and is directly related to one of the most important objectives of the Exchange Act—maintaining the integrity and competency of securities industry personnel.

Off-floor traders of member organizations of the PCX are participants in the securities industry. As associated persons of members of PCX, they are required to comply with the Commission's and the Exchange's rules pertaining to broker-dealers and their associated personnel, including qualification requirements established to assure that they maintain the degree of integrity and competency expected of securities industry personnel. Requiring these off-floor traders to pass the Series 7 Exam will further the objectives of Sections 6(c)(3)(A) and (B)[23] of the Act, which are intended to assure that associated persons are sufficiently familiar with Commission and SRO requirements and procedures when they are closely connected to the securities industry.

The proper education of securities industry personnel is but one component of a carefully considered statutory and regulatory framework designed to promote the integrity of securities markets and protect investors. By successfully completing the Series 7 Exam, these off-floor traders should develop a greater understanding of securities products, risks, and regulations appropriate for associated persons.

Moreover, the proposed rule change is consistent with the provisions of Section 6(b)(5)[24] of the Act requiring, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Series 7 Exam test for proficiency in a broad range of securities matters, including anti-fraud and anti-manipulation regulation. Without proper training, these associated persons may inadvertently engage in transactions that are improper under the federal securities laws and regulations

[10] *See* 15 U.S.C. 78f(c)(3)(B).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(c)(3) (A) and (B).

[13] *See* Section 15(b)(7) of the Act, 15 U.S.C. 78*o*(b)(7).

[14] 15 U.S.C. 78*o*(b)(7)(C).

[15] 15 U.S.C. 78*o*(b)(7).

[16] 17 CFR 240.15b7–1.

[17] 15U.S.C. 78f(c)(3)(A).

[18] Under Section 15(b)(8) of the Act, all registered brokers or dealers must be members of an SRO—either a securities association or a national securities exchange. 15 U.S.C. 78*o*(b)(8).

[19] 15 U.S.C. 78f(c)(3)(B).

[20] S. Rep. No. 379, 88th Cong. 1st Sess. 1 (1963) (''Senate Report'').

[21] *Id.* at 38.

[22] The Senate Report noted the following:

The findings of the Special Study show that—because of the complex nature of the securities markets, the reliance which the investing public necessarily places upon the competence and character of professionals in those markets, and the responsibilities which are assumed—the existing ease of entry for inexperienced and unqualified persons subjects the investing public to undue hazards and unnecessarily complicates the task of regulation.

Id. at 43–44. In this regard, the national securities exchanges and associations were specifically charged to enhance their regulation of associated persons: ''Development and administration of such standards is a matter which is peculiarly appropriate for self-regulation under Commission supervision; and the establishment of such requirements, in conjunction with the requirement of membership in a regulatory body, should significantly simplify regulation and improve investor protection.'' *Id.* at 44.

[23] 15 U.S.C. 78f(c)(3)(A) and (B).

[24] 15 U.S.C. 78f(b)(5).

or rules of the SROs. In the Commission's opinion, the proposed rule revision satisfies the objectives of Section 6(b)(5)[25] of the Act because, by satisfactorily completing the Series 7 Exam, off-floor traders will gain a greater understanding of the regulations, procedures and principles governing the securities industry.

The Commission also finds that the proposal will bring the Exchange's qualification requirements in line with those of other securities exchanges by adding testing requirements for off-floor traders who are not covered by the current qualification requirements for traders on the floor of the Exchange.[26] The Series 7 Exam was adopted as an industry-wide qualification examination in 1974. Other securities exchanges currently require traders off the floor of the exchange to pass the Series 7 Exam.[27] The examination requirement for off-floor traders at PCX will enhance the consistency of exam requirements across the exchanges and prevent traders off the floor of the Exchange from associating with members of PCX solely to avoid the examination requirements of other SROs.

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. Amendment No. 1 conforms the proposal to similar rules of other self-regulatory organizations.[28] For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the PCX. All submissions should refer to File No. SR–PCX–99–16 and should be submitted by October 15, 1999.

IV. Conclusion

The Commission finds that the proposed rule change, as amended, is consistent with the Act, and in particular, with Sections 6(b)(5) and 6(c)(3)(A) and (B).[29]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposal, SR–PCX–99–16, as amended, be and hereby is approved.[31]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24917 Filed 9–23–99; 8:45 am]

BILLING CODE 8010–01–M

[25] *Id.*

[26] The Exchange notes that no person may perform the function of a registered specialist, registered market maker or registered floor broker on the PCX trading floors without first passing a specified examination. *See supra* n. 3, Amendment No. 1.

[27] *See* New York Stock Exchange Rule 345; American Stock Exchange Rule 341; Chicago Stock Exchange Article VI, Rule 3; and Philadelphia Stock Exchange Rule 604.

[28] *Id.*

[29] 15 U.S.C. 78f(b)(5), 15 U.S.C. 78f(c)(3)(A) and (B).

[30] 15 U.S.C. 78s(b)(2).

[31] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143; Notice No. 99–6]

Safety Advisory: Use of Aluminum Pressure Relief Valves on Portable Tanks and Cargo Tanks in Anhydrous Ammonia Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: RSPA was recently advised of the use of aluminum pressure relief valves on portable tanks and cargo tanks that are used for the transportation of anhydrous ammonia which is not authorized by the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). The intent of this notice is to ensure safety and facilitate compliance with the HMR by clarifying applicable regulatory requirements pertaining to aluminum pressure relief valves.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Karim, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, Mr. Ronald Kirkpatrick, Office of Hazardous Materials Technology, telephone (202) 366–4545, Research and Special Programs Administration, or Mr. Danny Shelton, Office of Safety and Technology, telephone (202) 366–6121, Federal Highway Administration (FHWA).

SUPPLEMENTARY INFORMATION: The Research and Special Programs Administration (RSPA; ''we'') has been advised of the use of aluminum pressure relief valves on specification DOT 51 portable tanks, MC 330 and MC 331 cargo tanks, and certain non-specification cargo tanks used in anhydrous ammonia service. The purpose of this advisory guidance is to remind persons who offer for transportation or transport anhydrous ammonia of their responsibility for meeting the applicable specification requirements of part 178, and the provisions for the use of portable tanks in § 173.32(m), cargo tanks in § 173.33(b), and general requirements for packaging and packages contained in § 173.24(e)(1) and (2). The use of aluminum valves in anhydrous ammonia service may present a potential safety hazard due to the severe chemical attack/corrosion that may occur as a result of contact with anhydrous ammonia. The purpose of a pressure relief device is to discharge pressure to protect a tank from being over-pressurized. A corroded pressure relief device is not likely to perform its required function and may fail with a resulting release of anhydrous ammonia.

The general compatibility requirement in § 173.24(e) states that ''packaging materials and contents must be such that there will be no significant chemical or galvanic reaction between the materials and contents of the package.'' We believe significant corrosion of aluminum pressure relief devices is a result of a chemical reaction with the anhydrous ammonia. This is particularly true when water has been added to anhydrous ammonia for carriage in quenched and tempered (''QT'') steel tanks as specified in § 173.315(l).

The use of aluminum valves on MC 330, MC 331 cargo tanks, and DOT 51 portable tanks is specifically prohibited by Note 12 of the § 173.315 Table. This is true also of non-specification tanks authorized by Note 17 of the § 173.315 Table. For nurse tanks, § 173.315 (m) provides an exception, but that

exception applies to part 178 provisions in regard to specification cargo tanks. It does not waive the requirements of § 173.24(e) that are stated above.

Persons who offer for transportation and transport anhydrous ammonia in cargo tanks and portable tanks should take immediate steps to ascertain if their safety relief devices comply with the HMR.

Issued in Washington, D.C. on September 21, 1999, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–24899 Filed 9–23–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33800]

Vermont Railway, Inc.—Modified Rail Certificate

On September 14, 1999, Vermont Railway, Inc. (VTR), a Class III rail carrier, filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate a 14-mile rail line owned by the State of Vermont (the line).

The line was approved for abandonment by Montpelier and Barre Railroad Company in *Montpelier and Barre Railroad Company—Entire Line Abandonment—From Graniteville to Montpelier Junction in Washington County, VT*, Docket No. AB–202 F (ICC served Mar. 12, 1980), and acquired by the State of Vermont on November 21, 1980. The Washington County Railroad Corporation (WACR) filed a notice for a modified certificate of public convenience and necessity on November 17, 1980, and a modified rail certificate was issued to WACR authorizing it to operate the line as of November 17, 1980.[1] On February 2, 1999, WACR agreed to assign its lease of the line to New England Central Railroad, Inc. (NECR).[2] NECR accepted the assignment on February 9, 1999, and operated the line through the close of business on September 8, 1999, when it terminated operations over the line. VTR indicates that VTR and the State of Vermont have reached an interim agreement that would provide for immediate operation of the line. During the term of the interim agreement, VTR and the State of Vermont intend to negotiate and enter into a lease and operating agreement that will govern future operations of the line by VTR or a subsidiary of VTR.

The line extends from the interchange with NECR, at Montpelier Junction, VT, to Graniteville, VT. Approximately the last two miles of the line, from a point near the Bombardier rail car assembly plant in Websterville, VT, to Graniteville are out of service. VTR will operate the segment of the line presently in service, providing at least three round trips per week (except when no service is required by the line's customers).

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

A subsidy is involved. Under the letter agreement, the State of Vermont's Agency of Transportation (VAOT) agrees to pay VTR (or a VTR subsidiary) a subsidy of $2,000 per week to provide service over the line. The letter agreement further provides that VTR (or a VTR subsidiary) will be entitled to the line's share of freight revenues collected from customers.[3] VTR represents that it has extensive insurance coverage for property damage and personal injury. There are no preconditions for shippers to meet in order to receive rail service.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW, Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G Street, NW, Suite 520, Washington, DC 20005.

Decided: September 20, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–24948 Filed 9–23–99; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Washington County Railroad Corporation—Operations—From Montpelier Junction to Graniteville, VT*, Finance Docket No. 29536F (ICC served Jan. 2, 1981).

[2] *See New England Central Railroad, Inc.—Modified Rail Certificate*, STB Finance Docket No. 33715 (STB served Feb. 26, 1999).

[3] VAOT states that it is authorized under 5 V.S.A. 3401–3409 to administer State-owned railroad properties and to take necessary action to ensure continuity of service over such properties.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209040–88]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–209040–88, Qualified Electing Fund Elections (§ 1.1295–2).

DATES: Written comments should be received on or before November 23, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Electing Fund Elections.

OMB Number: 1545–1514.

Regulation Project Number: REG–209040–88.

Abstract: This regulation permits certain shareholders to make a special election under Internal Revenue Code section 1295 with respect to certain preferred shares of a passive foreign investment company. This special election operates in lieu of the regular section 1295 election and requires less annual reporting. Electing preferred shareholders must account for dividend income under the special income inclusion rules of the regulation, rather than under the general income inclusion rules of section 1293.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 1,030.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–24969 Filed 9–23–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Marlene Gross, Deputy Chief Counsel (Operations);

2. Kenneth Schmalzbach, Acting Deputy General Counsel;

3. Michael Danilack, III, Associate Chief Counsel (International);

4. Nancy J. Marks, Deputy Associate Chief Counsel (Employee Benefits and Exempt Organizations);

5. Gary D. Gray, Assistant Chief Counsel (General Litigation);

6. William F. Hammack, Midstates Regional Counsel; and

7. H. Stephen Kesselman, Pennsylvania District Counsel.

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: September 10, 1999.

Stuart L. Brown,

Chief Counsel, Internal Revenue Service.

[FR Doc. 99–24968 Filed 9–23–99; 8:45 am]

BILLING CODE 4830–01–U

Friday
September 24, 1999

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 and Parts 1, 5, 6, et al.

Federal Acquisition Regulation; Federal Acquisition Circular 97–14 and Small Entity Compliance Guide; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–14; 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.

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) 97–14. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents that 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 97–14 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	Very Small Business Concerns	98–013	Moss.
II	Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program	97–307	Moss.
III	Use of Competitive Proposals	99–001	DeStefano.
IV	Javits-Wagner-O'Day Proposed Revisions	98–602	DeStefano.
V	OMB Circular A–119	98–004	Moss.
VI	Determination of Price Reasonableness and Commerciality (Interim)	98–300	Olson.
VII	Conforming Late Offer Treatment	97–030	DeStefano.
VIII	Evaluation of Proposals for Professional Services	97–038	Olson.
IX	Option Clause Consistency	98–606	DeStefano.
X	Compensation for Senior Executives	98–301	Nelson.
XI	Interest and Other Financial Costs	98–006	Nelson.
XII	Cost-Reimbursement Architect-Engineer Contracts	97–043	O'Neill.
XIII	Conditionally Accepted Items	98–002	Klein.
XIV	Value Engineering Change Proposals/PAT	97–031	Klein.
XV	Cost Accounting Standards Post-Award Notification	98–003	Nelson.
XVI	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 97–14 amends the FAR as specified below:

Item I—Very Small Business Concerns (FAR Case 98–013)

This final rule converts the interim rule published as Item II of FAC 97–11 to a final rule with changes. The interim rule amended FAR 5.207, 8.404, 12.303, 19.000, 19.001, 19.102, 19.502–2, 19.901 through 19.904, 52.212–5, and 52.219–5, to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR Parts 121 and 125). This program became effective on January 4, 1999.

Item II—Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (FAR Case 97–307)

This final rule converts the interim rule published as Item I of FAC 97–10 to a final rule with amendments at FAR 6.201, 19.306, 19.307, 19.800, 19.1303, and the provision at 52.219–1. This final rule amends the FAR to implement the Small Business Administration's Historically Underutilized Business (HUBZone) Program. The purpose of the program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these areas. The program provides for set-asides, sole source awards, and price evaluation preferences for HUBZone small business concerns and establishes goals for awards to such concerns.

Item III—Use of Competitive Proposals (FAR Case 99–001)

This final rule amends FAR 6.401 to delete the requirement for contracting officers to explain in writing their rationale for choosing to use competitive proposals rather than sealed bidding.

Item IV—Javits-Wagner-O'Day Proposed Revisions (FAR Case 98–602)

This final rule adds a new section, FAR 8.716, and amends paragraph (a) of FAR 42.1203 to provide procedures for recognizing a name change or a successor in interest for a Javits-Wagner-O'Day Act participating nonprofit agency providing supplies or services on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled.

Item V—OMB Circular A–119 (FAR Case 98–004)

This final rule amends FAR 11.101, 11.107, 11.201, and adds a provision at 52.211–7 to address the use of voluntary consensus standards in accordance with the requirements of Office of Management and Budget (OMB) Circular A–119.

Item VI—Determination of Price Reasonableness and Commerciality (FAR Case 98–300)

This interim rule revises FAR 12.209, 13.106–3(a)(2), and amends Subpart 15.4 to implement Section 803 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261). Section 803 requires amending the FAR to provide specific guidance concerning—

- The appropriate application and precedence of various price analysis tools;
- The circumstances under which contracting officers should require

offerors of exempt commercial items to provide information other than cost or pricing data; and

• The role and responsibility of support organizations in determining price reasonableness.

This interim rule also revises FAR 15.403–3(a) to implement Section 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261). Section 808 requires amending the FAR to—

• Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items;

• Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award; and

• Establish exceptions, as appropriate.

Item VII—Conforming Late Offer Treatment (FAR Case 97–030)

This final rule amends FAR 14.201–6, 14.304, and 15.208, the provisions at 52.212–1, 52.214–7, 52.214–23, and 52.215–1, and removes 52.214–32 and 52.214–33 to provide uniform guidance regarding receipt of late offers for commercial, sealed bid, and negotiated acquisitions.

Item VIII—Evaluation of Proposals for Professional Services (FAR Case 97–038)

This final rule amends FAR 15.305(a)(1) and 37.115–2(c) to provide guidance on the evaluation of proposals that include uncompensated overtime hours.

Item IX—Option Clause Consistency (FAR Case 98–606)

This final rule amends FAR 17.208(g) to clarify that the time period for providing a preliminary notice of the Government's intent to exercise a contract option in the clause at FAR 52.217–9 may be tailored and amends the clause at FAR 52.217–8 to make the format of the Option to Extend Services clause consistent with the format of other option clauses in the FAR.

Item X—Compensation for Senior Executives (FAR Case 98–301)

This final rule coverts the interim rule published as Item VIII of FAC 97–11 to a final rule without change. The rule amends FAR Part 31 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'' even though the home office or segment might not report directly to the contractor's headquarters.

Item XI—Interest and Other Financial Costs (FAR Case 98–006)

This final rule amends FAR 31.205–20 to make minor changes to the cost principle concerning ''interest and other financial costs.''

Item XII—Cost-Reimbursement Architect-Engineer Contracts (FAR Case 97–043)

This final rule amends the clause prescriptions at FAR 36.609, 44.204, 49.503, and the clause preface at 52.236–25, Requirements for Registration of Designers, to include application of certain clauses to cost-reimbursement architect-engineer contracts.

