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Contents

Federal Register

Vol. 64, No. 228

Monday, November 29, 1999

Agricultural Marketing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66604–66605

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Food Safety and Inspection Service
See Forest Service

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Aetna Inc. et al., 66647–66663
Morgan Drive Away, Inc., et al., 66663

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Coast Guard
RULES
Ports and waterways safety:
Chesapeake Bay, MD; safety zone, 66585–66586

Commerce Department
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 66610–66612

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Guatemala, 66612–66613

Commodity Credit Corporation
NOTICES
Grain cleaning equipment; installation and improvement, 66606

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 66613

Comptroller of the Currency
RULES
Federal Deposit Insurance Act:
Safety and soundness standards, 66706–66708
Year 2000 guidelines, 66699–66706

Consumer Product Safety Commission
RULES
Organization, functions, and authority delegations:
Directorate for Epidemiology and Directorate for Health Sciences, 66579–66580
NOTICES
Settlement agreements:
Black & Decker (U.S.), Inc., 66613–66615

Customs Service
NOTICES
Customs broker permit; user fees, 66692–66693

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66615–66616
Meetings:
Federal Interagency Coordinating Council, 66616

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
Biological and Environmental Research Advisory Committee, 66617
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Weldon Spring Site, MO, 66617

Environmental Protection Agency
NOTICES
Air pollution control:
Acid rain program—
Nitrogen oxides compliance plans, 66632–66634
Air programs:
State implementation plans; adequacy status for transportation conformity purposes—
California, 66634
Superfund; response and remedial actions, proposed settlements, etc.:
Gary Lagoons Site, IN, 66634–66635
Water pollution control:
State water quality standards; approval and disapproval lists and individual control strategies; availability—
Louisiana, 66635–66636

Federal Aviation Administration
RULES
Airworthiness directives:
General Electric Co., 66554–66565
VOR Federal airways, 66565–66566
NOTICES
Exemption petitions; summary and disposition, 66687
Meetings:
Aviation Rulemaking Advisory Committee, 66687–66688
Passenger facility charges; applications, etc.:
Lehigh Northampton Airport Authority, PA, et al., 66688–66692

Federal Deposit Insurance Corporation
RULES
Federal Deposit Insurance Act:
Safety and soundness standards, 66706–66708
Year 2000 guidelines, 66699–66706

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Allegheny Energy Unit 1 and Unit 2, L.L.C., et al., 66621–66623
Citizens Power LLC et al., 66623–66625
McDonough Power Cooperative et al., 66625–66626
Midford Power L.P. et al., 66626–66630
Environmental statements; availability, etc.:
Electro Ecology, Inc., 66631
Northeast Hydroelectric Corp. et al., 66631
Hydroelectric applications, 66631–66632
Meetings; Sunshine Act, 66632
Applications, hearings, determinations, etc.:
Advantage Energy, Inc., et al., 66617–66618
Algonquin Gas Transmission Co., 66618
British Columbia Power Exchange Corp. et al., 66618
Illinova Energy Partners, Inc., et al., 66618
Kansas Pipeline Co., 66618–66619
MidAmerican Energy Co., 66619
Millennium Pipeline Co., L.P., et al., 66619
Mississippi River Transmission Corp., 66619
Pennsylvania Electric Co./GPU Genco, 66619
PG&E Energy Services Corp. et al., 66620
Public Service Co. of Colorado, 66620
State Street Bank & Trust Co., 66620
TIFD III-F, Inc., 66620–66621

Federal Labor Relations Authority
PROPOSED RULES
Equal Access to Justice Act; implementation:
Attorney fees regulations, 66589–66590

Federal Reserve System
RULES
Extensions of credit by Federal Reserve banks (Regulation A):
Discount rate change, 66553–66554
Federal Deposit Insurance Act:
Safety and soundness standards, 66706–66708
Year 2000 guidelines, 66699–66706
NOTICES
Banks and bank holding companies:
Change in bank control, 66636
Formations, acquisitions, and mergers, 66636–66637
Permissible nonbanking activities; correction, 66637
Meetings; Sunshine Act, 66637

Federal Trade Commission
NOTICES
Meetings; Sunshine Act, 66637

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Scaleshell mussel, 66600–66601
NOTICES
Endangered and threatened species permit applications, 66639–66640

Food and Drug Administration
NOTICES
Reports and guidance documents; availability, etc.:
Drug master files for bulk antibiotic drug substances; industry guidance, 66638

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Inspection services; enforcement actions; refusal, suspension, or withdrawal, 66541–66547
Pathogen reduction; hazard analysis and critical control point (HACCP) systems—
Generic E. coli testing for sheep, goats, equines, ducks, geese, and guineas, 66547–66553
NOTICES
Reports and guidance documents; availability, etc.:
Canada's Modernized Poultry Inspection Program; description, 66606–66607

Forest Service
NOTICES
Environmental statements; notice of intent:
Bitterroot National Forest, MT, 66607–66609
Idaho Panhandle National Forests, ID, 66609–66610

General Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66638

Health and Human Services Department
See Food and Drug Administration

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66663–66664

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office
NOTICES
Meetings:
Delaware and Lehigh National Heritage Corridor Commission, 66639

Internal Revenue Service
RULES
Procedure and administration:
Elective entity classification; treatment of changes, 66580–66585
PROPOSED RULES
Income taxes:
Partnership interests; special basis adjustments for transfer of property to corporation; partial withdrawal, 66591
Procedure and administration:
Entity classification changes; special rule for foreign eligible entities, 66591–66595
NOTICES
Meetings:
Citizen Advocacy Panels—
Brooklyn District, 66693

International Trade Commission
NOTICES
Import investigations:
Fresh and chilled Atlantic salmon from—
Norway, 66644

Harmonized Tariff Schedule—
Modifications, 66644–66645
Sodium thiosulfate from—
Various countries, 66645
Stainless steel butt-weld pipe fittings from—
Various countries, 66645–66646

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
See National Institute of Justice
NOTICES
Meetings:
Global Justice Information Network Advisory Committee, 66646
Pollution control; consent judgments:
Block Island Power Co., Inc., 66646
Bulk Transport LTD. of Bermuda et al., 66646–66647
H.W. Wageley, Inc., et al., 66647

Labor Department
See Labor Statistics Bureau
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66665

Labor Statistics Bureau
NOTICES
Meetings:
Labor Research Advisory Council, 66665–66666

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Northwest California, 66640
Opening of public lands:
Colorado, 66640

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 66668

National Aeronautics and Space Administration
NOTICES
Environmental statements; availability, etc.:
Mars Surveyor 2001 mission, 66668–66669
Patent licenses; non-exclusive, exclusive, or partially exclusive:
CISC, Inc., 66669

National Institute of Justice
NOTICES
Grants and cooperative agreements; availability, etc.:
W.E.B. DuBois Fellowship Program, 66664

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Prohibited species bycatch management; CFR correction, 66587–66588
Northeastern United States fisheries—
Northeast multispecies; correction, 66587
Summer flounder, scup, and black sea bass, etc.; correction, 66586–66587
Ocean and coastal resource management:
Marine sanctuaries—
Hawaiian Islands Humpback Whale National Marine Sanctuary, HI, 66566–66579
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc—
Columbia River eulachon, 66601–66603
NOTICES
Permits:
Marine mammals, 66612

National Park Service
NOTICES
Environmental statements; availability, etc.:
Fort Bowie National Historic Site, AZ, 66640–66641
Tallgrass Prairie National Preserve, KS, 66641–66642
Environmental statements; notice of intent:
Channel Islands National Park, CA, 66642–66643
Meeting:
Kenilworth Park, DC; clean up and planning for use of park, 66643
Meetings:
Boston Harbor Islands Advisory Council, 66643

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Northern States Power Co., 66670–66671

Occupational Safety and Health Administration
PROPOSED RULES
Construction safety and health standards:
Steel Erection Negotiated Rulemaking Advisory Committee—
Meetings, 66595

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; class exemptions:
Interest free loans, 66666–66668

Public Health Service
See Food and Drug Administration

Railroad Retirement Board
NOTICES
Senior Executive Service:
Performance Review Board; membership, 66671

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Elephant Butte/Caballo Reservoirs, NM; resource management plan, 66643–66644

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Conning Asset Management Co. et al., 66679–66681
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 66681–66684
Philadelphia Stock Exchange, Inc., 66684–66686
Applications, hearings, determinations, etc.:
Public utility holding company filings, 66672–66679

Social Security Administration
NOTICES
Privacy Act:
Computer matching programs, 66686–66687

State Department
NOTICES
Meetings:
International Telecommunication Advisory Committee, 66687

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania, 66595–66600

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
RULES
Federal Deposit Insurance Act:
Safety and soundness standards, 66706–66708
Year 2000 guidelines, 66699–66706

Transportation Department
See Coast Guard
See Federal Aviation Administration
PROPOSED RULES
Air travel; nondiscrimination on basis of disability:
Meeting postponed, 66590–66591

Treasury Department
See Comptroller of the Currency
See Customs Service
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66692

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66693–66697

Separate Parts In This Issue

Part II
Department of the Treasury, Comptroller of the Currency and Office of Thrift Supervision; Federal Reserve System; Federal Deposit Insurance Corporation, 66699–66708

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR

Proposed Rules:

2430 66589

9 CFR

304 66541
305 66541
310 66547
327 66541
335 66541
381 (2 documents) 66541, 66547
500 66541

12 CFR

30 (2 documents) 66700, 66706
201 66553
208 66700
263 66706
364 (2 documents) 66700, 66706
570 (2 documents) 66700, 66706

14 CFR

39 66554
71 66565

Proposed Rules:

Ch. I 66590

15 CFR

922 66566

16 CFR

1000 66579

26 CFR

301 66580

Proposed Rules:

1 66591
301 66591

29 CFR

Proposed Rules:

1926 66595

30 CFR

Proposed Rules:

938 (2 documents) 66595, 66598

33 CFR

165 66585

50 CFR

648 (2 documents) 66586, 66587
679 66587

Proposed Rules:

17 66600
223 66601
224 66601

Rules and Regulations

Federal Register
Vol. 64, No. 228
Monday, November 29, 1999

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

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 304, 305, 327, 335, 381, and 500

[Docket No. 95–025F]

RIN 0583–AC34

Rules of Practice

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its rules of practice that apply to Agency enforcement actions. FSIS is defining each type of enforcement action that it may take, the conditions under which it is likely to take each of these actions, and the procedures that it will follow in doing so. This rule is part of FSIS's ongoing effort to consolidate, streamline, and clarify the meat and poultry product inspection regulations.

EFFECTIVE DATE: This rule is effective January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development and Evaluation, FSIS, Room 112, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA), the Secretary of Agriculture is charged with the responsibility of protecting the public health by assuring that meat and poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. To accomplish this objective, the statutes require the Secretary to administer a comprehensive inspection program which includes examining live animals prior to slaughter, inspecting all carcasses to be used for human food, and inspecting facilities where meat and poultry products are produced or stored. FSIS has broad authority to issue regulations to carry out the provisions of the FMIA and PPIA, including authority to prescribe the terms and conditions under which inspection will be provided and maintained and pursuant to which the marks of inspection will be applied.

An establishment's failure to comply with regulatory requirements can result in the Agency's inability to determine that products are not adulterated as required by the inspection statutes. Accordingly, FSIS may find it necessary to take action to prevent the production and shipment of product until the Agency is assured that there is compliance with the statutes and their implementing regulations. For example, FSIS can refuse to grant an application for inspection. It can take regulatory control actions to retain product, to reject equipment or facilities, to slow or stop lines, or to refuse to allow the processing of specifically identified product. The Agency may refuse to allow the marks of inspection to be applied to products or suspend inspection by interrupting the assignment of program employees to all or part of an establishment. FSIS also can withdraw inspection or rescind or refuse to approve markings, labels, or containers.

FSIS takes these types of actions when an establishment fails to: (1) develop and implement a HACCP plan or operate in accordance with 9 CFR Part 417; (2) develop, implement, and maintain Sanitation Standard Operating Procedures (Sanitation SOP's) in accordance with 9 CFR Part 416; (3) conduct generic *E. coli* testing in accordance with 9 CFR 310.25(a) or 381.45(a); (4) comply with the *Salmonella* performance standard requirements prescribed in sections 9 CFR 310.25(b) or 381.94(b); (5) maintain sanitary conditions; (6) humanely slaughter livestock; or (7) destroy condemned product. FSIS also takes these actions when an applicant for inspection, a recipient of inspection, or anyone responsibly connected with the applicant or recipient is unfit to engage in business because of prior criminal convictions, or when establishment personnel assault, intimidate, or interfere with Federal inspection service.

When FSIS refuses to grant an application for inspection, seeks to withdraw inspection, or refuses to approve markings, labels, or containers, the Agency initiates an administrative action under USDA's ''Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes'' (7 CFR subtitle A, part 1, subpart H), as supplemented by FSIS's own ''Rules of Practice,'' which have been set out in 9 CFR part 335 for meat or part 381, subpart W, for poultry and are now replaced by 9 CFR part 500. FSIS's supplemental rules of practice also provide for the withholding of the marks of inspection and the suspension of inspection.