Item XIII—Conditionally Accepted Items (FAR Case 98–002)

This final rule amends FAR 46.101 to add a definition of conditional acceptance; and FAR 46.407 to require that, when conditionally accepting nonconforming items, amounts withheld from payments should be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work. FAR 46.407 has also been revised to require that the basis for the amounts withheld be documented in the contract file.

Item XIV—Value Engineering Change Proposals/PAT (FAR Case 97–031)

This final rule amends the value engineering change proposal (VECP) guidance in FAR 48.001, 48.102, 48.104, 48.201, and the FAR clause at 52.248–1 to allow the contracting officer to increase the sharing period from 36 to a range of 36 to 60 months; increase the contractor's share of instant, concurrent and future savings under the incentive/voluntary sharing arrangement from 50 to a range of 50 to 75 percent; and increase the contractor's share of collateral savings from 20 to a range of 20 to 100 percent on a case-by-case basis for each VECP.

Item XV—Cost Accounting Standards Post-Award Notification (FAR Case 98–003)

This final rule revises paragraph (e) of the clause at FAR 52.230–6, Administration of Cost Accounting Standards, to reduce the subcontractor information that a contractor is required to provide to its cognizant contract administration office (CAO) when requesting the CAO to perform administration for Cost Accounting Standards matters.

Item XVI—Technical Amendments

Amendments are being made at 1.106, 15.305, 19.102, 52.211–6, and 52.219–18 in order to update references and make editorial changes.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–14 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 97–14 are effective November 23, 1999, except for Items VI and XVI, which are effective September 24, 1999. Sections 19.102 and 52.219–18, which are included in Item XVI, are effective November 23, 1999.

Dated: September 10, 1999.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: September 13, 1999.

J. Les Davison,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: September 13, 1999.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 99–24409 Filed 9–23–99; 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 97–14; FAR Case 98–013; Item I]

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: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's (SBA) Very Small Business Pilot Program. This program became effective on January 4, 1999.

EFFECTIVE DATE: November 23, 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 97–14, 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 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. The program will expire on September 30, 2000.

The Councils published an interim rule in the **Federal Register** on March 4, 1999, (64 FR 10535). Five respondents submitted comments in response to the interim rule. The Councils considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 does not impose any new requirements on large or small contractors. The Small Business Administration has certified that the revisions to 13 CFR Parts 121 and 125 being implemented by this rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

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 5, 8, 12, 19, and 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR Parts 5, 8, 12, 19, and 52, which was published in the **Federal Register** on March 4, 1999, (64 FR 10535), as a final rule with the following changes:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19, and 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).

19.904 [Amended]

2. In section 19.904, remove from paragraphs (a) introductory text, (b), (c), and (d) ''shall'' and insert ''must'', in their places.

19.905 [Amended]

3. In section 19.905, remove from the introductory text, paragraph (a) introductory text, and paragraph (b) ''The contracting officer shall use'' and insert ''Insert'', in their places.

[FR Doc. 99–24410 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53

[FAC 97–14; FAR Case 97–307; Item II]

RIN 9000–AI20

Federal Acquisition Regulation; Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program

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 (Councils) have agreed to adopt the interim rule published in the **Federal Register** as Item I of Federal Acquisition Circular 97–10 at 63 FR 70265, December 18, 1998, and the correcting amendment published at 64 FR 3196, January 20, 1999, as a final rule with changes. The rule amends the Federal Acquisition Regulation (FAR) to implement revisions made to Small Business Administration (SBA) regulations covering the Historically Underutilized Business Zone (HUBZone) Program.

EFFECTIVE DATE: November 23, 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 97–14, FAR case 97–307.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 63 FR 70265, December 18, 1998, and a correcting amendment at 64 FR 3196, January 20, 1999. This final rule amends FAR Parts 6, 19, and 52 to comply with revisions made to the SBA's HUBZone Program contained in 13 CFR Parts 121, 125, and 126 (63 FR 31896, June 11, 1998), and to make editorial revisions. The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in distressed communities in an effort to increase employment opportunities, investment, and economic development in these communities. The program provides for set-asides for firms that meet the definition of a HUBZone small business concern (SBC), sole source awards to HUBZone SBCs, and price evaluation preferences for HUBZone SBCs in acquisitions conducted using full and open competition, and establishes a Governmentwide goal for HUBZone awards. Until September 30, 2000, ten Government agencies are required to comply with the prime contract HUBZone Program. After that date, the program will apply to all Federal agencies employing one or more contracting officers.

Seven respondents submitted comments in response to the interim rule. The Councils considered all comments in the development of the final rule.

This rule was subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this final rule. Therefore, the Councils completed a Final Regulatory Flexibility Analysis (FRFA). Interested parties may obtain a copy of the FRFA from the FAR Secretariat. It is summarized as follows:

The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns (SBCs) located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in such areas. The HUBZone Program will benefit SBCs by increasing the number of Federal Government contracts awarded to them. There is a statutory goal for HUBZone SBCs to receive 3 percent of contract dollars by fiscal year 2003. The HUBZone Act of 1997, Title VI of Public Law 105–135, 111 Stat. 2592 (December 2, 1997), created the HUBZone Program and directed the Administrator of the Small Business Administration to promulgate implementing regulations. On June 11, 1998, the SBA issued a final rule setting forth the program requirements for qualification as a HUBZone SBC, the Federal contracting assistance available to qualified HUBZone SBCs, and other aspects of this program. This Federal Acquisition Regulation (FAR) rule further implements the SBA rule. There were no public comments received in response to the Initial Regulatory Flexibility Analysis. The small entities affected by this rule are those who fit within the definition of a small business concern as defined by SBA in 13 CFR Part 121 and new Part 126 and who participate in Government contracting. Because the program is new, we cannot estimate precisely the number or classes of small entities that this rule will affect. However, SBA estimates that more than 30,000 SBCs will apply for certification as qualified HUBZone SBCs. These 30,000 HUBZone SBCs will be spread over about 7,000 census tracts, about 900 non-metropolitan counties, 310 Indian reservations, and 217 Alaska Native villages. With respect to projected reporting and recordkeeping requirements, this FAR rule requires that Government prime contractors with contracts that require subcontracting plans to seek out HUBZone SBCs as subcontractors, as well as to maintain records and report on those subcontracts awarded to HUBZone SBCs. These requirements do not apply to small businesses. We selected alternatives that would minimize any adverse economic impact on small business. In general, we modeled the rule's procurement mechanisms, to the extent permitted by the SBA rule, on those already in use within the Government. This approach should make the requirements of the rules immediately familiar to many small businesses that already have extensive experience in dealing with Government contracting offices. Moreover, we structured each individual mechanism to strike an appropriate balance between the interests of HUBZone and non-HUBZone small businesses, and to minimize the overall burden of compliance on small business. For example, we did not make the price evaluation adjustment applicable to all competitive procurements, but rather only to acquisitions that are not reserved or set aside for small business concerns, or where a small business would not be displaced.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements currently approved under OMB Control Numbers 9000–0006 and 9000–0007.

List of Subjects in 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 that was published at 63 FR 70265, December 18, 1998, and the correcting amendment published at 64 FR 3196, January 20, 1999, as a final rule with the following changes:

1. The authority citation for 48 CFR parts 6, 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 6—COMPETITION REQUIREMENTS

2. Revise section 6.201 to read as follows:

6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102.

PART 19—SMALL BUSINESS PROGRAMS

3. Amend section 19.306 to revise paragraphs (c), (e), and (k) to read as follows:

19.306 Protesting a firm's status as a HUBZone small business concern.

* * * * *

(c) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a qualified HUBZone small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. The contracting officer and the SBA must submit protests to SBA's Associate Administrator for the HUBZone Program (AA/HUB).

* * * * *

(e) Except for premature protests, the contracting officer must forward any protest received, notwithstanding whether the contracting officer believes that the protest is insufficiently specific or untimely, to: AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. The AA/HUB will notify the protester and the contracting officer of the date the protest was received and whether the protest

will be processed or dismissed for lack of timeliness or specificity.

* * * * *

(k) The ADA/GC&8(a)BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award will not apply to that acquisition. The ADA/GC&8(a)BD's decision is the final decision.

4. Revise section 19.307 to read as follows:

19.307 Solicitation provisions.

(a)(1) Insert the provision at 52.219–1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contractor will perform the contract inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(2)(i) Use the provision with its Alternate I in solicitations issued by the following agencies on or before September 30, 2000:

(A) Department of Agriculture.

(B) Department of Defense.

(C) Department of Energy.

(D) Department of Health and Human Services.

(E) Department of Housing and Urban Development.

(F) Department of Transportation.

(G) Department of Veterans Affairs.

(H) Environmental Protection Agency.

(I) General Services Administration.

(J) National Aeronautics and Space Administration.

(ii) Use the provision with its Alternate I in solicitations issued by all Federal agencies after September 30, 2000.

(3) Use the provision with its Alternate II in solicitations issued by DoD, NASA, or the Coast Guard that the contracting officer expects will exceed the threshold at 4.601(a).

(b) Insert the provision at 52.219–22, Small Disadvantaged Business Status, in solicitations that include the clause at 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting. Use the provision with its Alternate I in solicitations for acquisitions for which a price evaluation adjustment for small disadvantaged business concerns is authorized on a regional basis.

(c) When contracting by sealed bidding, insert the provision at 52.219–2, Equal Low Bids, in solicitations and contracts when the contractor will perform the contract inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

5. Amend section 19.800 to revise paragraph (e) to read as follows:

19.800 General.

* * * * *

(e) Before deciding to set aside an acquisition in accordance with Subpart 19.5 or 19.13, the contracting officer should review the acquisition for offering under the 8(a) Program. If the acquisition is offered to the SBA, SBA regulations (13 CFR 126.607(b)) give first priority to HUBZone 8(a) concerns.

* * * * *

6. Amend section 19.1303 to revise paragraph (b) to read as follows:

19.1303 Status as a qualified HUBZone small business concern.

* * * * *

(b) If the SBA determines that a concern is a qualified HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns on its Internet website at http://www.sba.gov/hubzone. A firm on the list is eligible for HUBZone program preferences without regard to the place of performance. The concern must appear on the list to be a HUBZone small business concern.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.219–1 to revise Alternates I and II to read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Alternate I (Nov 1999). As prescribed in 19.307(a)(2), add the following paragraph (b)(4) to the basic provision:

(4) [*Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.*] The offeror represents, as part of its offer, that—

(i) It____is, ____is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It ____ is, ____ is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(4)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture*: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

Alternate II (Nov 1999). As prescribed in 19.307(a)(3), add the following paragraph (b)(5) to the basic provision:

(5) [*Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.*] The offeror shall check the category in which its ownership falls:

____ Black American.

____ Hispanic American.

____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

____ Individual/concern, other than one of the preceding.

[FR Doc. 99–24411 Filed 9–23–99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 97–14; FAR Case 99–001; Item III]

RIN 9000–AI44

Federal Acquisition Regulation; Use of Competitive Proposals

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

(Councils) have agreed to a final rule amending the Federal Acquisition Regulation (FAR) to delete the requirement for contracting officers to explain in writing their rationale for choosing to use competitive proposals rather than sealed bidding.

EFFECTIVE DATE: November 23, 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 DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–14, FAR case 99–001.

SUPPLEMENTARY INFORMATION:

A. Background

This change streamlines the acquisition process by eliminating a nonstatutory requirement. It should be noted that the Competition in Contracting Act (Pub. L. 98–369), dated July 18, 1984, contains no requirement for written documentation.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–14, FAR case 99–001), 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 6

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Part 6 as set forth below:

PART 6—COMPETITION REQUIREMENTS

1. The authority citation for 48 CFR Part 6 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. In section 6.401, revise the introductory text to read as follows:

6.401 Sealed bidding and competitive proposals.

Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2; and, when appropriate, under Subpart 6.3.

* * * * *

[FR Doc. 99–24412 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 42

[FAC 97–14; FAR Case 98–602; Item IV]

RIN 9000–AI16

Federal Acquisition Regulation; Javits-Wagner-O'Day Proposed Revisions

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 provide procedures for recognizing a name change or a successor in interest for Javits-Wagner-O'Day Act (JWOD) participating nonprofit agencies.

EFFECTIVE DATE: November 23, 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 97–14, FAR case 98–602.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule adds a new section, FAR 8.716, to provide procedures for recognizing a name change or a successor in interest for a JWOD participating nonprofit agency providing supplies or services on the Procurement List maintained by the Committee For Purchase From People Who Are Blind or Severely Disabled, and amends paragraph (a) of FAR 42.1203 to exempt JWOD participating nonprofit agencies from requirements of that section pertaining to the processing of a name change or a successor in interest.

The rule is consistent with 41 U.S.C. 48, which pertains to the requirement (with certain exceptions) to procure supplies and services that are on the Procurement List issued by the Committee For Purchase From People Who Are Blind or Severely Disabled (Committee). The rule does not change the relationship between the Committee and JWOD participating nonprofit agencies concerning the compliance with State and local law before and during contract performance. The rule also does not change the Committee's obligation to insure that only responsible contractors provide supplies and services that are included on the Procurement List.

This rule is not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, 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 merely sets forth an existing practice and clarifies that certain administrative procedures pertaining to a name change or a successor in interest do not apply to JWOD participating nonprofit agencies.

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 8 and 42

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 8 and 42 as set forth below:

1. The authority citation for 48 CFR Parts 8 and 42 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 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Add a new section 8.716 to read as follows:

8.716 Change-of-name and successor in interest procedures.

When the Committee recognizes a name change or a successor in interest for a JWOD participating nonprofit agency providing supplies or services on the Procurement List—

(a) The Committee will provide a notice of a change to the Procurement List to the cognizant contracting officers; and

(b) Upon receipt of a notice of a change to the Procurement List from the Committee, the contracting officer must—

(1) Prepare a Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract, incorporating a summary of the notice and attaching a list of contracts affected; and

(2) Distribute the SF 30, including a copy to the Committee.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

3. Amend section 42.1203 to revise paragraph (a) to read as follows:

42.1203 Processing agreements.

(a) If a contractor wishes the Government to recognize a successor in interest to its contracts or a name change, the contractor must submit a written request to the responsible contracting officer (see 42.1202). If the contractor received its contract under Subpart 8.7 under the Javits-Wagner-O'Day Act, use the procedures at 8.716 instead.

* * * * *

[FR Doc. 99–24413 Filed 9–23–99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11 and 52

[FAC 97–14; FAR Case 98–004; Item V]

RIN 9000–AI12

Federal Acquisition Regulation; OMB Circular A–119

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to address the use of voluntary consensus standards in accordance with the requirements of Office of Management and Budget (OMB) Circular A–119.

EFFECTIVE DATE: November 23, 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 97–14, FAR case 98–004.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Management and Budget published a revised OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' in the **Federal Register** at 63 FR 8545, February 19, 1998. This rule revises FAR Subparts 11.1 and 11.2 and adds a new solicitation provision at 52.211–7 to implement the revised OMB circular.

A proposed rule was published in the **Federal Register** at 63 FR 68344, December 10, 1998. All comments were considered in the development of this final rule.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 merely amends the FAR to reflect the Government's preference for the use of voluntary consensus standards in accordance with OMB Circular A–119. The rule permits, but does not require, offerors to propose alternatives to Government-unique standards when responding to Government solicitations.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the final rule contains information collection requirements.

The Office of Management and Budget approved the information collection under clearance number 9000–0153 through February 28, 2002. This final rule does not affect those previously approved information collection requirements.

List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 11 and 52 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. In section 11.101, add paragraph (c) to read as follows:

§ 11.101 Order of precedence for requirements documents.

* * * * *

(c) In accordance with OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not

mandated by law (*e.g.*, industry standards such as ISO 9000).

3. Revise section 11.107 to read as follows:

§ 11.107 Solicitation provision.

(a) Insert the provision at 52.211–6, Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation.

(b) Insert the provision at 52.211–7, Alternatives to Government-Unique Standards, in solicitations that use Government-unique standards when the agency uses the transaction-based reporting method to report its use of voluntary consensus standards to the National Institute of Standards and Technology (see OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities''). Use of the provision is optional for agencies that report their use of voluntary consensus standards to the National Institute of Standards and Technology using the categorical reporting method. Agencies that manage their specifications on a contract-by-contract basis use the transaction-based method of reporting. Agencies that manage their specifications centrally use the categorical method of reporting. Agency regulations regarding specification management describe which method is used.

4. Revise paragraph (e) in section 11.201 to read as follows:

§ 11.201 Identification and availability of specifications.

* * * * *

(e) Agencies may purchase some nongovernment standards, including voluntary consensus standards, from the National Technical Information Service's Fedworld Information Network. Agencies may also obtain nongovernment standards from the standards developing organization responsible for the preparation, publication, or maintenance of the standard, or from an authorized document reseller. The National Institute of Standards and Technology can assist agencies in identifying sources for, and content of, nongovernment standards. DoD activities may obtain from the DoDSSP those nongovernment standards, including voluntary consensus standards, adopted for use by defense activities.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 52.211–7 to read as follows:

§ 52.211–7 Alternatives to Government-unique standards.

As prescribed in 11.107(b), insert the following provision:

Alternatives to Government-Unique Standards (Nov 1999)

(a) This solicitation includes Government-unique standards. The offeror may propose voluntary consensus standards that meet the Government's requirements as alternatives to the Government-unique standards. The Government will accept use of the voluntary consensus standard instead of the Government-unique standard if it meets the Government's requirements unless inconsistent with law or otherwise impractical.

(b) If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements. Acceptance of the alternative standard is a unilateral decision made solely at the discretion of the Government.

(c) Offers that do not comply with the Government-unique standards specified in this solicitation may be determined to be nonresponsive or unacceptable. The offeror may submit an offer that complies with the Government-unique standards specified in this solicitation, in addition to any proposed alternative standard(s).

(End of provision)

[FR Doc. 99–24414 Filed 9–23–99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 13, and 15

[FAC 97–14; FAR Case 98–300; Item VI]

RIN 9000–AI45

Federal Acquisition Regulation; Determination of Price Reasonableness and Commerciality

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 (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Sections 803 and 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261).

EFFECTIVE DATE: September 24, 1999.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before November 23, 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.

Address e-mail comments submitted via the Internet to:

farcase.98–300@gsa.gov

Please submit comments only and cite FAC 97–14, FAR case 98–300 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 Mr. Jeremy Olson at (202) 501–0692. Please cite FAC 97–14, FAR case 98–300.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils initiated this case to implement Sections 803 and 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) as follows:

(a) *Section 803 of Public Law 105–261.* (1) Paragraphs (a)(2)(A) through (a)(2)(C) of Section 803 of Public Law 105–261 require that the FAR provide specific guidance concerning—

(i) The appropriate application and precedence of various price analysis tools;

(ii) The circumstances under which contracting officers should require offerors of exempt commercial items to provide information other than cost or pricing data; and

(iii) The role and responsibility of support organizations in determining price reasonableness.

(2) Paragraph (a)(2)(D) of Section 803 is not implemented under this case.

(b) *Section 808 of Public Law 105–261.* Section 808 of Public Law 105–261 requires amending the FAR to—

(1) Clarify procedures associated with obtaining information other than cost or pricing data;

(2) Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award; and

(3) Establish exceptions, as appropriate.

This is not a significant regulatory action and, therefore, was not subject to Office of Management and Budget

review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This interim rule may have a significant cost or administrative impact on contractors or offerors within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because offerors may be ineligible for award if they fail to provide the required information other than cost or pricing data. We have prepared an Initial Regulatory Flexibility Analysis (IRFA) that is summarized as follows:

The rule will apply to all offerors, large or small, that respond to solicitations for commercial items which require submission of information other than cost or pricing data. We expect few, if any, offerors to fail to comply with the requirements to provide information other than cost or pricing data.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–14, FAR case 98–300), 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 because this rule implements Section 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261), which required implementation in the FAR by April 15, 1999. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 12, 13, and 15

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 12, 13, and 15 as set forth below:

1. The authority citation for 48 CFR Parts 12, 13, and 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).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. Revise section 12.209 read as follows:

12.209 Determination of price reasonableness.

When contracting for commercial items, the contracting officer must establish price reasonableness in accordance with 13.106–3, 14.408–2, or Subpart 15.4, as applicable.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

3. Amend section 13.106–3 in the introductory text of paragraph (a) by removing ''shall'' and adding ''must'' in its place, and by revising paragraph (a)(2) to read as follows:

13.106–3 Award and documentation.

(a) * * *

(2) If only one response is received, include a statement of price reasonableness in the contract file. The contracting officer may base the statement on—

(i) Market research;

(ii) Comparison of the proposed price with prices found reasonable on previous purchases;

(iii) Current price lists, catalogs, or advertisements. However, inclusion of a price in a price list, catalog, or advertisement does not, in and of itself, establish fairness and reasonableness of the price;

(iv) A comparison with similar items in a related industry;

(v) The contracting officer's personal knowledge of the item being purchased;

(vi) Comparison to an independent Government estimate; or

(vii) Any other reasonable basis.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

4. Amend section 15.403–1 to add a sentence to the end of paragraph (c)(3) 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) * * *

(3) * * * If the contracting officer determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies, the contracting officer must require submission of cost or pricing data.

* * * * *

5. Amend section 15.403–3 to revise paragraphs (a) and (c) to read as follows:

15.403–3 Requiring information other than cost or pricing data.

(a) *General.* (1) The contracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism, but the contracting officer should not obtain more information than is necessary (see 15.402(a)). If the contracting officer cannot obtain adequate information from sources other than the offeror, the contracting officer must require submission of information other than cost or pricing data from the offeror that is adequate to determine a fair and reasonable price (10 U.S.C. 2306a(d)(1) and 41 U.S.C. 254b(d)(1)). Unless an exception under 15.403–1(b) (1) or (2) applies, the contracting officer must require that the information submitted by the offeror include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price. To determine the information an offeror should be required to submit, the contracting officer should consider the guidance in Section 3.3, Chapter 3, Volume I, of the Contract Pricing Reference Guide cited at 15.404–1(a)(7).

(2) The contractor's format for submitting the information should be used (see 15.403–5(b)(2)).

(3) The contracting officer must ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists.

(4) As specified in Section 808 of Public Law 105–261, an offeror who

does not comply with a requirement to submit information for a contract or subcontract in accordance with paragraph (a)(1) of this subsection is ineligible for award unless the HCA determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

(i) The effort made to obtain the data.

(ii) The need for the item or service.

(iii) Increased cost or significant harm to the Government if award is not made.

* * * * *

(c) *Commercial items.* (1) At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item (see 15.404–1(b)). The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional information from sources other than the offeror, then the contracting officer must require the offeror to submit information other than cost or pricing data to support further analysis (see 15.403–3(a)(1)).

(2) *Limitations relating to commercial items (10 U.S.C. 2306a(d)(2) and 41 U.S.C. 254b(d)).* (i) The contracting officer must limit requests for sales data relating to commercial items to data for the same or similar items during a relevant time period.

(ii) The contracting officer must, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror as part of its commercial operations.

(iii) The Government must not disclose outside the Government information obtained relating to commercial items that is exempt from disclosure under 24.202(a) or the Freedom of Information Act (5 U.S.C. 552(b)).

6. Amend section 15.404–1 to revise paragraph (b)(2) introductory text, (b)(2)(i) and (b)(2)(ii); and to add (b)(2)(vii), (b)(3) and (b)(4) to read as follows:

15.404–1 Proposal analysis techniques.

* * * * *

(b) * * *

(2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

(i) Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes price reasonableness (see 15.403–1(c)(1)).

(ii) Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.

* * * * *

(vii) Analysis of pricing information provided by the offeror.

(3) The first two techniques at 15.404–1(b)(2) are the preferred techniques. However, if the contracting officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the contracting officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition.

(4) Value analysis can give insight into the relative worth of a product and the Government may use it in conjunction with the price analysis techniques listed in paragraph (b)(2) of this section.

* * * * *

7. Amend section 15.404–2 to revise paragraphs (a)(1) and (a)(2) to read as follows:

15.404–2 Information to support proposal analysis.

(a) *Field pricing assistance.* (1) The contracting officer should request field pricing assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. The contracting officer must tailor requests to reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) The contracting officer must tailor the type of information and level of detail requested in accordance with the specialized resources available at the buying activity and the magnitude and complexity of the required analysis. Field pricing assistance is generally available to provide—

(i) Technical, audit, and special reports associated with the cost elements of a proposal, including subcontracts;

(ii) Information on related pricing practices and history;

(iii) Information to help contracting officers determine commerciality and price reasonableness, including—

(A) Verifying sales history to source documents;

(B) Identifying special terms and conditions;

(C) Identifying customarily granted or offered discounts for the item;

(D) Verifying the item to an existing catalog or price list;

(E) Verifying historical data for an item previously not determined commercial that the offeror is now trying to qualify as a commercial item; and

(F) Identifying general market conditions affecting determinations of commerciality and price reasonableness.

(iv) Information relative to the business, technical, production, or other capabilities and practices of an offeror.

* * * * *

[FR Doc. 99–24415 Filed 9–23–99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, 22, and 52

[FAC 97–14; FAR Case 97–030; Item VII]

RIN 9000–AI25

Federal Acquisition Regulation; Conforming Late Offer Treatment

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide uniform guidance regarding receipt of late offers for commercial, sealed bid, and negotiated acquisitions.

EFFECTIVE DATE: November 23, 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 97–14, FAR case 97–030.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** on January

27, 1999 (64 FR 4248), amending the FAR to provide a single standard for receipt of late offers under commercial, sealed bid, and negotiated acquisitions. The final rule makes additional revisions to the proposed rule.

The rule amends paragraph (f) of the clause at FAR 52.212–1, Instructions to Offerors—Commercial Items, to permit consideration of late offers if the Government mishandled the offer. This rule also amends guidance on receipt of late offers in FAR 14.304 and 15.208 and associated FAR solicitation provisions at 52.214–7, Late Submissions, Modifications, and Withdrawals of Bids; 52.214–23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Bidding; and paragraph (c)(3) at 52.215–1, Instruction to Offerors—Competitive Acquisitions, to provide uniform guidance for sealed bids and negotiated acquisitions. The rule also deletes the solicitation provisions at 52.214–32, Late Submissions, Modifications, and Withdrawals of Bids (Overseas), and 52.214–33, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas), since the revisions to 52.214–7 and 52.214–23 eliminate the need for separate provisions, respectively.

Six respondents provided comments on the proposed rule. The Government considered the comments in finalizing the rule.

This action is not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, 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 will affect when an offer is considered late; and, although no statistics regarding the number of late proposals exist, we expect that less than 1 percent of the offers will be received late. Under the rule, the Government will consider late offers, including late offers under commercial acquisitions that are late because of Government mishandling.

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 14, 15, 22, and 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 14, 15, 22, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 14, 15, 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 14—SEALED BIDDING

2. Amend section 14.201–6 to revise paragraph (c)(3), remove paragraph (c)(4), revise paragraphs (g)(2), (o)(2)(i), (o)(2)(ii), and (r), remove paragraph (v), redesignate paragraphs (w) through (y) as (v) through (x), respectively, and revise newly designated paragraphs (w) and (x) to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(c) * * *

(3) 52.214–7, Late Submissions, Modifications, and Withdrawals of Bids.

* * * * *

(g) * * *

(2) Use the provision with its Alternate I in invitations for bids that are for perishable subsistence, and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

* * * * *

(o) * * *

(2) * * *

(i) If the nature of the required product does not necessitate limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, use the provision with its Alternate I; or

(ii) If the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, use the provision with its Alternate II.

* * * * *

(r) Insert the provision at 52.214–23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding.

* * * * *

(w) Insert the provision at 52.214–34, Submission of Offers in the English Language, in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

(x) Insert the provision at 52.214–35, Submission of Offers in U.S. Currency, in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

2a. In addition to the amendments set forth above, in section 14.201–6, remove the words ''The contracting officer shall insert'' and add, in their place, the word ''Insert'' in the following places:

a. The introductory text of paragraphs 14.201–6(b), (c), and (e);

b. Paragraphs (f), (g)(1), and (h);

c. Paragraph (i);

d. Paragraphs (j), (l), (m), and (o)(1);

e. Paragraph (p)(1); and

f. Paragraphs (q), (s), (t), (u), and newly redesignated paragraph (v).

14.202–7 [Amended]

3. Amend section 14.202–7 in the introductory text of paragraph (a) by removing ''(see 14.201–6(w))'' and adding ''(see 14.201–6(v))'' in its place.

14.303 [Amended]

4. Amend section 14.303 in the fourth sentence of paragraph (a) by removing ''14.201–6(w)'' and adding ''14.201–6(v)'' in its place.

5. Section 14.304, consisting of sections 14.304–1 through 14.304–4, is revised to read as follows:

14.304 Submission, modification, and withdrawal of bids.

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bid (IFB) by the time specified in the IFB. They may use any transmission method authorized by the IFB (*i.e.*, regular mail, electronic commerce, or facsimile). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal of a bid received at the

Government office designated in the IFB after the exact time specified for receipt of bids is ''late'' and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB, and urgent Government requirements preclude amendment of the bid opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the IFB on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214–31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. Upon withdrawal of an electronically transmitted bid, the data received must not be viewed and, where practicable, must be purged from primary and backup data storage systems.

(f) The contracting officer must promptly notify any bidder if its bid, modification, or withdrawal was received late, and must inform the bidder whether its bid will be considered, unless contract award is imminent and the notices prescribed in 14.409 would suffice.

(g) Late bids and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee must be returned.

(h) If available, the following must be included in the contract files for each late bid, modification, or withdrawal:

(1) The date and hour of receipt.

(2) A statement, with supporting rationale, regarding whether the bid was considered for award.

(3) The envelope, wrapper, or other evidence of the date of receipt.

6. Amend section 14.503–1 by revising paragraph (h) to read as follows:

114.503–1 Step one.

* * * * *

(h) Late technical proposals are governed by 15.208 (b), (c), and (f).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

7. Revise section 15.208 to read as follows:

15.208 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for submitting proposals, and any revisions, and modifications, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. Offerors may use any transmission method authorized by the solicitation (*i.e.*, regular mail, electronic commerce, or facsimile). If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b)(1) Any proposal, modification, revision, or withdrawal that is received at the designated Government office after the exact time specified for receipt of proposals is ''late'' and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of proposals and was under the Government's control prior to the time set for receipt of proposals; or

(iii) It was the only proposal received.

(2) However, a late modification of an otherwise successful proposal, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Proposals may be withdrawn by written notice at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer must document the contract file when oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see 4.803(a)(10)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offerors request. Where practicable, electronically transmitted proposals that are withdrawn must be purged from primary and backup data storage systems after a copy is made for the file. Extremely bulky proposals must only be returned at the offeror's request and expense.

(f) The contracting officer must promptly notify any offeror if its proposal, modification, or revision was received late, and must inform the offeror whether its proposal will be considered, unless contract award is imminent and the notice prescribed in 15.503(b) would suffice.

(g) Late proposals and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(h) If available, the following must be included in the contracting office files for each late proposal, modification, revision, or withdrawal:

(1) The date and hour of receipt.

(2) A statement regarding whether the proposal was considered for award, with supporting rationale.

(3) The envelope, wrapper, or other evidence of date of receipt.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1009–4 [Amended]

8. Amend section 22.1009–4 in the first sentence of paragraph (d) by removing ''14.304–1'' and adding ''14.304'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Amend section 52.212–1 to revise the date of the provision and paragraph (f) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Nov 1999)

* * * * *

(f) *Late submissions, modifications, revisions, and withdrawals of offers.* (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is ''late'' and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

* * * * *

10. Revise section 52.214–7 to read as follows:

52.214–7 Late submissions, modifications, and withdrawals of bids.

As prescribed in 14.201–6(c)(3), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Bids (Nov 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is ''late'' and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214–31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

11. Revise section 52.214–23 to read as follows:

52.214–23 Late submissions, modifications, revisions, and withdrawals of technical proposals under two-step sealed bidding.

As prescribed in 14.201–6(r), insert the following provision:

Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Nov 1999)

(a) Bidders are responsible for submitting technical proposals, and any modifications or revisions, so as to reach the Government office designated in the request for technical proposals by the time specified in the invitation for bids (IFB). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids or revisions are due.

(b)(1) Any technical proposal under step one of two-step sealed bidding or modification, revision, or withdrawal of such proposal received at the Government office designated in the request for technical proposals after the exact time specified for receipt will not be considered unless the Contracting Officer determines that accepting the late technical proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the request for technical proposals, it was

received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt; or

(iii) It is the only proposal received and it is negotiated under part 15 of the Federal Acquisition Regulation.

(2) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the technical proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the Government office designated for receipt of technical proposals by the exact time specified in the request for technical proposals, and urgent Government requirements preclude amendment of the request for technical proposals, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the request for technical proposals on the first work day on which normal Government processes resume.

(e) Technical proposals may be withdrawn by written notice received at any time before the exact time set for receipt of technical proposals. If the request for technical proposals authorizes facsimile technical proposals, they may be withdrawn via facsimile received at any time before the exact time set for receipt of proposals, subject to the conditions specified in the provision at 52.214–31, Facsimile Bids. A technical proposal may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of technical proposals, the identity of the person requesting withdrawal is established and the person signs a receipt for the technical proposal.

(End of provision)

52.214–31 [Amended]

12. Amend section 52.214–31 in the introductory text of the provision by removing ''14.201–6(w)'' and adding ''14.201-6(v)'' in its place.

52.214–32 and 52.214–33 [Removed and Reserved]

13. Remove and reserve sections 52.214–32 and 52.214–33.

52.214–34 [Amended]

14. Amend section 52.214–34 in the introductory paragraph of the provision by removing ''14.201–6(x)'' and adding ''14.201–6(w)'' in its place.

52.214–35 [Amended]

15. Amend section 52.214–35 in the introductory paragraph of the provision by removing ''14.201–6(y)'' and adding ''14.201–6(x)'' in its place.