When public health is a concern, FSIS immediately suspends inspection until the problem is corrected. FSIS refuses to mark product as ''inspected and passed'' or retains an establishment's meat or poultry products if the Agency determines that meat or poultry products are adulterated or cannot determine, as required by the statutes, that those products are not adulterated. Such actions typically are discontinued when the adulterated products have been destroyed or properly controlled, or when the deficiencies or noncompliances are corrected satisfactorily. The current supplemental rules also provide for an opportunity to address and correct problems before the Agency files a formal administrative complaint to suspend or withdraw an establishment's grant of inspection.

On January 12, 1998, FSIS issued a proposed rule (63 FR 1797) to reorganize and revise its supplemental rules of practice to better ensure that its enforcement procedures are fair; to eliminate redundancy; to identify the situations that may lead FSIS to take enforcement action which may include refusing to grant or withholding the marks of inspection and suspending or withdrawing inspection; and to establish the procedures FSIS would follow in taking such actions.

Comments

FSIS received 64 comments in response to the proposed rule. Although the commenters supported the consolidation and streamlining of the

rules of practice, they raised concerns about the actual proposed revisions to the regulations. The following is a discussion of the commenters' issues.

1. FSIS Authority

Several commenters asserted that an establishment's failure to meet the *Salmonella* performance standards, to carry out and meet generic *E. coli* testing requirements, or to prevent a HACCP system failure would not provide an adequate basis to suspend or seek withdrawal of inspection. They contend that the FMIA and PPIA authorize FSIS to remove inspectors only when an establishment fails to follow sanitary practices, refuses to destroy condemned carcasses, fails to comply with the Humane Slaughter Act, or is convicted in a criminal proceeding.

FSIS disagrees with this assessment of the Agency's authority. Under the FMIA and the PPIA, FSIS is charged with the duty and the responsibility to protect the public health by developing and implementing an effective, comprehensive, and scientifically valid inspection system that will ensure that meat and poultry products are wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS is required by these statutes to carry out continuous inspection of slaughter and processing operations at Federal establishments and to make the affirmative determination that the meat and poultry products produced at those establishments are wholesome and not adulterated prior to marking the products as ''inspected and passed.''

FSIS has specified, through regulations, the conditions under which meat and poultry products must be produced [the HACCP/Pathogen Reduction regulations]. These regulations are essential, integral components of the FMIA and PPIA inspection system, and the failure, inability, or unwillingness of an establishment to comply with these food safety regulations effectively precludes FSIS from making the statutorily-mandated determination that meat and poultry products are wholesome, not adulterated, and entitled to bear the legend ''inspected and passed.'' The inspection system provided for in the FMIA and PPIA is a continuous and real-time inspection program that, by its very nature, requires real-time and continuous inspection determinations. It is clear that the FMIA and the PPIA contemplate and authorize the Agency to take prompt and, if necessary, immediate action to carry out its public health responsibility to ensure that only products that are marked ''inspected and passed'' are shipped in commerce. It is the Agency view, therefore, that compliance with FSIS's food safety regulations, including the HACCP/Pathogen Reduction regulations, is a necessary predicate for inspection services and for the application of the marks of inspection under the FMIA and the PPIA, and that FSIS has inherent authority to withhold the marks, to suspend inspection services, and to withdraw inspection when these requirements are not satisfied.

In addition, FSIS is required to prescribe the rules and regulations for sanitation, with which slaughter and processing establishments must comply. The term ''sanitation'' is comprehensive and encompasses the array of procedures, practices, and controls employed by establishments to ensure that the products they produce are wholesome and not adulterated. Sanitation obviously includes procedures for the cleaning of equipment and facilities; proper sanitation also encompasses practices for ensuring the acceptability of incoming products and ingredients, proper product handling and preparation practices, controlling condemned product, and properly storing product. It is also FSIS's view that the SSOP requirements, the HACCP regulations, the *Salmonella* performance standards, and the generic *E. coli* testing requirements are material components of an effective sanitation program that is sufficient to meet the requirements of the FMIA and PPIA. For example, *E. coli* testing is prescribed in the HACCP/Pathogen Reduction regulations to verify that the establishment is employing sanitary dressing procedures to prevent the fecal contamination of carcasses. Also, the *Salmonella* performance standards were adopted to ensure that an establishment's procedures, practices, and controls, as embodied in its HACCP plans, are working properly. The Agency has ample statutory authority to withhold, suspend, or seek withdrawal, in accord with the facts of any particular case, when the Agency's sanitation requirements are not satisfied.

2. Due Process: Notice and Opportunity To Achieve Compliance

Commenters also raised concerns that the proposed rules did not provide adequate due process protections for establishments. The commenters argued, for example, that the taking of withholding actions by inspectors, and the resulting interruption of plant operations, without providing the establishment with notice of the deficiencies and an opportunity to demonstrate or achieve compliance is unreasonable and contrary to applicable law. Commenters underscored this point with particular focus on HACCP regulation noncompliances, contending that notice and opportunity to establish compliance were essential in such cases before taking withholding or suspension actions.

Some commenters believed that the proposed rules of practice were inconsistent with other FSIS regulations and policies related to the suspension of inspection. They cited, for example, the Quality Control (QC) regulations and the Progressive Enforcement Action program. Under these regulations and policies, in situations not involving the preparation and distribution of adulterated product, establishments were provided an opportunity to achieve compliance before FSIS terminated a QC program or imposed progressive sanctions.

FSIS is mindful that withholding the marks of inspection and suspending inspection services are significant enforcement actions to be taken only after careful evaluation of the facts and circumstances. At the same time, as discussed above, it is FSIS's statutory responsibility and duty to protect public health by maintaining an inspection system that will ensure that meat and poultry products produced and shipped in commerce are wholesome and not adulterated. FSIS agrees that fundamental fairness requires that appropriate due process be accorded establishments in connection with enforcement actions under the FMIA and PPIA. FSIS believes that the proposed rules of practice, as modified and specified in this document will, in fact, protect the due process rights of all establishments.

As we make clear in this final rule, FSIS will continue to provide notice and an opportunity to demonstrate or achieve compliance in situations where the violations and deficiencies disclosed by inspection or investigation do not, in the Agency's view, present a public health concern that requires immediate action. Where, however, noncompliance with the requirements of the acts and regulations indicates that continued production and shipment of product do pose, in the Agency's view, an imminent threat to public health, FSIS will take immediate action. Accordingly, section 500.3 of the rules of practice sets out the conditions under which FSIS may withhold the marks of inspection or suspend inspection without prior written notification and section 500.4 sets out the conditions under which FSIS may withhold the marks of inspection or suspend

inspection after providing prior written notification.

Commenters also argued that FSIS's noncompliance records (NRs) should not be deemed adequate to notify an establishment of the Agency's determination that there has been a ''system failure.''