16. Amend section 52.215–1 to revise the date of the provision and paragraph (c)(3) to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions to Offerors—Competitive Acquisition (Nov 1999)

* * * * *

(c) * * *

(3) *Submission, modification, revision, and withdrawal of proposals.* (i) Offerors are responsible for submitting proposals, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, revision, or withdrawal received at the Government office designated in the solicitation after the exact time specified for receipt of offers is ''late'' and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(*1*) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(*2*) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(*3*) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215–5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

* * * * *

[FR Doc. 99–24416 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 37

[FAC 97–14; FAR Case 97–038; Item VIII]

RIN 9000–AI07

Federal Acquisition Regulation; Evaluation of Proposals for Professional Services

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide guidance on the evaluation of proposals that include uncompensated overtime hours.

EFFECTIVE DATE: November 23, 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 F. Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 97–14, FAR case 97–038.

SUPPLEMENTARY INFORMATION:

A. Background

A final rule published as Item VII of Federal Acquisition Circular (FAC) 97–01 in the **Federal Register** on August 22, 1997 (62 FR 44813) elevated guidance regarding uncompensated overtime from the Defense Federal Acquisition Regulation Supplement (DFARS) Part

237 to FAR Part 37, and elevated a DFARS solicitation provision to FAR 52.237–10, Identification of Uncompensated Overtime. However, the FAR rule in FAC 97–01 did not address the evaluation of proposals that include uncompensated overtime.

Therefore, a proposed FAR rule was published in the **Federal Register** on August 24, 1998 (63 FR 45112), to add guidance at FAR 15.305(a)(1) and FAR 37.115–2(c) on the evaluation of proposed uncompensated overtime hours. One respondent submitted comments in response to the proposed rule. The Councils considered the respondent's comments in the development of the final rule and converted the proposed rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 guidance added to FAR Parts 15 and 37 is consistent with the existing policy pertaining to uncompensated overtime at FAR 37.115 and 52.237–10.

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 15 and 37

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 15 and 37 as set forth below:

1. The authority citation for 48 CFR Parts 15 and 37 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 15—CONTRACTING BY NEGOTIATION

2. In section 15.305, amend paragraph (a)(1) by adding a parenthetical as the penultimate sentence to read as follows:

15.305 Proposal evaluation.

(a) * * *

(1) * * * (See 37.115 for uncompensated overtime evaluation.) * * *

* * * * *

PART 37—SERVICE CONTRACTING

3. In section 37.115–2, add paragraph (c) to read as follows:

37.115–2 General policy.

* * * * *

(c) Contracting officers must ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the Government's requirements (see 15.305 for competitive negotiations and 15.404–1(d) for cost realism analysis). When acquiring these services, contracting officers must conduct a risk assessment and evaluate, for award on that basis, any proposals received that reflect factors such as:

(1) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(2) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

[FR Doc. 99–24417 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17 and 52

[FAC 97–14; FAR Case 98–606; Item IX]

RIN 9000–AI26

Federal Acquisition Regulation; Option Clause Consistency

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 (Councils) have agreed to adopt the amendments of the proposed rule without change into the CFR. The rule amends the Federal Acquisition Regulation (FAR) to make the format of all option clauses consistent and to clarify that contracting officers may tailor the time period for providing a preliminary notice of the Government's intent to exercise an option.

EFFECTIVE DATE: November 23, 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 DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–14, FAR case 98–606.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 64 FR 3618, January 22, 1999, to amend FAR 17.208(g) to clarify that the time period for providing a preliminary notice of the Government's intent to exercise a contract option in the clause at FAR 52.217–9, Option to Extend the Term of the Contract, may be tailored, and amend the clause at FAR 52.217–8 to make the format of the Option to Extend Services clause consistent with the format of other option clauses in the FAR.

Two respondents submitted public comments. The Councils considered the comments in finalizing the rule.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 merely clarifies an existing practice.

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 17 and 52:

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 17 and 52 as set forth below:

1. The authority citation for 48 CFR Parts 17 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 17—SPECIAL CONTRACTING METHODS

2. In section 17.208, amend paragraphs (a), (b), (c) introductory text, (d), (e), and (f) by removing ''The contracting officer shall insert'' and add ''Insert'' in its place; and revise paragraph (g) to read as follows:

17.208 Solicitation provisions and contract clauses.

* * * * *

(g) Insert a clause substantially the same as the clause at 52.217–9, Option to Extend the Term of the Contract, in solicitations and contracts when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract any or all of the following:

(1) A requirement that the Government must give the contractor a preliminary written notice of its intent to extend the contract.

(2) A statement that an extension of the contract includes an extension of the option.

(3) A specified limitation on the total duration of the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. In section 52.217–8, revise the date of the clause and the last sentence to read as follows:

52.217–8 Option to Extend Services.

* * * * *

Option to Extend Services (Nov 1999)

* * * The Contracting Officer may exercise the option by written notice to the Contractor within__ [insert the period of time within which the Contracting Officer may exercise the option].

(End of clause)

3. In section 52.217–9, revise the date of the clause and paragraph (a) to read as follows:

52.217–9 Option to Extend the Term of the Contract.

* * * * *

Option to Extend the Term of the Contract (Nov 1999)

(a) The Government may extend the term of this contract by written notice to the Contractor within __ [insert the period of time within which the Contracting Officer may exercise the option]; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least __ days [60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the Government to an extension.

* * * * *

(End of clause)

[FR Doc. 99–24418 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–14; FAR Case 98–301; Item X]

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: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule 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(l)(5) and at 41 U.S.C. 256(m)(2).

EFFECTIVE DATE: September 24, 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 97–14, FAR case 98–301.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published an interim rule in the **Federal Register** on March 4, 1999 (64 FR 10547). The rule revised FAR 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(l)(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'' even though the home office or segment might not report directly to the contractor's headquarters.

There were no public comments submitted in response to the interim rule. Therefore, the Councils have agreed to convert the interim rule to a final rule without change.

This regulatory action was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 principle 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: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR Part 31, which was published in the **Federal Register** on March 4, 1999 (64 FR 10547), as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 99–24419 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–14; FAR Case 98–006; Item XI]

RIN 9000–AI24

Federal Acquisition Regulation; Interest and Other Financial Costs

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to make minor changes to the cost principle concerning ''interest and other financial costs.''

EFFECTIVE DATE: November 23, 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 97–14, FAR case 98–006.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** on January 29, 1999 (64 FR 4760). The rule proposed amending FAR 31.205–20, Interest and Other Financial Costs, to add ''interest charges and other amounts paid as a consequence of late contractor payments'' to the list of unallowable costs. In addition, the rule proposed several minor revisions, including the deletion of ''and directly associated costs.'' This phrase is unnecessary since FAR 31.201–6(a) indicates that when ''an unallowable cost is incurred, its directly associated costs are also unallowable.''

Fifteen respondents submitted public comments to the proposed rule. Many of the respondents expressed the following concerns:

- The ruling by the Court of Appeals for the Federal Circuit (*Lockheed Corporation* v. *Secretary of the Air Force*, 113 F.3d 1225 (Fed. Cir. 1997)) did not involve interest charges paid ''as a consequence of late contractor payments,'' but rather as a consequence of an inadvertent tax deficiency.
- The term ''late contractor payments'' is overly broad and may result in confusion regarding interest allowability.

The rule is inequitable since it proposes to disallow Government reimbursement of interest costs incurred by a contractor for the underpayment of State taxes while FAR 31.201–5, Credits, requires the contractor to credit the Government the applicable portion of any State tax refunds it receives, together with interest.

- The rule incentivizes contractors to be overly conservative in computing State tax liability.
- The rule substantially increases administrative burdens on the Government and contractors.

While the Councils do not agree with all of the concerns expressed by the respondents, the Councils have decided not to add ''interest charges and other amounts paid as a consequence of late contractor payments'' to the list of unallowable costs in FAR 31.205–20, pending further study on the issue of interest allowability. Therefore, this final rule only makes minor changes to the interest cost principle.

This is not a significant regulatory action and, therefore, was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 this rule only makes nonsubstantive changes to the cost principle concerning ''interest and other financial costs.'' In addition, 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.

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: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Part 31 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. Revise section 31.205–20 to read as follows:

31.205–20 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, and costs of preparing and issuing stock rights are unallowable (but see 31.205–28). However, interest assessed by State or local taxing authorities under the conditions specified in 31.205–41(a)(3) is allowable.

[FR Doc. 99–24420 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 36, 44, 49, and 52

[FAC 97–14; FAR Case 97–043; Item XII]

RIN 9000–AI22

Federal Acquisition Regulation; Cost-Reimbursement Architect-Engineer 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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide guidance

on the applicability of certain clauses to cost-reimbursement architect-engineer (A–E) contracts.

EFFECTIVE DATE: November 23, 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 97–14, FAR case 97–043.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 63 FR 71710, December 29, 1998, with comments requested by March 1, 1999. Only one respondent submitted comments, and those comments were not substantive. This final rule is unchanged from the proposed rule. The rule amends the prescriptions for use of the following FAR clauses to include cost-reimbursement architect-engineer services contracts:

52.236–24 Work Oversight in Architect-Engineer Contracts
52.236–25 Requirements for Registration of Designers
52.244–4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)
52.249–6 Termination (Cost-Reimbursement)

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 only corrects certain clause prescriptions, and this correction will not bring about any increased costs to be borne by the contractor.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule requires use of the clause at FAR 52.249–6, Termination (Cost-Reimbursement), in cost-reimbursement contracts for architect-engineer services. The information collection requirements relating to termination clauses are approved and covered by OMB Control No. 9000–0028.

List of Subjects in 48 CFR Parts 36, 44, 49, and 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 36, 44, 49, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 36, 44, 49, 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 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.609–3 [Amended]

2. In section 36.609–3, remove ''fixed-price'' and add ''all'' in its place.

36.609–4 [Amended]

3. In section 36.609–4, remove ''fixed-price''.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.204 [Amended]

4. In section 44.204, amend paragraph (b) by removing the words ''fixed-price''.

PART 49—TERMINATION OF CONTRACTS

5. In section 49.503, revise paragraphs (a)(1) and (b) to read as follows:

49.503 Termination for convenience of the Government and default.

(a) *Cost-reimbursement contracts*—(1) *General use.* Insert the clause at 52.249–6, Termination (Cost-Reimbursement), in solicitations and contracts when a cost-reimbursement contract is contemplated, except contracts for research and development with an educational or nonprofit institution on a no-fee basis.

* * * * *

(b) Insert the clause at 52.249–7, Termination (Fixed-Price Architect-Engineer), in solicitations and contracts for architect-engineer services, when a fixed-price contract is contemplated.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. In section 52.236–25, revise the introductory text of the clause to read as follows:

52.236–25 Requirements for Registration of Designers.

As prescribed in 36.609–4, insert the following clause:

* * * * *

[FR Doc. 99–24421 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 46

[FAC 97–14; FAR Case 98–002; Item XIII]

RIN 9000–AI17

Federal Acquisition Regulation; Conditionally Accepted Items

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require that, when conditionally accepting nonconforming items, amounts withheld from payments should be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work; and that the contracting officer must document the basis for the amounts withheld in the contract file.

EFFECTIVE DATE: November 23, 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 Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–14, FAR case 98–002.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** on October 28, 1998, (63 FR 57878). This final rule implements the recommendation of General Accounting Office Report GAO/NSIAD–98–20 Defense Acquisition, Guidance Is Needed On Payments For Conditionally Accepted Items, dated December 12, 1997. The rule amends FAR 46.101 to add a definition of ''conditional acceptance,'' and amends

FAR 46.407 to provide procedures for the conditional acceptance of supplies and services.

The Councils received public comments from two respondents and considered them in finalizing the rule.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 use of conditional acceptance is not widespread. No additional requirements are imposed on small businesses.

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 46

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Part 46 as set forth below:

PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 46 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. Amend section 46.101 by adding, in alphabetical order, the definition ''Conditional acceptance'' to read as follows:

46.101 Definitions.

* * * * *

Conditional acceptance, as used in this part, means acceptance of supplies or services that do not conform to contract quality requirements, or are otherwise incomplete, that the contractor is required to correct or otherwise complete by a specified date.

* * * * *

3. Amend section 46.407 as follows:

a. Remove from paragraph (a) ''Contracting officers'' and insert ''The contracting officer'', in its place;

b. Remove from the first sentence of paragraph (b) ''Contractors ordinarily shall be given'' and from the second sentence ''shall'' and insert ''The contracting officer ordinarily must give the contractor'', and ''must'', respectively;

c. Revise paragraph (c)(1);

d. Remove from the first and second sentences of paragraph (c)(2) ''shall'' and insert ''must,'' in their places;

e. Remove from paragraph (e) ''Contracting officers shall'' and insert ''The contracting officer must'';

f. Revise paragraph (f); and

g. Remove from the first and last sentences of the introductory text of paragraph (g) ''shall'' and insert ''must,'' in their places;

Revised text read as follows:

46.407 Nonconforming supplies or services.

* * * * *

(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer ordinarily must reject supplies or services when the nonconformance is critical or major or the supplies or services are otherwise incomplete. However, there may be circumstances (*e.g.*, reasons of economy or urgency) when the contracting officer determines acceptance or conditional acceptance of supplies or services is in the best interest of the Government. The contracting officer must make this determination based upon—

(i) Advice of the technical activity that the item is safe to use and will perform its intended purpose;

(ii) Information regarding the nature and extent of the nonconformance or otherwise incomplete supplies or services;

(iii) A request from the contractor for acceptance of the nonconforming or otherwise incomplete supplies or services (if feasible);

(iv) A recommendation for acceptance, conditional acceptance, or rejection, with supporting rationale; and

(v) The contract adjustment considered appropriate, including any adjustment offered by the contractor.

* * * * *

(f) When supplies or services are accepted with critical or major nonconformances as authorized in paragraph (c) of this section, the contracting officer must modify the contract to provide for an equitable price reduction or other consideration. In the case of conditional acceptance, amounts withheld from payments generally should be at least sufficient to cover the estimated cost and related profit to correct deficiencies and complete unfinished work. The contracting officer must document in the contract file the basis for the amounts withheld. For services, the contracting officer can consider identifying the value of the individual work requirements or tasks (subdivisions) that may be subject to price or fee reduction. This value may be used to determine an equitable adjustment for nonconforming services. However, when supplies or services involving minor nonconformances are accepted, the contract need not be modified unless it appears that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconforming services will exceed the cost to the Government of processing the modification.

* * * * *

[FR Doc. 99–24422 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 48 and 52

[FAC 97–14; FAR Case 97–031; Item XIV]

RIN 9000–AH84

Federal Acquisition Regulation; Value Engineering Change Proposals/PAT

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to change the sharing periods and rates that contracting officers may establish for individual value engineering change proposals.

EFFECTIVE DATE: November 23, 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 Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–14, FAR case 97–031.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the value engineering change proposal (VECP) guidance in FAR Parts 48 and 52 to allow the contracting officer to increase the sharing period from 36 to a range of 36 to 60 months; increase the contractor's share of instant, concurrent and future savings under the incentive/voluntary sharing arrangement from 50 to a range of 50 to 75 percent; and increase the contractor's share of collateral savings from 20 to a range of 20 to 100 percent on a case-by-case basis for each VECP. The contracting officer's unilateral decision on each of these aspects is final. This revision is intended to incentivize contractors to submit more value engineering change proposals, by allowing contracting officers to unilaterally increase both the share percentage and the sharing period, so that contractors with meritorious proposals may be adequately compensated for the effort required to prepare and negotiate individual change proposals.

The Councils published a proposed rule in the **Federal Register** at 63 FR 43236, August 12, 1998. Nine respondents submitted comments on the proposed rule. The Councils considered all comments in the development of the final rule.

The Councils are addressing the changes concerning the Contract Disputes Act under FAR Case 98–017, Review of Award Fee Determinations (Burnside-Ott). The Councils published this case in the **Federal Register** at 64 FR 24472, May 6, 1999 as a proposed rule with a request for comments.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule. Interested parties may obtain a copy of the FRFA from the FAR Secretariat.

The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) and it is summarized as follows:

The objective of the rule is to change the sharing periods and rates that contracting officers may establish for individual VECPs. By allowing longer sharing periods and allowing increased contractor sharing rates for collateral and concurrent savings, more contractors may find it feasible to submit VECPs. The rule may increase the number of VECP settlements negotiated between the Government and private entities, as the additional flexibility in sharing periods and contractor sharing rates it provides should incentivize contractors to submit more VECPs. The rule will apply to all entities, large and small, that propose VECPs under Government contracts.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

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 48 and 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 48 and 52 as set forth below:

1. The authority citation for 48 CFR Parts 48 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 48—VALUE ENGINEERING

2. In section 48.001, revise paragraph (c) of the definition ''Acquisition savings'' and revise the definition ''Sharing period'' to read as follows:

48.001 Definitions.

Acquisition savings, * * *

(c) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

* * * * *

Sharing period, as used in this part, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

* * * * *

3. In section 48.102, revise paragraphs (g) and (h) to read as follows:

48.102 Policies.

* * * * *

(g) The contracting officer determines the sharing periods and sharing rates on a case-by-case basis using the guidelines in 48.104–1 and 48.104–2, respectively. In establishing a sharing period and sharing rate, the contracting officer must consider the following, as appropriate, and must insert supporting rationale in the contract file:

(1) Extent of the change.

(2) Complexity of the change.

(3) Development risk (*e.g.*, contractor's financial risk).

(4) Development cost.

(5) Performance and/or reliability impact.

(6) Production period remaining at the time of VECP acceptance.

(7) Number of units affected.

(h) Contracts for architect-engineer services must require a mandatory value engineering program to reduce total ownership cost in accordance with 48.101(b)(2). However, there must be no sharing of value engineering savings in contracts for architect-engineer services.

* * * * *

48.104–1 through 104–3 [Redesignated as 48.104–2 through 48.104–4]

4. Redesignate sections 48.104–1 through 48.104–3 as 48.104–2 through 48.104–4, respectively;

5. Add new section 48.104–1 to read as follows:

48.104–1 Determining sharing period.

(a) Contracting officers must determine discrete sharing periods for each VECP. If more than one VECP is incorporated into a contract, the sharing period for each VECP need not be identical.

(b) The sharing period begins with acceptance of the first unit incorporating the VECP. Except as provided in paragraph (c) of this section, the end of the sharing period is a specific calendar date that is the later of—

(1) 36 to 60 consecutive months (set at the discretion of the contracting officer for each VECP) after the first unit affected by the VECP is accepted; or

(2) The last scheduled delivery date of an item affected by the VECP under the instant contract delivery schedule in effect at the time the VECP is accepted.

(c) For engineering-development contracts and contracts containing low-rate-initial-production or early production units, the end of the sharing period is based not on a calendar date, but on acceptance of a specified quantity of future contract units. This quantity is the number of units affected by the VECP that are scheduled to be delivered over a period of between 36 and 60 consecutive months (set at the discretion of the contracting officer for each VECP) that spans the highest

planned production, based on planning and programming or production documentation at the time the VECP is accepted. The specified quantity begins with the first future contract unit affected by the VECP and continues over consecutive deliveries until the sharing period ends at acceptance of the last of the specified quantity of units.

(d) For contracts (other than those in paragraph (c) of this subsection) for items requiring a prolonged production schedule (*e.g.,* ship construction, major system acquisition), the end of the sharing period is determined according to paragraph (b) of this subsection. Agencies may prescribe sharing of future contract savings on all future contract units to be delivered under contracts awarded within the sharing period for essentially the same item, even if the scheduled delivery date is outside the sharing period.

6. In the newly designated section 48.104–2—

a. Remove from the first sentence of paragraph (a)(1) ''normally'';

b. Revise the table in paragraph (a)(1);

c. Remove from the second sentence in paragraph (a)(2) ''subparagraph (1) above'' and insert ''paragraph (a)(1) of this section'', in its place;

d. Remove from the first sentence of paragraph (a)(3) ''(but see 48.102(g))''; and

e. Remove paragraph (c).

The revised text reads as follows:

48.104–2 Sharing acquisition savings.

(a) * * *

(1) * * *

GOVERNMENT/CONTRACTOR SHARES OF NET ACQUISITION SAVINGS

[Figures in percent]

Contract type	Sharing arrangement			
	Incentive (voluntary)		Program requirement (mandatory)	
	Instant contract rate	Concurrent and future contract rate	Instant contract rate	Concurrent and future contract rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	[1] 50/50	[1] 50/50	75/25	75/25
Incentive (fixed-price or cost) (other than award fee)	([2])	[1] 50/50	([2])	75/25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	[3] 75/25	[3] 75/25	85/15	85/15

[1] The contracting officer may increase the contractor's sharing rate to as high as 75 percent for each VECP. (See 48.102(g) (1) through (7).)
[2] Same sharing arrangement as the contract's profit or fee adjustment formula.
[3] The contracting officer may increase the contractor's sharing rate to as high as 50 percent for each VECP. (See 48.102(g) (1) through (7).)

* * * * *

7. Revise designated section 48.104–3 to read as follows:

§ 48.104–3 Sharing collateral savings.

(a) The Government shares collateral savings with the contractor, unless the head of the contracting activity has determined that the cost of calculating and tracking collateral savings will exceed the benefits to be derived (see 48.201(e)).

(b) The contractor's share of collateral savings may range from 20 to 100 percent of the estimated savings to be realized during a typical year of use but must not exceed the greater of—

(1) The contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted; or

(2) $100,000.

(c) The contracting officer must determine the sharing rate for each VECP.

(d) In determining collateral savings, the contracting officer must consider any degradation of performance, service life, or capability.

8. In section 48.201, add paragraphs (g) and (h) to read as follows:

§ 48.201 Clauses for supply or service contracts.

* * * * *

(g) *Engineering-development solicitations and contracts.* For engineering-development solicitations and contracts, and solicitations and contracts containing low-rate-initial-production or early production units, the contracting officer must modify the clause at 52.248–1, Value Engineering, by—

(1) Revising paragraph (i)(3)(i) of the clause by substituting ''a number equal to the quantity required to be delivered over a period of between 36 and 60 consecutive months (set at the discretion of the Contracting Officer for each VECP) that spans the highest planned production, based on planning and programming or production documentation at the time the VECP is accepted;'' for ''the number of future contract units scheduled for delivery during the sharing period;'' and

(2) Revising the first sentence under paragraph (3) of the definition of ''acquisition savings'' by substituting ''a number equal to the quantity to be delivered over a period of between 36 and 60 consecutive months (set at the discretion of the Contracting Officer for each VECP) that spans the highest planned production, based on planning and programming or production documentation at the time the VECP is accepted.'' for ''the number of future contract units in the sharing base.''

(h) *Extended production period solicitations and contracts.* In solicitations and contracts for items requiring an extended period for production (*e.g.,* ship construction, major system acquisition), if agency procedures prescribe sharing of future contract savings on all units to be delivered under contracts awarded during the sharing period (see 48.104–1(c)), the contracting officer must modify the clause at 52.248–1, Value Engineering, by revising paragraph (i)(3)(i) of the clause and the first sentence under paragraph (3) of the definition of ''acquisition savings'' by substituting ''under contracts awarded during the sharing period'' for ''during the sharing period.''

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. In section 52.248–1, revise the introductory text, the date of the clause, in paragraph (b) paragraph (3) of the definition ''Acquisition savings'', and the definition ''Sharing period'', revise the table in (f); amend paragraph (i)(5) introductory text by removing ''48.104–3'' and adding ''48.104–4'', and revise

the first sentence in paragraph (j). The revised text reads as follows:

52.248–1 Value Engineering.

As prescribed in 48.201, insert the following clause:

Value Engineering (Nov 1999)

* * * * *

(b) *Definitions.*

Acquisition savings, * * *

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

* * * * *

Sharing period, as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

* * * * *

(f) * * *

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS

[Figures in Percent]

Contract type	Sharing arrangement			
	Incentive (voluntary)		Program requirement (mandatory)	
	Instant contract rate	Con-current and future contract rate	Instant contract rate	Con-current and future contract rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	[1] 50	[1] 50	25	25
Incentive (fixed-price or cost) (other than award fee)	([2])	[1] 50	([2])	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	[3] 25	[3] 25	15	15

[1] The Contracting Officer may increase the Contractor's sharing rate to as high as 75 percent for each VECP.
[2] Same sharing arrangement as the contract's profit or fee adjustment formula.
[3] The Contracting Officer may increase the Contractor's sharing rate to as high as 50 percent for each VECP.

* * * * *

(j) *Collateral savings.* If a VECP is accepted, the instant contract amount must be increased, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. * * *

* * * * *

[FR Doc. 99–24423 Filed 9–23–99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 97–14; FAR Case 98–003; Item XV]

RIN 9000–AI23

Federal Acquisition Regulation; Cost Accounting Standards Post-Award Notification

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reduce the subcontractor information that the FAR requires a contractor to provide to its cognizant contract administration office (CAO) when requesting the CAO to perform administration for Cost Accounting Standards (CAS) matters.

EFFECTIVE DATE: November 23, 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 97–14, FAR case 98–003.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** on January 25, 1999 (64 FR 3786). The proposed rule revised the clause at FAR 52.230–6(e)(2) to reduce the subcontractor information that a contractor is required to provide to its cognizant contract administration office (CAO) when requesting the CAO to perform administration for CAS matters.

Two respondents submitted public comments to the proposed rule. The Councils considered all comments and converted the proposed rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201–1(b)(3).

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. Accordingly, the FAR Secretariat will forward a request for a revised paperwork burden under OMB Control Number 9000–0129 reflecting a slight decrease to the hours to the Office of Management and Budget under 44

U.S.C. 3501, *et seq.* The **Federal Register** notice published on January 25, 1999, invited public comment concerning this decrease. The FAR Secretariat received no comments.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 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).

2. Amend section 52.230–6 to revise the date of the clause and paragraph (e) of the clause to read as follows:

52.230–6 Administration of Cost Accounting Standards.

* * * * *

Administration of Cost Accounting Standards (Nov 1999)

* * * * *

(e) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, or 52.230–5—

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

* * * * *

[FR Doc. 99–24424 Filed 9–23–99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 15, 19, and 52

[FAC 97–14; Item XVI]

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: September 24, 1999, except for sections 19.102 and 52.219–18 which are effective November 23, 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, 15, 19, and 52

Government procurement.

Dated: September 14, 1999

Edward C. Loeb

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 1, 15, 19, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 1, 15, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.106 in the table following the introductory paragraph by adding entries to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control number
* * * * *	
52.232–1	9000–0070
52.232–2	9000–0070
52.232–3	9000–0070
52.232–4	9000–0070
* * * * *	
52.232–6	9000–0070
* * * * *	
52.232–8	9000–0070
52.232–9	9000–0070
* * * * *	
52.232–11	9000–0070
* * * * *	

PART 15—CONTRACTING BY NEGOTIATION

15.305 [Amended]

3. Amend section 15.305 in paragraph (a)(2)(i) by removing ''(41 U.S.C. 401)''.

PART 19—SMALL BUSINESS PROGRAMS

4. Amend section 19.102 by revising the first sentence of paragraph (h); and by removing the size standards table that follows, which consists of Division A through Division K, and Footnotes 1 through 13, to read as follows:

19.102 Size standards.

* * * * *

(h) The industry size standards are published by the Small Business Administration on the Internet at http://www.sba.gov/regulations/siccodes.

* * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.211–6 [Amended]

5. Remove from the introductory text ''11.107'' and insert ''11.107(a).

52.219–18 [Amended]

6. In section 52.219–18 in paragraph (d)(2) of the clause, remove the last sentence in parentheses.

[FR Doc. 99–24425 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

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) 97–14 which amend the FAR. The rules marked with an asterisk (*) indicate that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–14 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–14

Item and Subject	FAR case	Analyst
I—Very Small Business Concerns	98–013	Moss
II—* Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program	97–307	Moss
III—Use of Competitive Proposals	99–001	DeStefano
IV—Javits-Wagner-O'Day Proposed Revisions	98–602	DeStefano
V—OMB Circular A–119	98–004	Moss
VI—* Determination of Price Reasonableness and Commerciality (Interim)	98–300	Olson
VII—Conforming Late Offer Treatment	97–030	DeStefano
VIII—Evaluation of Proposals for Professional Services	97–038	Olson
IX—Option Clause Consistency	98–606	DeStefano
X—Compensation for Senior Executives	98–301	Nelson
XI—Interest and Other Financial Costs	98–006	Nelson
XII—Cost-Reimbursement Architect-Engineer Contracts	97–043	O'Neill
XIII Conditionally Accepted Items	98–002	Klein
XIV—* Value Engineering Change Proposals/PAT	97–031	Klein
XV—Cost Accounting Standards Post-Award Notification	98–003	Nelson

Item I—Very Small Business Concerns (FAR Case 98–013)

This final rule converts the interim rule published as Item II of FAC 97–11 to a final rule with changes. The interim rule amended FAR 5.207, 8.404, 12.303, 19.000, 19.001, 19.102, 19.502–2, 19.901 through 19.904, 52.212–5, and 52.219–5, to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR Parts 121 and 125). This program became effective on January 4, 1999.

Item II—Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (FAR Case 97–307)

This final rule converts the interim rule published as Item I of FAC 97–10 to a final rule with amendments at FAR 6.201, 19.306, 19.307, 19.800, 19.1303, and the provision at 52.219–1. This final rule amends the FAR to implement the Small Business Administration's Historically Underutilized Business (HUBZone) Program. The purpose of the program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these areas. The program provides for set-asides, sole source awards, and price evaluation preferences for HUBZone small business concerns and establishes goals for awards to such concerns.

Item III—Use of Competitive Proposals (FAR Case 99–001)

This final rule amends FAR 6.401 to delete the requirement for contracting officers to explain in writing their rationale for choosing to use competitive proposals rather than sealed bidding.

Item IV—Javits-Wagner-O'Day Proposed Revisions (FAR Case 98–602)

This final rule adds a new section, FAR 8.716, and amends paragraph (a) of FAR 42.1203 to provide procedures for recognizing a name change or a successor in interest for a Javits-Wagner-O'Day Act participating nonprofit agency providing supplies or services on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled.

Item V—OMB Circular A–119 (FAR Case 98–004)

This final rule amends FAR 11.101, 11.107, 11.201, and adds a provision at 52.211–7 to address the use of voluntary consensus standards in accordance with the requirements of Office of Management and Budget (OMB) Circular A–119.

Item VI—Determination of Price Reasonableness and Commerciality (FAR Case 98–300)

This interim rule revises FAR 12.209, 13.106–3(a)(2), and amends Subpart 15.4 to implement Section 803 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261). Section 803 requires amending the FAR to provide specific guidance concerning—

- The appropriate application and precedence of various price analysis tools;
- The circumstances under which contracting officers should require offerors of exempt commercial items to provide information other than cost or pricing data; and
- The role and responsibility of support organizations in determining price reasonableness.

This interim rule also revises FAR 15.403–3(a) to implement Section 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261). Section 808 requires amending the FAR to—

- Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items;
- Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award; and
- Establish exceptions, as appropriate.

Item VII—Conforming Late Offer Treatment (FAR Case 97–030)

This final rule amends FAR 14.201–6, 14.304, and 15.208, the provisions at 52.212–1, 52.214–7, 52.214–23, and 52.215–1, and removes 52.214–32 and 52.214–33 to provide uniform guidance regarding receipt of late offers for commercial, sealed bid, and negotiated acquisitions.

Item VIII—Evaluation of Proposals for Professional Services (FAR Case 97–038)

This final rule amends FAR 15.305(a)(1) and 37.115–2(c) to provide guidance on the evaluation of proposals that include uncompensated overtime hours.

Item IX—Option Clause Consistency (FAR Case 98–606)

This final rule amends FAR 17.208(g) to clarify that the time period for providing a preliminary notice of the Government's intent to exercise a contract option in the clause at FAR 52.217–9 may be tailored and amends the clause at FAR 52.217–8 to make the format of the Option to Extend Services clause consistent with the format of other option clauses in the FAR.

Item X—Compensation for Senior Executives (FAR Case 98–301)

This final rule coverts the interim rule published as Item VIII of FAC 97–11 to a final rule without change. The rule amends FAR Part 31 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'' even though the home office or segment might not report directly to the contractor's headquarters.

Item XI—Interest and Other Financial Costs (FAR Case 98–006)

This final rule amends FAR 31.205–20 to make minor changes to the cost principle concerning ''interest and other financial costs.''

Item XII—Cost-Reimbursement Architect-Engineer Contracts (FAR Case 97–043)

This final rule amends the clause prescriptions at FAR 36.609, 44.204, 49.503, and the clause preface at 52.236–25, Requirements for Registration of Designers, to include application of certain clauses to cost-reimbursement architect-engineer contracts.

Item XIII—Conditionally Accepted Items (FAR Case 98–002)

This final rule amends FAR 46.101 to add a definition of conditional acceptance; and FAR 46.407 to require that, when conditionally accepting nonconforming items, amounts withheld from payments should be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work. FAR 46.407 has also been revised to require that the basis for the amounts withheld be documented in the contract file.

Item XIV—Value Engineering Change Proposals/PAT (FAR Case 97–031)

This final rule amends the value engineering change proposal (VECP) guidance in FAR 48.001, 48.102, 48.104, 48.201, and the FAR clause at 52.248–1 to allow the contracting officer to increase the sharing period from 36 to a range of 36 to 60 months; increase the contractor's share of instant, concurrent and future savings under the incentive/voluntary sharing arrangement from 50 to a range of 50 to 75 percent; and increase the contractor's share of collateral savings from 20 to a range of 20 to 100 percent on a case-by-case basis for each VECP.