It is FSIS's view that NRs do constitute valid and effective notice to an establishment that the establishment has not maintained regulatory compliance. An NR informs the establishment of the specific deficiency involved and on its face invites the establishment to respond to the finding and to present in writing its immediate and further planned corrective actions. The NR also specifically notes the right to appeal the inspector's finding and potential regulatory consequences of the NR.

When an NR is issued, it is incumbent upon the establishment to evaluate the NR carefully and to act upon and respond to it promptly and effectively. In particular, it is important that establishments address the NRs related to a HACCP plan noncompliance because such NRs may indicate that the plan is not working properly and should be reassessed. Accordingly, FSIS believes that should the Agency determine that it is necessary to withhold the marks of inspection or to suspend inspection because of multiple or recurring noncompliances, evidenced by NRs, the establishment will have been given appropriate notice as well as ample opportunity to demonstrate or achieve compliance.

Nonetheless, in cases where FSIS has determined that multiple or recurring noncompliances warrant the withholding of the marks of inspection or suspension of inspection, this final rule provides for written notification to the establishment before withholding or suspending inspection when the circumstances do not pose an imminent threat to public health.

Therefore, in response to the comments, FSIS is revising the regulatory language used in the proposed rule. This final rule lists the types of enforcement actions that the Agency may take and identifies the circumstances under which each action may be taken. This final rule also clarifies the procedures FSIS will follow to provide, when appropriate, prior notification to establishments.

Section 500.1 defines a ''regulatory control action,'' ''withholding action,'' and ''suspension.'' A regulatory control action is the retention of product, rejection of equipment or facilities, slowing or stopping of lines, or refusal to allow the processing of specifically identified product. A withholding action is the refusal to allow the marks of inspection to be applied to products. A withholding action may affect all products in the establishment or product produced by a particular process. A suspension is an interruption of the assignment of program employees to all or part of an establishment.

Section 500.2 states that FSIS may take a regulatory control action because of insanitary conditions or practices, product adulteration or misbranding, conditions that preclude FSIS from determining that product is not adulterated or misbranded, or inhumane handling or slaughtering of livestock. These control actions are necessary, indeed essential, in-plant enforcement tools for inspectors to use in cases where the noncompliance is willful or involves public health, interest, or safety. Typically, regulatory control actions involve specific amounts of product or generally well-defined deficiencies such as crushed and open cartons or malfunctioning equipment. If FSIS takes a regulatory control action, it will immediately notify the establishment orally or in writing of the action and of the basis for the action. An establishment may appeal a regulatory control action, as provided in 9 CFR 306.5 and 381.35.

Withholding actions are generally more significant than regulatory control actions and affect a larger part of an establishment or the establishment's processes. In most cases, in-plant inspection personnel take these actions because of systemic problems, such as HACCP plan inadequacies. Typically, the actions necessary to correct the problem that resulted in a withholding action are more complex than those necessary to resolve a problem that resulted in a regulatory control action and are likely to require an establishment to accomplish a HACCP plan reassessment and make any necessary plan modification or to revise its Sanitation SOP.

A suspension of inspection is likely to have an even more significant impact on an establishment than a withholding action. Typically, an FSIS District Manager or Agency official at a higher level suspends inspection after an establishment fails to correct a situation involving a withholding action, or when the nature of the noncompliances are such that the corrective action, such as HACCP plan reassessment or changes in the establishment's operation, may take a significant amount of time to implement.

Section 500.3 states that FSIS may take a withholding or suspension action without providing the establishment prior notification because the establishment produced and shipped adulterated or misbranded product as defined in 21 U.S.C. 453 or 21 U.S.C. 602; the establishment does not have a HACCP plan as specified in section 417.2 of the regulations; the establishment does not have Sanitation SOPs as specified in sections 416.11–416.12 of the regulations; sanitary conditions are such that any products in the establishment are or would be rendered adulterated; an establishment operator, officer, employee, or agent assaulted, threatened to assault, intimidated, or interfered with an FSIS employee; the establishment violated the terms of a regulatory control action; or the establishment did not destroy a condemned meat or poultry carcass, or part or product thereof, in accordance with 9 CFR part 314 or part 381, subpart L, within three days of notification. FSIS also may impose a suspension without providing the establishment prior notification because the establishment is handling or slaughtering animals inhumanely.

Section 500.4 states that FSIS may take a withholding action or impose a suspension after the Agency provides an establishment prior notification and the opportunity to demonstrate or achieve compliance because the HACCP system is inadequate, as specified in 9 CFR 417.6, due to multiple or recurring noncompliances; the Sanitation SOPs have not been properly implemented or maintained as specified in 9 CFR 416.13–16; the establishment has not maintained sanitary conditions as prescribed in 9 CFR 416.2–416.8 due to multiple or recurring noncompliances; the establishment did not collect and analyze samples for *Escherichia coli* Biotype I and record results in accordance with 9 CFR 310.25(a) or 381.94(a); or the establishment did not comply with the *Salmonella* performance standard requirements prescribed in 9 CFR 310.25(b) or 381.94(b).

Section 500.5 states that if FSIS takes a withholding action or imposes a suspension without prior written notification, the Agency will notify the establishment orally and, as promptly as circumstances permit, in writing. The written notification will provide the effective date of the action, reasons for the action, products or processes affected by the action, opportunity for the establishment to present immediate corrective action and further planned preventive action, and the appeals procedures. This section also addresses the prior notification provided for in section 500.4. This prior notification will state the type of action that may be

taken; describe the reason for the proposed action; identify the products or processes affected by the proposed action; advise the establishment of its right to contact FSIS to contest the basis for the proposed action or to explain how compliance has been or will be achieved; and advise the establishment that it will have three business days from receipt of the written notification to respond to FSIS unless the time period is extended by FSIS.

The provisions in section 500.5 also reiterate that an establishment may appeal the withholding action or suspension, as provided in section 9 CFR 306.5 and 381.35. Also, this section provides that if FSIS suspends inspection and does not hold the suspension action in abeyance, the establishment may request a hearing pursuant to the Uniform Rules of Practice, 7 CFR Subtitle A, part 1, subpart H. Upon such request, the Administrator will file a complaint that will include a request for an expedited hearing.

Section 500.6 addresses withdrawal of inspection, and section 500.7 addresses refusal of inspection. These provisions are substantially unchanged from the January 1998 proposal. When FSIS withdraws or refuses inspection, the Agency initiates an administrative action under USDA's Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR subtitle A, part 1, subpart H). Also, FSIS made no significant changes, other than renumbering the sections, to the provisions that relate to rescinding or refusing approval of marks, labels, and containers, (section 500.8) and refusing or withdrawing inspection for applicants or recipients unfit to engage in business (sections 500.6 and 500.7).

3. Appropriateness of Other Aspects of the Regulations

Some commenters suggested that FSIS should better explain the Agency's practice of allowing an establishment to operate while under a suspension if the establishment presents adequate written assurances that corrective actions are being implemented.

It has been FSIS's experience that some establishments, upon being notified that the Agency intends to suspend inspection, offer a plan to address the circumstances that caused FSIS to issue the notification. In these cases, FSIS has concluded that, even though the basis for a suspension existed, it was appropriate to hold the suspension in abeyance and to allow the establishment to continue to operate under its proposed corrective and preventive actions.

Section 500.5(e) states that FSIS may hold a suspension in abeyance and allow the establishment to operate under the conditions agreed to by FSIS and the establishment.

Some commenters suggested that there should be a third-party review of an establishment's response to the notification of the Agency's intent to take an enforcement action, and that this third party should make the decision on whether the enforcement action is warranted.

FSIS concluded that such third-party review is not appropriate under the meat and poultry inspection statutes. The Agency is required to make the determination that the statutes and regulations have been complied with, and that the products produced meet the statutory requirements. The suggested procedure is clearly inconsistent with the statutory authority and plan embodied in the FMIA and PPIA and would be impractical and contrary to the public interest.

A number of commenters raised concerns about FSIS's appeal policy. Some recommended provisions for alternative dispute resolution instead of an administrative hearing before an Administrative Law Judge in cases where there is a scientific dispute. Under the provisions submitted by the commenters, the Agency would create a standing panel of expert advisors to be called upon on an as needed basis. The establishment and the Agency would be permitted to call witnesses and present relevant evidence, especially scientific evidence, to the panel. The panel's decision along with any dissenting views would be written and shared with the establishment and the Agency. The Administrator, as the ultimate decisionmaker for the government, would give the panel's decision due consideration. Other commenters suggested that FSIS establish a special appeals resolution team in the Technical Service Center to which all appeals from inspection decisions would automatically be sent. Some commenters urged FSIS to specify how long it will take to resolve appeals, to allow establishments to continue operating while an appeal of an FSIS decision to suspend or withdraw inspection is pending, except in the event of an ''imminent hazard to health,'' and to reimburse regulated establishments for losses during ''down time'' when they win an appeal from an inspection decision.

As stated in the proposed rule, FSIS is committed to providing establishments with appropriate notice and an effective opportunity to appeal withholding actions and suspensions of inspection. It recognizes the need for timely resolution of all such appeals. The Agency intends to develop regulations to address how appeals are handled. However, since there were no proposed regulations on appeals included in the proposed rules of practice, establishing such rules in this document is outside the scope of this rulemaking. FSIS plans to issue a proposed rulemaking related to the appeals process at a later date.

Until new regulations on appeals are in place, appeals will continue to be heard through the ''chain-of-command'' process, which is incorporated into FSIS's existing regulations (9 CFR 306.5 and 381.35). In an attempt to ensure the timely review of appeals, FSIS issued FSIS Notice 14–98 on April 20, 1998. This notice explains FSIS's policy regarding the appeal of inspection findings and decisions. It also established the Inspection Appeals Tracking System (IATS) report which the Agency uses to help ensure a timely response to appeals.

Some commenters stated that FSIS should not delete the provisions in section 335.13. In this regulation, FSIS stated that it will notify an establishment of what actions are necessary to correct an insanitary condition and of the time within which corrections must be made.

It is an establishment's responsibility to identify problems and to determine how best to correct them. Section 335.13 appeared by its terms to place the burden for devising and correcting insanitary conditions on the Agency. Such regulations are not consistent with the Pathogen Reduction/HACCP approach. The Agency will identify problems when an establishment fails to do so, but it is the establishment's responsibility to identify problems on a continuing basis and to identify, select, and implement effective action to correct noncompliances. FSIS will verify that establishments have taken the necessary corrective actions. Accordingly, FSIS is removing section 335.13.

Commenters also questioned the elimination of section 335.40, ''Present Your Views (PYV)'' provisions, which allow establishments believed to have violated the FMIA an opportunity to present their views to the Agency regarding an alleged criminal violation before FSIS refers the violation to the Department of Justice for prosecution. The commenters pointed out that the PYV provisions are a statutory entitlement for poultry processors, and that by rescinding the regulations, the

Agency is backing away from equity between meat and poultry.

After consideration of these comments, FSIS has reconsidered its proposal and will not remove Part 335, Subpart E.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant, and therefore, has not been reviewed by the Office of Management and Budget.

The Administrator has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

There are no direct costs or benefits associated with this final rule. Costs and benefits are related to the regulatory actions, not the proceedings. At the present time, there is no way to predict whether industry ''down time'' will increase or decrease under these revised rules of practice. To the extent that resolution of disputes in a timely and efficient manner will be facilitated by these rules, there are potential benefits to consumers, industry, and the government. When disputes are related to public health issues, FSIS may reduce health risks to consumers by stopping an establishment's operations until the problem has been resolved.

There are also costs to industry associated with actions that suspend production operations.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. When this rule becomes final: (1) all state and local laws and regulations that are inconsistent with this rule would be preempted; (2) no retroactive effect would be given to this rule; and (3) administrative proceedings would not be required before parties may file suit in court challenging this rule.

Paperwork Requirements

This final rule does not include any new paperwork requirements.

Additional Public Notification

In an effort to better ensure that minorities, women, and persons with disabilities are made aware of this final rule, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information with a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

List of Subjects

9 CFR Part 304

Meat inspection.

9 CFR Part 305

Meat inspection.

9 CFR Part 327

Imports, Meat inspection.

9 CFR Part 381

Poultry and poultry products.

9 CFR Part 500

Rules of practice.

For the reasons set forth in this preamble, 9 CFR chapter III would be amended as follows:

PART 304—APPLICATION FOR INSPECTION; GRANT OF INSPECTION

1. The authority citation for part 304 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Part 304 is amended by revising the heading to read as set forth above, and amending § 304.2 by removing paragraphs (c) and (e), redesignating paragraph (d) as paragraph (c), and revising the last sentence of paragraph (b) to read as follows:

* * * * *

§ 304.2 Information to be provided.

* * * * *

(b) * * * Any application for inspection may be refused in accordance with the rules of practice in part 500 of this chapter.

* * * * *

PART 305—OFFICIAL NUMBERS; INAUGURATION OF INSPECTION; WITHDRAWAL OF INSPECTION; REPORTS OF VIOLATION

3. The authority citation for part 305 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 305.5 [Removed]

4. Part 305 is amended by removing § 305.5.

PART 327—IMPORTED PRODUCTS

5. The authority citation for part 327 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

6. Section 327.6 is amended by removing the last four sentences in paragraph (f) and adding in their place one sentence to read as follows:

§ 327.6 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers

* * * * *

(f) * * * Any application for inspection under this section may be denied or refused in accordance with the rules of practice in part 500 of this chapter.