Item XV—Cost Accounting Standards Post-Award Notification (FAR Case 98–003)

This final rule revises paragraph (e) of the clause at FAR 52.230–6, Administration of Cost Accounting Standards, to reduce the subcontractor information that a contractor is required to provide to its cognizant contract administration office (CAO) when requesting the CAO to perform administration for Cost Accounting Standards matters.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–24426 Filed 9–23–99; 8:45 am]

BILLING CODE 6820–EP–P

Friday
September 24, 1999

Part III

National Archives and Records Administration

Information Security Oversight Office

32 CFR Part 2004

Safeguarding Classified National Security Information; Final Rule

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2004

RIN 3095–AA95

Safeguarding Classified National Security Information

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This final rule promulgates a new Directive on Safeguarding Classified National Security Information, which applies to Federal agencies. It implements provisions of Executive Order 12958, Classified National Security Information, that pertain to the handling, storage, distribution, transmittal, destruction of, and accounting for classified information.

EFFECTIVE DATE: October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Dan L. Jacobson, Staff Director, United States Security Policy Board, telephone 703–602–1030; or Steven Garfinkel, Director, ISOO, telephone 202–219–5250.

SUPPLEMENTARY INFORMATION: In accordance with section 5(c) of Executive Order 12958, ''Classified National Security Information,'' the President has approved the Directive for safeguarding classified information contained in this final rule. On behalf of the United States Security Policy Board, which prepared the Directive, and at the direction of the Executive Office of the President, NARA/ISOO is publishing this Directive as Part 2004 of Title 32, Code of Federal Regulations. This Directive complements and supplements the ISOO regulations in 32 CFR Chapter XX, which also implement particular provisions of E.O. 12958. Most specifically, this Directive should be read in conjunction with the Directive contained in 32 CFR part 2001 and with E.O. 12958.

This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure. This rule is not a significant regulatory action for the purposes of Executive Order 12866. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies.

List of Subjects in 32 CFR Part 2004

Archives and records, Authority delegations (Government agencies), Classified information, Executive orders, Freedom of information, Information, Intelligence, National defense, National security information, Presidential document, Security information, Security measures.

For the reasons set forth in the preamble, NARA adds new part 2004 to Chapter XX of title 32, Code of Federal Regulations, as follows:

PART 2004—DIRECTIVE ON SAFEGUARDING CLASSIFIED NATIONAL SECURITY INFORMATION:

Sec.

Authority: E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

§ 2004.1 Authority.

This Directive is issued pursuant to Section 5.2 (c) of Executive Order (E.O.) 12958, ''Classified National Security Information.'' The E.O. and this Directive set forth the requirements for the safeguarding of classified national security information (hereinafter classified information) and are applicable to all U.S. Government agencies.

§ 2004.2 General.

(a) Classified information, regardless of its form, shall be afforded a level of protection against loss or unauthorized disclosure commensurate with its level of classification.

(b) Except for NATO and other foreign government information, agency heads or their designee(s) (hereinafter referred to as agency heads) may adopt alternative measures, using risk management principles, to protect against loss or unauthorized disclosure when necessary to meet operational requirements. When alternative measures are used for other than temporary, unique situations, the alternative measures shall be documented and provided to the Director, Information Security Oversight Office (ISOO), to facilitate that office's oversight responsibility. Upon request, the description shall be provided to any other agency with which classified information or secure facilities are shared. In all cases, the alternative measures shall provide protection sufficient to reasonably deter and detect loss or unauthorized disclosure. Risk management factors considered will include sensitivity, value and crucial nature of the information; analysis of known and anticipated threats; vulnerability; and countermeasures benefits versus cost.

(c) NATO classified information shall be safeguarded in compliance with U.S. Security Authority for NATO Instructions I–69 and I–70. Other foreign government information shall be safeguarded as described herein for U.S. information except as required by an existing treaty, agreement or other obligation (hereinafter, obligation). When the information is to be safeguarded pursuant to an existing obligation, the additional requirements at Appendix B may apply to the extent they were required in the obligation as originally negotiated or are agreed upon during amendment. Negotiations on new obligations or amendments to existing obligations shall strive to bring provisions for safeguarding foreign government information into accord with standards for safeguarding U.S. information as described in this Directive.

(d) An agency head who originates or handles classified information shall refer any matter pertaining to the implementation of this Directive that he or she cannot resolve to the Director, ISOO for resolution.

§ 2004.3 Definitions.

(a) *Open storage area.* An area, constructed in accordance with Appendix A and authorized by the agency head for open storage of classified information.

(b) *Authorized person.* A person who has a favorable determination of eligibility for access to classified information, has signed an approved nondisclosure agreement, and has a need-to-know for the specific classified information in the performance of official duties.

(c) *Cleared commercial carrier.* A carrier that is authorized by law, regulatory body, or regulation, to transport SECRET and CONFIDENTIAL

material and has been granted a SECRET facility clearance in accordance with the National Industrial Security Program.

(d) *Security-in-depth.* A determination by the agency head that a facility's security program consists of layered and complementary security controls sufficient to deter and detect unauthorized entry and movement within the facility. Examples include, but are not limited to, use of perimeter fences, employee and visitor access controls, use of an Intrusion Detection System (IDS), random guard patrols throughout the facility during non-working hours, closed circuit video monitoring or other safeguards that mitigate the vulnerability of open storage areas without alarms and security storage cabinets during non-working hours.

(e) *Vault.* An area approved by the agency head which is designed and constructed of masonry units or steel lined construction to provide protection against forced entry. A modular vault approved by the General Services Administration (GSA) may be used in lieu of a vault as prescribed in the first sentence of this paragraph (e). Vaults shall be equipped with a GSA-approved vault door and lock.

§ 2004.4 Responsibilities of holders.

Authorized persons who have access to classified information are responsible for:

(a) Protecting it from persons without authorized access to that information, to include securing it in approved equipment or facilities whenever it is not under the direct control of an authorized person;

(b) Meeting safeguarding requirements prescribed by the agency head; and

(c) Ensuring that classified information is not communicated over unsecured voice or data circuits, in public conveyances or places, or in any other manner that permits interception by unauthorized persons.

§ 2004.5 Standards for security equipment.

The Administrator of General Services shall, in coordination with agency heads originating classified information, establish and publish uniform standards, specifications and supply schedules for security equipment designed to provide secure storage for and destruction of classified information. Whenever new security equipment is procured, it shall be in conformance with the standards and specifications established by the Administratior of General Services, and shall, to the maximum extent possible, be of the type available through the Federal Supply System.

§ 2004.6 Storage.

(a) *General.* Classified information shall be stored only under conditions designed to deter and detect unauthorized access to the information. Storage at overseas locations shall be at U.S. Government controlled facilities unless otherwise stipulated in treaties or international agreements. Overseas storage standards for facilities under a Chief of Mission are promulgated under the authority of the Overseas Security Policy Board.

(b) *Requirements for physical protection.* (1) *Top Secret.* Top Secret information shall be stored by *one* of the following methods:

(i) In a GSA-approved security container with one of the following supplemental controls:

(A) Continuous protection by cleared guard or duty personnel;

(B) Inspection of the security container every two hours by cleared guard or duty personnel;

(C) An Intrusion Detection System (IDS) with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation [Acceptability of Intrusion Detection Equipment (IDE): All IDE must be UL-listed (or equivalent as defined by the agency head) and approved by the agency head. Government and proprietary installed, maintained, or furnished systems are subject to approval only by the agency head.]; or

(D) Security-In-Depth conditions, provided the GSA-approved container is equipped with a lock meeting Federal Specification FF–L–2740.

(ii) An open storage area constructed in accordance with Appendix A, which is equipped with an IDS with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation if the area is covered by Security-In-Depth or a five minute alarm response if it is not.

(iii) An IDS-equipped vault with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation.

(2) *Secret.* Secret information shall be stored by one of the following methods:

(i) In the same manner as prescribed for Top Secret information;

(ii) In a GSA-approved security container or vault without supplemental controls; or

(iii) In either of the following:

(A) Until October 1, 2012, in a non-GSA-approved container having a built-in combination lock or in a non-GSA approved container secured with a rigid metal lockbar and an agency head approved padlock; or

(B) An open storage area. In either case, one of the following supplemental controls is required:

(*1*) The location that houses the container or open storage area shall be subject to continuous protection by cleared guard or duty personnel;

(*2*) Cleared guard or duty personnel shall inspect the security container or open storage area once every four hours; or

(*3*) An IDS (per paragraph (b)(1)(i)(C) of this section) with the personnel responding to the alarm arriving within 30 minutes of the alarm annunciation. [In addition to one of these supplemental controls specified in paragraphs (b)(2)(iii)(B)(*1*) through (*3*), security-in-depth as determined by the agency head is required as part of the supplemental controls for a non-GSA approved container or open storage area storing Secret information.]

(3) *Confidential.* Confidential information shall be stored in the same manner as prescribed for Top Secret or Secret information except that supplemental controls are not required.

(c) *Combinations.* Use and maintenance of dial-type locks and other changeable combination locks.

(1) Equipment in service. The classification of the combination shall be the same as the highest level of classified information that is protected by the lock. Combinations to dial-type locks shall be changed only by persons having a favorable determination of eligibility for access to classified information and authorized access to the level of information protected unless other sufficient controls exist to prevent access to the lock or knowledge of the combination. Combinations shall be changed under the following conditions:

(i) Whenever such equipment is placed into use;

(ii) Whenever a person knowing the combination no longer requires access to it unless other sufficient controls exist to prevent access to the lock; or

(iii) Whenever a combination has been subject to possible unauthorized disclosure.

(2) Equipment out of service. When security equipment is taken out of service, it shall be inspected to ensure that no classified information remains and the built-in combination lock shall be reset to a standard combination.

(d) *Key operated locks.* When special circumstances exist, an agency head may approve the use of key operated locks for the storage of Secret and Confidential information. Whenever such locks are used, administrative procedures for the control and accounting of keys and locks shall be established.

§ 2004.7 Information controls.

(a) *General.* Agency heads shall establish a system of control measures which assure that access to classified information is limited to authorized persons. The control measures shall be appropriate to the environment in which the access occurs and the nature and volume of the information. The system shall include technical, physical, and personnel control measures. Administrative control measures which may include records of internal distribution, access, generation, inventory, reproduction, and disposition of classified information shall be required when technical, physical and personnel control measures are insufficient to deter and detect access by unauthorized persons.

(b) *Reproduction.* Reproduction of classified information shall be held to the minimum consistent with operational requirements. The following additional control measures shall be taken:

(1) Reproduction shall be accomplished by authorized persons knowledgeable of the procedures for classified reproduction;

(2) Unless restricted by the originating Agency, Top Secret, Secret, and Confidential information may be reproduced to the extent required by operational needs, or to facilitate review for declassification;

(3) Copies of classified information shall be subject to the same controls as the original information; and

(4) The use of technology that prevents, discourages, or detects the unauthorized reproduction of classified information is encouraged.

§ 2004.8 Transmission.

(a) *General.* Classified information shall be transmitted and received in an authorized manner which ensures that evidence of tampering can be detected, that inadvertent access can be precluded, and that provides a method which assures timely delivery to the intended recipient. Persons transmitting classified information are responsible for ensuring that intended recipients are authorized persons with the capability to store classified information in accordance with this Directive.

(b) *Dispatch.* Agency heads shall establish procedures which ensure that:

(1) All classified information physically transmitted outside facilities shall be enclosed in two layers, both of which provide reasonable evidence of tampering and which conceal the contents. The inner enclosure shall clearly identify the address of both the sender and the intended recipient, the highest classification level of the contents, and any appropriate warning notices. The outer enclosure shall be the same except that no markings to indicate that the contents are classified shall be visible. Intended recipients shall be identified by name only as part of an attention line. The following exceptions apply:

(i) If the classified information is an internal component of a packable item of equipment, the outside shell or body may be considered as the inner enclosure provided it does not reveal classified information;

(ii) If the classified information is an inaccessible internal component of a bulky item of equipment, the outside or body of the item may be considered to be a sufficient enclosure provided observation of it does not reveal classified information;

(iii) If the classified information is an item of equipment that is not reasonably packable and the shell or body is classified, it shall be concealed with an opaque enclosure that will hide all classified features;

(iv) Specialized shipping containers, including closed cargo transporters or diplomatic pouch, may be considered the outer enclosure when used; and

(v) When classified information is hand-carried outside a facility, a locked briefcase may serve as the outer enclosure.

(2) Couriers and authorized persons designated to hand-carry classified information shall ensure that the information remains under their constant and continuous protection and that direct point-to-point delivery is made. As an exception, agency heads may approve, as a substitute for a courier on direct flights, the use of specialized shipping containers that are of sufficient construction to provide evidence of forced entry, are secured with a high security padlock, are equipped with an electronic seal that would provide evidence of surreptitious entry and are handled by the carrier in a manner to ensure that the container is protected until its delivery is completed.

(c) *Transmission methods within and between the U.S., Puerto Rico, or a U.S. possession or trust territory.* (1) *Top Secret.* Top Secret information shall be transmitted by direct contact between authorized persons; the Defense Courier Service or an authorized government agency courier service; a designated courier or escort with Top Secret clearance; electronic means over approved communications systems. Under no circumstances will Top Secret information be transmitted via the U.S. Postal Service.

(2) *Secret.* Secret information shall be transmitted by:

(i) Any of the methods established for Top Secret; U.S. Postal Service Express Mail and U.S. Postal Service Registered Mail, as long as the Waiver of Signature and Indemnity block, item 11–B, on the U.S. Postal Service Express Mail Label shall not be completed; and cleared commercial carriers or cleared commercial messenger services. The use of street-side mail collection boxes is strictly prohibited; and

(ii) Agency heads may, on an exceptional basis and when an urgent requirement exists for overnight delivery within the U.S. and its Territories, authorize the use of the current holder of the General Services Administration contract for overnight delivery of information for the Executive Branch as long as applicable postal regulations (39 CFR chapter I) are met. Any such delivery service shall be U.S. owned and operated, provide automated in-transit tracking of the classified information, and ensure package integrity during transit. The contract shall require cooperation with government inquiries in the event of a loss, theft, or possible unauthorized disclosure of classified information. The sender is responsible for ensuring that an authorized person will be available to receive the delivery and verification of the correct mailing address. The package may be addressed to the recipient by name. The release signature block on the receipt label shall not be executed under any circumstances. The use of external (street side) collection boxes is prohibited. Classified Communications Security Information, NATO, and foreign government information shall not be transmitted in this manner.

(3) *Confidential.* Confidential information shall be transmitted by any of the methods established for Secret information or U.S. Postal Service Certified Mail. In addition, when the recipient is a U.S. Government facility, the confidential information may be transmitted via U.S. First Class Mail. However, confidential information shall not be transmitted to government contractor facilities via first class mail. When first class mail is used, the envelope or outer wrapper shall be marked to indicate that the information is not to be forwarded, but is to be returned to sender. The use of street-side mail collection boxes is prohibited.

(d) *Transmission methods to a U.S. Government facility located outside the U.S.* The transmission of classified information to a U.S. Government facility located outside the 50 states, the District of Columbia, the

Commonwealth of Puerto Rico, or a U.S. possession or trust territory, shall be by methods specified above for Top Secret information or by the Department of State Courier Service. U.S. Registered Mail through Military Postal Service facilities may be used to transmit Secret and Confidential information provided that the information does not at any time pass out of U.S. citizen control nor pass through a foreign postal system.

(e) *Transmission of U.S. classified information to foreign governments.* Such transmission shall take place between designated government representatives using the transmission methods described in paragraph (d) of this section. When classified information is transferred to a foreign government or its representative a signed receipt is required.

(f) *Receipt of classified information.* Agency heads shall establish procedures which ensure that classified information is received in a manner which precludes unauthorized access, provides for inspection of all classified information received for evidence of tampering and confirmation of contents, and ensures timely acknowledgment of the receipt of Top Secret and Secret information by an authorized recipient. As noted in paragraph (e) of this section, a receipt acknowledgment of all classified material transmitted to a foreign government or its representative is required.

§ 2004.9 Destruction.

(a) *General.* Classified information identified for destruction shall be destroyed completely to preclude recognition or reconstruction of the classified information in accordance with procedures and methods prescribed by agency heads. The methods and equipment used to routinely destroy classified information include burning, cross-cut shredding, wet-pulping, melting, mutilation, chemical decomposition or pulverizing.

(b) *Technical guidance.* Technical guidance concerning appropriate methods, equipment, and standards for the destruction of classified electronic media and processing equipment components may be obtained by submitting all pertinent information to the National Security Agency/Central Security Service, Directorate for Information Systems Security, Fort Meade, MD 20755. Specifications concerning appropriate equipment and standards for the destruction of other storage media may be obtained from the GSA.

§ 2004.10 Loss, possible compromise or unauthorized disclosure.

(a) *General.* Any person who has knowledge that classified information has been or may have been lost, possibly compromised or disclosed to an unauthorized person(s) shall immediately report the circumstances to an official designated for this purpose.

(b) *Cases involving information originated by a foreign government or another U.S. government agency.* Whenever a loss or possible unauthorized disclosure involves the classified information or interests of a foreign government agency, or another government agency, the department or agency in which the compromise occurred shall advise the other government agency or foreign government of the circumstances and findings that affect their information or interests. However, foreign governments normally will not be advised of any security system vulnerabilities that contributed to the compromise.