PART 335—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE FEDERAL MEAT INSPECTION ACT

§§ 335.1–335.32 (Subparts A—D [Removed]

7. Part 335 Subparts A through D (§§ 335.1–335.32) are removed. Subpart E—Criminal Violations is redesignated as Subpart A.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

8. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

9. Section 381.21 is amended by removing paragraphs (a), (b), and (c); redesignating paragraph (d) as (b); and adding a new paragraph (a) to read as follows:

§ 381.21 Refusal of inspection.

(a) Any application for inspection in accordance with this part may be denied or refused in accordance with the rules of practice in part 500 of this chapter.

* * * * *

§ 381.29 [Removed]

10. Part 381 is amended by removing § 381.29.

§§ 381.230–381.236 (Subparts VI) [Removed]

11. Part 381 is amended by removing Subpart W (§§ 381.230—381.236).

SUBCHAPTER E—REGULATORY REQUIREMENTS UNDER THE FEDERAL MEAT INSPECTION ACT AND THE POULTRY PRODUCTS INSPECTION ACT

12. Subchapter E is amended by adding a new Part 500 to read as follows:

PART 500—RULES OF PRACTICE

Sec.

500.1 Definitions.
500.2 Regulatory control action.
500.3 Withholding or suspension of inspection without prior notification.
500.4 Withholding action or suspension of inspection with prior notification.
500.5 Notification, appeals, and actions held in abeyance.
500.6 Withdrawal of inspection.
500.7 Refusal to grant inspection.
500.8 Procedures for rescinding or refusing approval of marks, labels, sizes, and containers.

Authority: 21 U.S.C. 451–470, 601–695; 7 U.S.C. 450, 1901–1906; 7 CFR 2.18, 2.53.

§ 500.1 Definitions.

(a) A ''regulatory control action'' is the retention of product, rejection of equipment or facilities, slowing or stopping of lines, or refusal to allow the processing of specifically identified product.

(b) A ''withholding action'' is the refusal to allow the marks of inspection to be applied to products. A withholding action may affect all product in the establishment or product produced by a particular process.

(c) A ''suspension'' is an interruption in the assignment of program employees to all or part of an establishment.

§ 500.2 Regulatory control action.

(a) FSIS may take a regulatory control action because of:

(1) Insanitary conditions or practices;

(2) Product adulteration or misbranding;

(3) Conditions that preclude FSIS from determining that product is not adulterated or misbranded; or

(4) Inhumane handling or slaughtering of livestock.

(b) If a regulatory control action is taken, the program employee will immediately notify the establishment orally or in writing of the action and the basis for the action.

(c) An establishment may appeal a regulatory control action, as provided in sections 306.5 and 381.35 of this chapter.

§ 500.3 Withholding action or suspension without prior notification.

(a) FSIS may take a withholding action or impose a suspension without providing the establishment prior notification because:

(1) The establishment produced and shipped adulterated or misbranded product as defined in 21 U.S.C. 453 or 21 U.S.C. 602;

(2) The establishment does not have a HACCP plan as specified in § 417.2 of this chapter;

(3) The establishment does not have Sanitation Standard Operating Procedures as specified in §§ 416.11–416.12 of this chapter;

(4) Sanitary conditions are such that products in the establishment are or would be rendered adulterated;

(5) The establishment violated the terms of a regulatory control action;

(6) An establishment operator, officer, employee, or agent assaulted, threatened to assault, intimidated, or interfered with an FSIS employee; or

(7) The establishment did not destroy a condemned meat or poultry carcass, or part or product thereof, in accordance with part 314 or part 381, subpart L, of this chapter within three days of notification.

(b) FSIS also may impose a suspension without providing the establishment prior notification because the establishment is handling or slaughtering animals inhumanely.

§ 500.4 Withholding action or suspension with prior notification.

FSIS may take a withholding action or impose a suspension after an establishment is provided prior notification and the opportunity to demonstrate or achieve compliance because:

(a) The HACCP system is inadequate, as specified in § 417.6 of this chapter, due to multiple or recurring noncompliances;

(b) The Sanitation Standard Operating Procedures have not been properly implemented or maintained as specified in §§ 416.13 through 416.16 of this chapter;

(c) The establishment has not maintained sanitary conditions as prescribed in § § 416.2 through 416.8 of this chapter due to multiple or recurring noncompliances;

(d) The establishment did not collect and analyze samples for *Escherichia coli* Biotype I and record results in accordance with §§ 310.25(a) or 381.94(a) of this chapter;

(e) The establishment did not meet the *Salmonella* performance standard requirements prescribed in §§ 310.25(b) or 381.94(b) of this chapter.

§ 500.5 Notification, appeals, and actions held in abeyance

(a) If FSIS takes a withholding action or imposes a suspension, the establishment will be notified orally and, as promptly as circumstances permit, in writing. The written notification will:

(1) State the effective date of the action(s),

(2) Describe the reasons for the action(s),

(3) Identify the products or processes affected by the action(s),

(4) Provide the establishment an opportunity to present immediate and corrective action and further planned preventive action; and

(5) Advise the establishment that it may appeal the action as provided in §§ 306.5 and 381.35 of this chapter.

(b) The prior notification provided for in § 500.4 of this part will:

(1) State the type of action that FSIS may take;

(2) Describe the reason for the proposed action;

(3) Identify the products or processes affected by the proposed action;

(4) Advise the establishment of its right to contact FSIS to contest the basis for the proposed action or to explain how compliance has been or will be achieved; and

(5) Advise the establishment that it will have three business days from receipt of the written notification to respond to FSIS unless the time period is extended by FSIS.

(c) An establishment may appeal the withholding action or suspension, as provided in §§ 306.5 and 381.35 of this chapter.

(d) If FSIS suspends inspection and does not hold the suspension action in abeyance as provided in paragraph (e) of this section, the establishment may request a hearing pursuant to the Uniform Rules of Practice, 7 CFR Subtitle A, part 1, subpart H. Upon such request, the Administrator will file a complaint that will include a request for an expedited hearing.

(e) FSIS may hold a suspension in abeyance and allow the establishment to operate under the conditions agreed to by FSIS and the establishment.

§ 500.6 Withdrawal of inspection.