(c) *Inquiry/investigation and corrective actions.* Agency heads shall establish appropriate procedures to conduct an inquiry/investigation of a loss, possible compromise or unauthorized disclosure of classified information, in order to implement appropriate corrective actions, which may include disciplinary sanctions, and to ascertain the degree of damage to national security.

(d) *Department of Justice and legal counsel coordination.* Agency heads shall establish procedures to ensure coordination with legal counsel whenever a formal action, beyond a reprimand, is contemplated against any person believed responsible for the unauthorized disclosure of classified information. Whenever a criminal violation appears to have occurred and a criminal prosecution is contemplated, agency heads shall use established procedures to ensure coordination with—

(1) The Department of Justice, and

(2) The legal counsel of the agency where the individual responsible is assigned or employed.

§ 2004.11 Special access programs.

(a) *General.* The safeguarding requirements of this Directive may be enhanced for information in Special Access Programs (SAP), established under the provisions of Section 4.4 of E.O. 12958, by the agency head responsible for creating the SAP. Agency heads shall ensure that the enhanced controls are based on an assessment of the value, critical nature, and vulnerability of the information.

(b) *Significant interagency support requirements.* Agency heads must ensure that a Memorandum of Agreement/Understanding (MOA/MOU) is established for each Special Access Program that has significant interagency support requirements, to appropriately and fully address support requirements and supporting agency oversight responsibilities for that SAP.

§ 2004.12 Telecommunications, automated information systems and network security.

Each agency head shall ensure that classified information electronically accessed, processed, stored or transmitted is protected in accordance with applicable national policy issuances identified in the Index of National Security Telecommunications and Information Systems Security Issuances (NSTISSI) and Director of Central Intelligence Directive (DCID) 6/3.

§ 2004.13 Technical security.

Based upon the risk management factors referenced in § 2004.2 of this directive agency heads shall determine the requirement for technical countermeasures such as Technical Surveillance Countermeasures (TSCM) and TEMPEST necessary to detect or deter exploitation of classified information through technical collection methods and may apply countermeasures in accordance with NSTISSI 7000, entitled Tempest Countermeasures for Facilities, and SPB Issuance 6–97, entitled National Policy on Technical Surveillance Countermeasures.

§ 2004.14 Emergency authority.

Agency heads may prescribe special provisions for the dissemination, transmittal, destruction, and safeguarding of classified information during military operations or other emergency situations.

Appendix A to Part 2004—Open Storage Areas

This Appendix describes the construction standards for open storage areas.

1. *Construction.* The perimeter walls, floors, and ceiling will be permanently constructed and attached to each other. All construction must be done in a manner as to provide visual evidence of unauthorized penetration.

2. *Doors.* Doors shall be constructed of wood, metal, or other solid material. Entrance doors shall be secured with a built-in GSA-approved three-position combination lock. When special circumstances exist, the agency head may authorize other locks on entrance doors for Secret and Confidential storage. Doors other than those secured with the aforementioned locks shall be secured from the inside with either deadbolt

emergency egress hardware, a deadbolt, or a rigid wood or metal bar which extends across the width of the door, or by other means approved by the agency head.

3. *Vents, ducts, and miscellaneous openings.* All vents, ducts, and similar openings in excess of 96 square inches (and over 6 inches in its smallest dimension) that enter or pass through an open storage area shall be protected with either bars, expanded metal grills, commercial metal sound baffles, or an intrusion detection system.

4. *Windows.*

a. All windows which might reasonably afford visual observation of classified activities within the facility shall be made opaque or equipped with blinds, drapes, or other coverings.

b. Windows at ground level will be constructed from or covered with materials which provide protection from forced entry. The protection provided to the windows need be no stronger than the strength of the contiguous walls. Open storage areas which are located within a controlled compound or equivalent may eliminate the requirement for forced entry protection if the windows are made inoperable either by permanently sealing them or equipping them on the inside with a locking mechanism and they are covered by an IDS (either independently or by the motion detection sensors within the area.)

Appendix B to Part 2004—Foreign Government Information

The requirements described below are additional baseline safeguarding standards that may be necessary for foreign government information, other than NATO information, that requires protection pursuant to an existing treaty, agreement, or other obligation. NATO classified information shall be safeguarded in compliance with United States Security Authority for NATO Instructions I–69 and I–70. To the extent practical, and to facilitate its control, foreign government information should be stored separately from other classified information. To avoid additional costs, separate storage may be accomplished by methods such as separate drawers of a container. The safeguarding standards described below may be modified if required or permitted by treaties or agreements, or for other obligations, with the prior written consent of the National Security Authority of the originating government.

1. *Top Secret.* Records shall be maintained of the receipt, internal distribution, destruction, access, reproduction, and transmittal of foreign government Top Secret information. Reproduction requires the consent of the originating government. Destruction will be witnessed.

2. *Secret.* Records shall be maintained of the receipt, external dispatch and destruction of foreign government Secret information. Other records may be necessary if required by the originator. Secret foreign government information may be reproduced to meet mission requirements unless prohibited by the originator. Reproduction shall be recorded unless this requirement is waived by the originator.

3. *Confidential.* Records need not be maintained for foreign government Confidential information unless required by the originator.

4. *Restricted and other foreign government information provided in confidence.* In order to assure the protection of other foreign government information provided in confidence (e.g., foreign government ''Restricted,'' ''Designated,'' or unclassified provided in confidence), such information must be classified under E.O. 12958. The receiving agency, or a receiving U.S. contractor, licensee, grantee, or certificate holder acting in accordance with instructions received from the U.S. Government, shall provide a degree of protection to the foreign government information at least equivalent to that required by the government or international organization that provided the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to US CONFIDENTIAL information. If the foreign protection requirement is lower than the protection required for US CONFIDENTIAL information, the following requirements shall be met:

a. Documents may retain their original foreign markings if the responsible agency determines that these markings are adequate to meet the purposes served by U.S. classification markings. Otherwise, documents shall be marked, ''This document contains (insert name of country) (insert classification level) information to be treated as US (insert classification level).'' The notation, ''Modified Handling Authorized,'' may be added to either the foreign or U.S. markings authorized for foreign government information. If remarking foreign originated documents or matter is impractical, an approved cover sheet is an authorized option;

b. Documents shall be provided only to those who have an established need-to-know, and where access is required by official duties;

c. Individuals being given access shall be notified of applicable handling instructions. This may be accomplished by a briefing, written instructions, or by applying specific handling requirements to an approved cover sheet;

d. Documents shall be stored in such a manner so as to prevent unauthorized access;

e. Documents shall be transmitted in a method approved for classified information, unless this method is waived by the originating government.

5. *Third-country transfers.* The release or disclosure of foreign government information to any third-country entity must have the prior consent of the originating government if required by a treaty, agreement, bilateral exchange, or other obligation.

Dated: September 17, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–24813 Filed 9–23–99; 8:45 am]

BILLING CODE 7515–01–P

Friday
September 24, 1999

Part IV

Department of Housing and Urban Development

24 CFR Part 888

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Years 2000; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4528–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2000

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: This notice announces revised Annual Adjustment Factors (AAFs) for adjustment of Section 8 contract rents on housing assistance payment contract anniversaries from October 1, 1999. The AAFs are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD's Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing [(202) 708–0477], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Allison Manning, Office of Special Needs Assistance Programs, Office of Community Planning and Development, [(202) 708–1234] for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Frank M. Malone, Acting Director, Office of Asset Management and Disposition, Office of Housing [(202) 708–3730], for questions relating to all other Section 8 programs; and Alan Fox, Economic and Market Analysis Division, Office of Policy Development and Research [(202) 708–0590; e-mail alan__fox@hud.gov], for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

This Notice explains how AAFs are applied. The first section identifies to which programs and under what circumstances AAFs apply. The second section provides an explanation of when and how the statutory 1 percent reduction to AAFs should be applied. The third section describes the actual adjustment procedures. For this purpose, Section 8 programs affected by AAFs are grouped into three categories, each of which uses AAFs differently:

Category 1.—The Section 8 new construction and substantial rehabilitation programs and the moderate rehabilitation program.

Category 2.—The Section 8 loan management (LM) and property disposition (PD) programs.

Category 3.—The Section 8 certificate program and the project-based voucher program.

Next the Notice explains the content and applicability of the two AAF tables included in this Notice and provides detailed information on the geographical coverage of each AAF area. The Notice then explains how to apply AAFs to manufactured home space rentals in the Section 8 tenant-based certificate program.

The Notice closes with a brief explanation of how HUD calculates AAFs.

I. Applicability of AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs, during the term of the HAP contract. However, the specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used for the Section 8 tenant-based voucher program.

AAFs are not used for budget-based rent adjustments. Contract rents for projects receiving Section 8 subsidies under the loan management program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the property disposition program (24 CFR part 886, subpart C) are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.

Under the Section 8 moderate rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent.

II. Use of Reduced AAF

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by .01:

—For regular tenancy in the Section 8 certificate program, for all units.

—In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

This statutory language is now permanent law. Section 2004 of the Balanced Budget Act of 1997 provides that these provisions are in effect through fiscal year 2000 and thereafter (Pub. L. 105–33, approved August 5, 1997).

To implement the law, HUD is again publishing two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. Each AAF in Table 2 is computed by subtracting 0.01 from the annual adjustment factor in Table 1.

III. Adjustment Procedures

The discussion in this **Federal Register** Notice is intended to provide a broad orientation on adjustment procedures. Technical details and requirements will be described in HUD notices (issued by the Office of Housing and the Office of Public and Indian Housing).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for three program categories:

—The Section 8 new construction and substantial rehabilitation programs (including the Section 8 state agency program); and the moderate rehabilitation programs (including the moderate rehabilitation single room occupancy program).

—The Section 8 loan management (LM) Program (Part 886, Subpart A) and property disposition (PD) Program (Part 886 Subpart C).

—The Section 8 certificate program (including the project-based

certificate [PBC] program) and the project-based voucher program.

Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless contract rent is reduced by comparability):

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.

—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (LM; Part 886, Subpart A) and Property Disposition Program (PD; Part 886 Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.

—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Program

The same adjustment procedure is used for rent adjustment in the tenant-based certificate program, in the project-based certificate program, and the project-based voucher program. The following procedures are used:

—The Table 2 AAF is always used; the Table 1 AAF is not used.

—The Table 2 AAF is always applied before determining comparability (rent reasonableness).

—Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

AAF Tables

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent. The second column is used where the highest cost utility is not included in the contract rent—i.e., where the tenant pays for the highest cost utility.

AAF Areas

Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

—For the metropolitan parts of the ten HUD regions exclusive of CPI areas;

—For the nonmetropolitan parts of these regions; and

—For 96 separate metropolitan AAF areas for which local CPI survey data are available.

With the exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for certain large metropolitan areas, where HUD considers the area covered by the OMB definition to be larger than appropriate for use as a housing market area definition. In those areas, HUD has deleted some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan area	Deleted counties
Chicago, IL:	DeKalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN:	Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX:	Henderson County.
Flagstaff, AZ–UT:	Kane County, UT.
New Orleans, LA:	St. James Parish.
Washington, DC–VA–MD–WV:	Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk indicates that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the metropolitan CPI areas (in those states that have such areas) are the non-CPI metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the Table as ''STATE: Hawaii,'' which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii Nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

For a manufactured home space rental in the Section 8 tenant-based certificate program, the AAFs in this publication identified as ''Highest Cost Utility Excluded'' are to be used to adjust the rent to owner for the manufactured home space. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section.

How Factors Are Calculated

For Areas With CPI Surveys

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data.

(2) The ''Highest Cost Utility Included'' column in Schedule C was calculated by weighting the rent and utility components with the corresponding components from the 1990 Census.

(3) The ''Highest Cost Utility Excluded'' column in Schedule C was calculated by eliminating the effect of heating costs that are included in the rent of some of the units in the CPI surveys.

For Areas Without CPI Surveys

(1) HUD used random digit dialing (RDD) regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls, and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

(2) The change in rent with the highest cost utility included in the rent was calculated using the average of the ratios of gross rent in the current year RDD survey divided by the previous year's for the respective metropolitan or nonmetropolitan parts of the HUD region.

(3) The change in rent with the highest cost utility excluded (i.e., paid separately by the tenant) was calculated in the same manner, after subtracting the median values of utilities costs from the gross rents in the two years. The median cost of utilities was determined from the units in the RDD sample which reported that all utilities were paid by the tenant.

Other Matters

Environmental Impact

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(6).

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the following Tables:

Dated: September 17, 1999.

Andrew Cuomo,

Secretary.

BILLING CODE 4210–32–P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
New England Metropolitan	1.008	1.013	New England Nonmetropolitan	1.007	1.014
New York/New Jersey Metropolitan	1.005	1.012	New York/New Jersey Nonmetropolitan	1.002	1.009
Mid-Atlantic Metropolitan	1.008	1.018	Mid-Atlantic Nonmetropolitan	1.005	1.018
Southeast Metropolitan	1.006	1.020	Southeast Nonmetropolitan	1.000	1.010
Midwest Metropolitan	1.013	1.019	Midwest Nonmetropolitan	1.005	1.011
Southwest Metropolitan	1.002	1.016	Southwest Nonmetropolitan	1.000	1.017
Great Plains Metropolitan	1.012	1.018	Great Plains Nonmetropolitan	1.005	1.012
Rocky Mountain Metropolitan	1.018	1.022	Rocky Mountain Nonmetropolitan	1.009	1.015
Pacific/Hawaii Metropolitan	1.013	1.018	Pacific/Hawaii Nonmetropolitan	1.004	1.009
Northwest/Alaska Metropolitan	1.005	1.010	Northwest/Alaska Nonmetropolitan	1.008	1.013
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.043	1.051
MSA Anchorage, AK	1.014	1.013	PMSA Ann Arbor, MI	1.027	1.033
MSA Atlanta, GA	1.036	1.038	PMSA Atlantic-Cape May, NJ	1.023	1.027
PMSA Baltimore, MD	1.024	1.026	PMSA Bergen-Passaic, NJ	1.032	1.039
*COUNTY Berkeley, WV	1.023	1.027	PMSA Boston, MA-NH	1.040	1.053
PMSA Boulder-Longmont, CO	1.052	1.056	PMSA Brazoria, TX	1.031	1.037
PMSA Bremerton, WA	1.046	1.054	PMSA Bridgeport, CT	1.030	1.041
PMSA Brockton, MA	1.038	1.054	*COUNTY Brown, OH	1.025	1.020
*Chicago, IL	1.034	1.045	*Cincinnati, OH-KY-IN	1.024	1.021
*COUNTY Clarke, VA	1.023	1.027	PMSA Cleveland-Lorain-Elyria, OH	1.043	1.051
*COUNTY Culpeper, VA	1.024	1.027	*Dallas, TX	1.043	1.050

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
PMSA Danbury, CT	1.031	1.040
PMSA Denver, CO	1.051	1.056
PMSA Dutchess County, NY	1.031	1.039
PMSA Flint, MI	1.024	1.034
PMSA Fort Worth-Arlington, TX	1.042	1.050
PMSA Galveston-Texas City, TX	1.031	1.037
*COUNTY Grant, KY	1.025	1.020
*COUNTY Grundy, IL	1.030	1.049
PMSA Hamilton-Middletown, OH	1.024	1.021
PMSA Houston, TX	1.032	1.037
PMSA Jersey City, NJ	1.032	1.038
MSA Kansas City, MO-KS	1.040	1.048
PMSA Kenosha, WI	1.032	1.047
PMSA Lawrence, MA-NH	1.038	1.054
PMSA Lowell, MA-NH	1.039	1.053
PMSA Miami, FL	1.014	1.018
PMSA Milwaukee-Waukesha, WI	1.023	1.020
PMSA Monmouth-Ocean, NJ	1.031	1.040
PMSA Nassau-Suffolk, NY	1.031	1.039
PMSA New Haven-Meriden, CT	1.031	1.039
*COUNTY Westchester, NY	1.033	1.037
*COUNTY De Kalb, IL	1.032	1.047
PMSA Detroit, MI	1.025	1.034
PMSA Fitchburg-Leominster, MA	1.039	1.054
PMSA Fort Lauderdale, FL	1.014	1.018
*COUNTY Gallatin, KY	1.026	1.020
PMSA Gary, IN	1.029	1.050
PMSA Greeley, CO	1.052	1.056
PMSA Hagerstown, MD	1.024	1.027
*COUNTY Henderson, TX	1.037	1.051
*COUNTY Jefferson, WV	1.023	1.027
PMSA Kankakee, IL	1.028	1.051
*COUNTY Kendall, Il	1.032	1.046
*COUNTY King George, VA	1.023	1.027
PMSA Los Angeles-Long Beach, CA	1.022	1.029
PMSA Manchester, NH	1.039	1.054
PMSA Middlesex-Somerset-Hunterdon, NJ	1.032	1.038
MSA Minneapolis-St. Paul, MN-WI	1.027	1.031
PMSA Nashua, NH	1.039	1.053
PMSA New Bedford, MA	1.039	1.054
PMSA New York, NY	1.032	1.037
PMSA Newark, NJ	1.031	1.039