The FSIS Administrator may file a complaint to withdraw a grant of Federal inspection in accordance with the Uniform Rules of Practice, 7 CFR Subtitle A, part 1, subpart H because:

(a) An establishment produced and shipped adulterated product;

(b) An establishment did not have or maintain a HACCP plan in accordance with part 417 of this chapter;

(c) An establishment did not have or maintain Sanitation Standard Operating Procedures in accordance with part 416 of this chapter;

(d) An establishment did not maintain sanitary conditions;

(e) An establishment did not collect and analyze samples for *Escherichia coli* Biotype I and record results as prescribed in §§ 310.25(a) or 381.94(a) of this chapter;

(f) An establishment did not comply with the Salmonella performance standard requirements as prescribed in §§ 310.25(b) and 381.94(b) of this chapter;

(g) An establishment did not slaughter or handle livestock humanely;

(h) An establishment operator, officer, employee, or agent assaulted, threatened to assault, intimidated, or interfered with an FSIS program employee; or

(i) A recipient of inspection or anyone responsibly connected to the recipient is unfit to engage in any business requiring inspection as specified in section 401 of the FMIA or section 18(a) of the PPIA.

§ 500.7 Refusal to grant inspection.

(a) The FSIS Administrator may refuse to grant Federal inspection because an applicant:

(1) Does not have a HACCP plan as required by part 417 of this chapter;

(2) Does not have Sanitation Standard Operating Procedures as required by part 416 of this chapter;

(3) Has not demonstrated that adequate sanitary conditions exist in the establishment as required by part 308 or part 381, subpart H, and part 416 of this chapter;

(4) Has not demonstrated that livestock will be handled and slaughtered humanely; or

(5) Is unfit to engage in any business requiring inspection as specified in section 401 of the FMIA or section 18(a) of the PPIA.

(b) If the Administrator refuses to grant inspection, the applicant will be provided the opportunity for a hearing in accordance with the Uniform Rules of Practice, 7 CFR Subtitle A, part 1, subpart H.

§ 500.8 Procedures for rescinding or refusing approval of marks, labels, and containers.

(a) FSIS may rescind or refuse approval of false or misleading marks, labels, or sizes or forms of any container for use with any meat or poultry product under section 7 of the FMIA or under section 8 of the PPIA.

(b) FSIS will provide written notification that:

(1) Explains the reason for rescinding or refusing the approval;

(2) Provides an opportunity for the establishment to modify the marking, labeling, or container so that it will no longer be false or misleading; and

(3) Advises the establishment of its opportunity to submit a written statement to respond to the notification and to request a hearing.

(c) If FSIS rescinds or refuses approval of false or misleading marks, labels, or sizes or forms of any container for use with any meat or poultry product, an opportunity for a hearing will be provided in accordance with the Uniform Rules of Practice, 7 CFR Subtitle A, part 1, subpart H.

Done at Washington, DC on: November 17, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–30603 Filed 11–26–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 310 and 381

[Docket No. 97–004F]

RIN 0583–AC32

Generic *E. coli* Testing for Sheep, Goats, Equines, Ducks, Geese, and Guineas

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is requiring establishments that slaughter sheep, goats, horses, mules, and other equines, and establishments that slaughter ducks, geese, and guineas, to sample and test carcasses for generic *E. coli.* This final rule extends the sampling and testing requirements already applied to establishments that slaughter cattle, swine, chickens, and turkeys. Regular microbial testing by slaughter establishments is necessary to verify the adequacy of the establishment's process controls for the prevention and removal of fecal contamination and associated bacteria.

EFFECTIVE DATE: January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulation Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, Room 112 Annex Building, Washington, DC 20250–3700; telephone (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1996, FSIS published a final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,'' (61 FR 38806). The new regulations (1) require that each establishment develop, implement, and maintain written sanitation standard operating procedures (Sanitation SOP's); (2) require regular microbial testing for generic *E. coli* by establishments that slaughter cattle, swine, chicken, and turkey to verify the adequacy of each establishment's process control for the prevention and removal of fecal contamination and associated bacteria; (3) establish pathogen reduction performance standards for *Salmonella* that slaughter establishments and establishments producing raw ground products must meet; and (4) require that all meat and poultry establishments develop and implement a system of preventive controls designed to improve the safety of their products, a Hazard Analysis and Critical Control Point (HACCP) system.

At present, all inspected establishments that slaughter cattle, swine, chickens or turkeys must sample and test carcasses for generic *E. coli.* These establishments have developed sampling plans and sample at specified frequencies, locations, and sites. They maintain records of results and evaluate the results using either the m/M criteria developed in FSIS' baseline studies or, if m/M criteria are not available, statistical process control techniques. Establishments defined as ''very low volume'' may sample at an alternative frequency. Also, establishments operating under HACCP may develop alternative sampling frequencies if certain requirements are met. The Pathogen Reduction/HACCP final rule and the ''Pathogen Reduction/HACCP; Technical Corrections and Amendment'' final rule (62 FR 26211) provide detailed information about the need for these requirements.

On November 3, 1997, FSIS published a proposed rule in the **Federal Register** (62 FR 59305) proposing to extend the sampling and testing requirements for generic *E. coli* to meat establishments that slaughter sheep, goats, and equines and to poultry establishments that slaughter ducks, geese, and guineas. FSIS believes that regular microbial testing by all slaughter establishments is necessary to verify the adequacy of the establishment's process controls for the prevention and removal of fecal contamination and associated bacteria.

Comments

FSIS received five comments during the public comment period that ended January 2, 1998. Two of the commenters are members of the meat industry, and two commenters represent industry trade associations. The fifth commenter is from the Ministry of Agriculture of a major U.S. trading partner. None of the commenters expressed any opposition to extending the generic *E. coli* sampling and testing requirements to minor species, and one commenter found both the costs and hours necessary for implementation to be reasonable.

The principal areas of disagreement with the proposed rule dealt with sampling/testing rates and sites. One of the commenters proposed that the sampling for sheep and goats be done less frequently than for cattle and swine. Another commenter disagreed with the application of the 1 per 300 sampling frequency and proposed an ovine sampling rate of 1 per 810 as being more appropriate for establishments that slaughter large numbers of sheep and lambs.

The sampling/testing site was another area about which there was disagreement with the proposal. One commenter expressed a preference for a single sampling site rather than the three sites proposed by FSIS. Another commenter disagreed with the proposed sampling sites and recommended that alternative sites be described in the final rule to accommodate different dressing systems.

The flank, brisket, and rump are the same sites that were used by FSIS when conducting the baseline studies for cattle and swine. FSIS' decision not to change sites is based on the fact that there are no available data to demonstrate that one-site sampling will provide results comparable to the baseline survey data.

Moreover, it is appropriate, under HACCP, that the same three sites be used for sampling all livestock carcasses. The Agency's understanding of the minor species' dressing practices is that these three sites are the most likely places where contamination would be found. Although species-specific data are not currently available, researchers at Colorado State University (CSU) are conducting sampling analysis at three locations on lamb carcasses: the leg (rump, for beef), flank, and breast (brisket, for beef). The Agency will consider amending the regulations if the CSU data indicate a persuasive need to considering other sampling sites. With regard to frequency of sampling/testing, FSIS proposed a maximum limit of 13 samples per day, as was done with poultry.