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
PMSA Newburgh, NY-PA	1.031	1.039
*COUNTY Ohio, IN	1.025	1.020
PMSA Orange County, CA	1.023	1.029
PMSA Philadelphia, PA-NJ	1.023	1.027
PMSA Portland-Vancouver, OR-WA	1.039	1.036
PMSA Racine, WI	1.024	1.020
MSA St. Louis, MO-IL	1.018	1.023
MSA San Diego, CA	1.043	1.050
PMSA San Jose, CA	1.072	1.080
PMSA Santa Rosa, CA	1.068	1.080
PMSA Stamford-Norwalk, CT	1.032	1.038
MSA Tampa-St. Petersburg-Clearwater, FL	1.030	1.035
PMSA Vallejo-Fairfield-Napa, CA	1.068	1.080
PMSA Vineland-Millville-Bridgeton, NJ	1.022	1.027
*Washington, DC-MD-VA	1.024	1.026
PMSA Wilmington-Newark, DE-MD	1.023	1.027
PMSA Oakland, CA	1.070	1.080
PMSA Olympia, WA	1.046	1.054
*COUNTY Pendleton, KY	1.025	1.020
PMSA Pittsburgh, PA	1.028	1.040
PMSA Portsmouth-Rochester, NH-ME	1.039	1.054
PMSA Riverside-San Bernardino, CA	1.020	1.029
PMSA Salem, OR	1.040	1.036
PMSA San Francisco, CA	1.072	1.080
PMSA Santa Cruz-Watsonville, CA	1.070	1.080
PMSA Seattle-Bellevue-Everett, WA	1.048	1.054
PMSA Tacoma, WA	1.047	1.054
PMSA Trenton, NJ	1.031	1.039
PMSA Ventura, CA	1.023	1.029
*COUNTY Warren, VA	1.024	1.027
PMSA Waterbury, CT	1.031	1.039
PMSA Worcester, MA-CT	1.039	1.054

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
New England Metropolitan	1.000	1.003	New England Nonmetropolitan	1.000	1.004
New York/New Jersey Metropolitan	1.000	1.002	New York/New Jersey Nonmetropolitan	1.000	1.000
Mid-Atlantic Metropolitan	1.000	1.008	Mid-Atlantic Nonmetropolitan	1.000	1.008
Southeast Metropolitan	1.000	1.010	Southeast Nonmetropolitan	1.000	1.000
Midwest Metropolitan	1.003	1.009	Midwest Nonmetropolitan	1.000	1.001
Southwest Metropolitan	1.000	1.006	Southwest Nonmetropolitan	1.000	1.007
Great Plains Metropolitan	1.002	1.008	Great Plains Nonmetropolitan	1.000	1.002
Rocky Mountain Metropolitan	1.008	1.012	Rocky Mountain Nonmetropolitan	1.000	1.005
Pacific/Hawaii Metropolitan	1.003	1.008	Pacific/Hawaii Nonmetropolitan	1.000	1.000
Northwest/Alaska Metropolitan	1.000	1.000	Northwest/Alaska Nonmetropolitan	1.000	1.003
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.033	1.041
MSA Anchorage, AK	1.004	1.003	PMSA Ann Arbor, MI	1.017	1.023
MSA Atlanta, GA	1.026	1.028	PMSA Atlantic-Cape May, NJ	1.013	1.017
PMSA Baltimore, MD	1.014	1.016	PMSA Bergen-Passaic, NJ	1.022	1.029
*COUNTY Berkeley, WV	1.013	1.017	PMSA Boston, MA-NH	1.030	1.043
PMSA Boulder-Longmont, CO	1.042	1.046	PMSA Brazoria, TX	1.021	1.027
PMSA Bremerton, WA	1.036	1.044	PMSA Bridgeport, CT	1.020	1.031
PMSA Brockton, MA	1.029	1.044	*COUNTY Brown, OH	1.015	1.010
*Chicago, IL	1.024	1.035	*Cincinnati, OH-KY-IN	1.014	1.011
*COUNTY Clarke, VA	1.014	1.017	PMSA Cleveland-Lorain-Elyria, OH	1.033	1.041
*COUNTY Culpeper, VA	1.014	1.017	*Dallas, TX	1.033	1.040

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
PMSA Danbury, CT	1.021	1.030	*COUNTY De Kalb, IL	1.022	1.037
PMSA Denver, CO	1.042	1.046	PMSA Detroit, MI	1.015	1.024
PMSA Dutchess County, NY	1.022	1.029	PMSA Fitchburg-Leominster, MA	1.029	1.044
PMSA Flint, MI	1.014	1.024	PMSA Fort Lauderdale, FL	1.004	1.008
PMSA Fort Worth-Arlington, TX	1.032	1.040	*COUNTY Gallatin, KY	1.016	1.010
PMSA Galveston-Texas City, TX	1.021	1.027	PMSA Gary, IN	1.019	1.040
*COUNTY Grant, KY	1.016	1.010	PMSA Greeley, CO	1.042	1.046
*COUNTY Grundy, IL	1.020	1.039	PMSA Hagerstown, MD	1.014	1.017
PMSA Hamilton-Middletown, OH	1.014	1.011	*COUNTY Henderson, TX	1.027	1.041
PMSA Houston, TX	1.022	1.027	*COUNTY Jefferson, WV	1.013	1.017
PMSA Jersey City, NJ	1.022	1.028	PMSA Kankakee, IL	1.018	1.041
MSA Kansas City, MO-KS	1.030	1.038	*COUNTY Kendall, Il	1.022	1.036
PMSA Kenosha, WI	1.022	1.037	*COUNTY King George, VA	1.013	1.017
PMSA Lawrence, MA-NH	1.028	1.044	PMSA Los Angeles-Long Beach, CA	1.012	1.019
PMSA Lowell, MA-NH	1.029	1.043	PMSA Manchester, NH	1.029	1.044
PMSA Miami, FL	1.004	1.008	PMSA Middlesex-Somerset-Hunterdon, NJ	1.022	1.028
PMSA Milwaukee-Waukesha, WI	1.013	1.010	MSA Minneapolis-St. Paul, MN-WI	1.017	1.021
PMSA Monmouth-Ocean, NJ	1.021	1.030	PMSA Nashua, NH	1.029	1.044
PMSA Nassau-Suffolk, NY	1.021	1.030	PMSA New Bedford, MA	1.029	1.044
PMSA New Haven-Meriden, CT	1.021	1.030	PMSA New York, NY	1.022	1.027
*COUNTY Westchester, NY	1.023	1.027	PMSA Newark, NJ	1.022	1.029

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
PMSA Newburgh, NY-PA	1.022	1.029	PMSA Oakland, CA	1.060	1.070
*COUNTY Ohio, IN	1.015	1.010	PMSA Olympia, WA	1.036	1.044
PMSA Orange County, CA	1.013	1.019	*COUNTY Pendleton, KY	1.015	1.010
PMSA Philadelphia, PA-NJ	1.013	1.017	PMSA Pittsburgh, PA	1.018	1.030
PMSA Portland-Vancouver, OR-WA	1.030	1.026	PMSA Portsmouth-Rochester, NH-ME	1.029	1.044
PMSA Racine, WI	1.014	1.010	PMSA Riverside-San Bernardino, CA	1.010	1.019
MSA St. Louis, MO-IL	1.008	1.013	PMSA Salem, OR	1.030	1.026
MSA San Diego, CA	1.033	1.040	PMSA San Francisco, CA	1.062	1.070
PMSA San Jose, CA	1.062	1.070	PMSA Santa Cruz-Watsonville, CA	1.060	1.070
PMSA Santa Rosa, CA	1.058	1.070	PMSA Seattle-Bellevue-Everett, WA	1.038	1.044
PMSA Stamford-Norwalk, CT	1.022	1.028	PMSA Tacoma, WA	1.037	1.044
MSA Tampa-St. Petersburg-Clearwater, FL	1.020	1.025	PMSA Trenton, NJ	1.022	1.029
PMSA Vallejo-Fairfield-Napa, CA	1.058	1.070	PMSA Ventura, CA	1.013	1.019
PMSA Vineland-Millville-Bridgeton, NJ	1.012	1.017	*COUNTY Warren, VA	1.014	1.017
*Washington, DC-MD-VA	1.014	1.016	PMSA Waterbury, CT	1.021	1.030
PMSA Wilmington-Newark, DE-MD	1.013	1.017	PMSA Worcester, MA-CT	1.029	1.044

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lee, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

MSA	Anchorage, AK: Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr. Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Craighead, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS: COUNTIES

PMSA Los Angeles-Long Beach, CA:	Los Angeles
PMSA Oakland, CA:	Alameda, Contra Costa
PMSA Orange County, CA:	Orange
PMSA Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA San Diego, CA:	San Diego
PMSA San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA San Jose, CA:	Santa Clara
PMSA Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA Santa Rosa, CA:	Sonoma
PMSA Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA Ventura, CA:	Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

COLORADO (ROCKY MOUNTAIN)

CPI AREAS: COUNTIES

PMSA Boulder-Longmont, CO:	Boulder
PMSA Denver, CO:	Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO:	Weld

METROPOLITAN COUNTIES

El Paso, Larimer, Pueblo

NONMETROPOLITAN COUNTIES

Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Bridgeport, CT	
Fairfield County part:	Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
New Haven County part:	Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
PMSA Danbury, CT	
Fairfield County part:	Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part:	Bridgewater town, New Milford town, Roxbury town, Washington town
PMSA New Haven-Meriden, CT	
Middlesex County part:	Clinton town, Killingworth town
New Haven County part:	Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town
PMSA Stamford-Norwalk, CT	
Fairfield County part:	Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
PMSA Waterbury, CT	
Litchfield County part:	Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part:	Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town
PMSA Worcester, MA-CT	
Windham County part:	Thompson town

METROPOLITAN COUNTIES

Hartford County part:	Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town,Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Manchester town, Marlborough town, New Britain town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
Litchfield County part:	Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part:	Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town, Old Saybrook town
New London County part:	Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town, Colchester town, Lebanon town
Tolland County part:	Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part:	Ashford town, Chaplin town, Windham town, Canterbury town, Plainfield town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NONMETROPOLITAN COUNTIES

Hartford County part:	Hartland town
Litchfield County part:	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part:	Chester town, Deep River town, Essex town, Westbrook town
New London County part:	Lyme town, Voluntown town
Tolland County part:	Union town
Windham County part:	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Wilmington-Newark, DE-MD:	New Castle

METROPOLITAN COUNTIES

Kent

NONMETROPOLITAN COUNTIES

Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS: COUNTIES

PMSA Fort Lauderdale, FL:	Broward
PMSA Miami, FL:	Dade
MSA Tampa-St. Petersburg-Clearwater, FL:	Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES

Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES

Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS: COUNTIES

*Atlanta, GA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

METROPOLITAN COUNTIES

Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES

Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox,Wilkes, Wilkinson, Worth

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

HAWAII (PACIFIC/HAWAII)

CPI AREAS: COUNTIES

STATE Hawaii:	Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES

Ada, Canyon

NONMETROPOLITAN COUNTIES

Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS: COUNTIES

*Chicago, IL:	Cook, Dupage, Kane, Lake, Mchenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, Il:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES

Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES

Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS: COUNTIES

*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

METROPOLITAN COUNTIES

Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES

Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES

Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES

Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

IOWA (Cont.)

Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS: COUNTIES

MSA Kansas City, MO-KS: Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES

Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES

Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS: COUNTIES

*Cincinnati, OH-KY-IN:	Boone, Campbell, Kenton
*COUNTY Gallatin, KY:	Gallatin
*COUNTY Grant, KY:	Grant
*COUNTY Pendleton, KY:	Pendleton

METROPOLITAN COUNTIES

Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES

Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

METROPOLITAN COUNTIES

Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Ouachita, Plaquemines, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES

Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Portsmouth-Rochester, NH-ME

York County part:	Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES

Androscoggin County part:	Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part:	Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part:	Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part:	Winterport town
York County part:	Buxton town, Hollis town, Limington town, Old Orchard Beach

NONMETROPOLITAN COUNTIES

Aroostook
Franklin
Hancock
Kennebec
Knox
Lincoln
Oxford
Piscataquis
Sagadahoc
Somerset
Washington

Androscoggin County part:	Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part:	Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part:	Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town
Waldo County part:	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part:	Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Baltimore, MD:	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD:	Washington
*Washington, DC-MD-VA:	Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD:	Cecil

METROPOLITAN COUNTIES

Allegany

NONMETROPOLITAN COUNTIES

Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH

Bristol County part:	Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part:	Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part:	Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part:	Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
Plymouth County part:	Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part:	Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part:	Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA

Bristol County part:	Easton town, Raynham town
Norfolk County part:	Avon town
Plymouth County part:	Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA

Middlesex County part:	Ashby town
Worcester County part:	Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town

PMSA Lawrence, MA-NH

Essex County part:	Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH

Middlesex County part:	Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA

Bristol County part:	Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part:	Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT

Hampden County part:	Holland town
Worcester County part:	Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westboroughtown, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES

Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town,Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES

Dukes	
Nantucket	
Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part:	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part:	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part:	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS: COUNTIES

PMSA Ann Arbor, MI:	Lenawee, Livingston, Washtenaw
PMSA Detroit, MI:	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI:	Genesee

METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS: COUNTIES

MSA Minneapolis-St. Paul, MN-WI:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NONMETROPOLITAN COUNTIES

Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES

Desoto, Hancock, Harrison, Hinds, Jackson, Madison, Rankin

NONMETROPOLITAN COUNTIES

Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS: COUNTIES

MSA Kansas City, MO-KS: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray

MSA St. Louis, MO-IL: Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES

Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES

Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard,Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Cascade, Missoula, Yellowstone

NONMETROPOLITAN COUNTIES

Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES

Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES

Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town,Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

PMSA Lowell, MA-NH
Hillsborough county part: Pelham town

PMSA Manchester, NH
Hillsborough county part: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town

PMSA Nashua, NH
Hillsborough county part: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town

PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Atlantic-Cape May, NJ: Atlantic, Cape May
PMSA Bergen-Passaic, NJ: Bergen, Passaic
PMSA Jersey City, NJ: Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ: Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ: Monmouth, Ocean
PMSA Newark, NJ: Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ: Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ: Mercer

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEW JERSEY (Cont.)

PMSA Vineland-Millville-Bridgeton, NJ: Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Buffalo-Niagara Falls, NY:	Erie, Niagara
PMSA Dutchess County, NY :	Dutchess
PMSA Nassau-Suffolk, NY:	Nassau, Suffolk
PMSA New York, NY:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY:	Westchester
PMSA Newburgh, NY-PA:	Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

OHIO (MIDWEST)

CPI AREAS: COUNTIES

PMSA Akron, OH:	Portage, Summit
*COUNTY Brown, OH:	Brown
*Cincinnati, OH-KY-IN:	Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH:	Butler

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

OHIO (MIDWEST) cont.

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

PMSA Portland-Vancouver, OR-WA:	Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR:	Marion, Polk

METROPOLITAN COUNTIES
Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Benton, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Newburgh, NY-PA:	Pike
PMSA Philadelphia, PA-NJ:	Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA:	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES

Bristol County part:	Barrington town, Bristol town, Warren town
Kent County part:	Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Providence County part:	Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city
Newport County part:	Jamestown town, Little Compton town, Tiverton town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

RHODE ISLANE (CONT.)

Washington County part:	Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town
Washington County part:	Hopkinton town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part:	Middletown town, Newport city, Portsmouth town
Washington County part:	New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES

Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES

Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES

Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody, Perkins,Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES

Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES

Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Chester, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX:	Brazoria
*Dallas, TX:	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX:	Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX:	Galveston
*COUNTY Henderson, TX:	Henderson
PMSA Houston, TX:	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES

Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES

Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Davis, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES

Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part:	Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part:	Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part:	Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES

Addison	
Bennington	
Caledonia	
Essex	
Lamoille	
Orange	
Orleans	
Rutland	
Washington	
Windham	
Windsor	
Chittenden County part:	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part:	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part:	Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

*COUNTY Clarke, VA:	Clarke
*COUNTY Culpeper, VA:	Culpeper
*COUNTY King George, VA:	King George
*COUNTY Warren, VA:	Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS: COUNTIES

*Washington, DC-MD-VA:	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES

Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES

Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

PMSA Bremerton, WA:	Kitsap
PMSA Olympia, WA:	Thurston
PMSA Portland-Vancouver, OR-WA:	Clark
PMSA Seattle-Bellevue-Everett, WA:	Island, King, Snohomish
PMSA Tacoma, WA:	Pierce

METROPOLITAN COUNTIES

Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES

Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

*COUNTY Berkeley, WV:	Berkeley
*COUNTY Jefferson, WV:	Jefferson

METROPOLITAN COUNTIES

Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES

Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS: COUNTIES

PMSA Kenosha, WI:	Kenosha
PMSA Milwaukee-Waukesha, WI:	Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI:	Pierce, St. Croix
PMSA Racine, WI:	Racine

METROPOLITAN COUNTIES

Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

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WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grand, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alt, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

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