One commenter recommended a smaller template for lamb carcasses, such as an area between 3×3 inches and 5×5 inches. In response to this recommendation, FSIS agrees that a smaller template is reasonable for sheep and goats, smaller species than livestock species, and will specify a 5×10 cm template in its sampling procedures.

The Final Rule

FSIS now is extending these sampling and testing requirements to sheep, goats, horses, mules, and other equines, defined as livestock in 9 CFR 301.2 (qq). All establishments slaughtering sheep, goats, horses, mules, or other equines now are required to meet the sampling and testing requirements in 9 CFR 310.25. Similarly, establishments that slaughter ducks, geese, and guineas now are required to meet the sampling and testing requirements in 9 CFR 381.94. These establishments will only be required to test sheep, goats, equines, ducks, geese, or guineas if they primarily slaughter these types of livestock or poultry. FSIS considers the livestock or poultry an establishment slaughters in the largest number to be that establishment's primary type of livestock or poultry slaughtered. Finally, this final rule also corrects an inadvertent inconsistency in the headings of §§ 310.25 and 381.94 that appeared in the proposed rule by including the phrase ''process control verification criteria and testing'' as well as removing the phrase ''for *Salmonella*'' in § 310.25.

Sampling Frequencies and Definitions for Very Low Volume Establishments

For the Pathogen Reduction/HACCP final rule, FSIS used a methodology to select sampling frequencies so that, in the subgroup of establishments accounting for 99 percent of total production for each type of livestock or poultry, the 5 percent of establishments with the highest production volume would each conduct a minimum of 13 *E. coli* tests, or one complete test window each day. Under these frequencies, 90 percent of all cattle, 94 percent of all swine, 99 percent of all chickens, and 99 percent of all turkeys would be slaughtered in establishments conducting a minimum of one complete *E. coli* sampling window per day to provide a minimum, adequate basis for process control verification.

FSIS developed alternative sampling frequencies for establishments defined as ''very low volume.'' If there are published m/M criteria for the type of livestock or poultry primarily slaughtered, the establishment must sample that type of livestock or poultry at a minimum frequency of once per week, starting the first full week of operation after June 1 of each year until a series of 13 tests has met those m/M criteria. If there are no m/M criteria for the type of livestock or poultry primarily slaughtered, a very low volume establishment must collect at least one sample per week, starting the first full week of operation after June 1 of each year, and continue sampling at a minimum of once each week that the establishment operates until June 1 of the following year or until 13 samples have been collected, whichever comes first. This provision will be eliminated once m/M criteria are developed for the primary type of livestock or poultry slaughtered.

FSIS permits very low volume establishments to test at this frequency, in part, because of their relatively simple and stable production environments. Also, FSIS assumes that the total risk of exposure to enteric pathogens from products produced at such establishments would be small and roughly proportional to the amount of products produced. FSIS requires these establishments to begin testing in June because it is most important for these establishments to conduct testing during the summer months, when there is a seasonal peak in the occurrence of foodborne diseases attributable to the major bacterial pathogens.

The Pathogen Reduction/HACCP final rule (61 FR 38842) noted that very low volume cattle and swine establishments account for only 1.5 percent and 1.3 percent of overall production, respectively. Very low volume chicken and turkey establishments account for .05 percent and .01 percent of overall production, respectively.

FSIS is now requiring establishments that slaughter sheep, goats, and equines to sample at the same frequency now required for cattle, one test per 300 carcasses. Similarly, FSIS is requiring establishments that slaughter ducks, geese, and guineas to sample at the same frequency now required for turkeys, one test per 3,000 carcasses. FSIS also is requiring establishments that slaughter sheep, goats, equines, ducks, geese, and guineas, except those defined as very low volume establishments, to conduct sampling at a frequency of at least once per week to provide a minimum, adequate basis for process control verification.

FSIS is requiring ''very low volume'' establishments that slaughter sheep, goats, equines, ducks, geese, and guineas to collect at least one sample per week, starting the first full week of

operation after June 1 of each year, and continue sampling at a minimum of once each week that the establishment operates until June 1 of the following year or until 13 samples have been collected, whichever comes first. At this time, baseline studies have not been conducted to develop m/M criteria for sheep, goats, equines, ducks, geese, and guineas. When m/M criteria are developed for any of these types of livestock or poultry, FSIS intends to require sampling at a minimum frequency of once per week starting the first full week of operation after June 1 until a series of 13 tests has met those m/M criteria.

Sheep and Goats

In fiscal year 1993, 93 establishments slaughtered primarily sheep and goats. FSIS is requiring that these establishments sample at a frequency of one test per 300 carcasses or at least once a week, whichever is greater, unless they are very low volume establishments. At this sampling frequency, 85 percent of all sheep and goats will be slaughtered in establishments conducting a minimum of 13 samplings each day or one complete *E. coli* test window. A very low volume sheep or goat slaughter establishment is one that annually will slaughter no more than 6,000 head. Based on fiscal year 1993 data, 61 of the 93 establishments will be classified as very low volume and account for 1.9 percent of total sheep and goat production.

Equines

In fiscal year 1995, eight establishments slaughtered equines under Federal inspection for human food. These eight establishments slaughtered only equines. The Agency now is requiring that horse, mule, or other equine slaughter establishments sample at a rate of one per 300 carcasses or at least once a week, whichever is greater, unless they are very low volume establishments. Very low volume equine establishments are those that will annually slaughter no more than 6,000 equines. Two of the equine establishments, slaughtering 5.6 percent of overall production, will be classified as very low volume.

Ducks, Geese, and Guineas

In fiscal year 1995, there were 12 establishments that slaughtered primarily ducks and two establishments that slaughtered primarily geese. FSIS is not aware of any federally inspected establishment currently slaughtering guineas. FSIS now is requiring establishments that slaughter ducks, geese, and guineas to sample at a frequency of one test per 3,000 carcasses or at least once a week, whichever is greater, unless they are very low volume establishments. At this frequency, 96 percent of all ducks will be slaughtered in establishments conducting a minimum of one *E. coli* test per day. Very low volume duck, geese, or guinea establishments are those that will slaughter no more than 60,000 ducks, geese, or guineas, respectively, a year.

In FY 1995, 25 establishments slaughtered 19.2 million ducks. Only 12 establishments slaughtered primarily ducks. These establishments produced 98.7 percent of all ducks slaughtered under Federal inspection. One of the 12 establishments produces less than 0.2 percent of ducks slaughtered and will be defined as a very low volume duck establishment.

Eight establishments under Federal inspection slaughtered 159,000 geese in FY 1995. Only two establishments slaughtered primarily geese and only one of these establishments slaughters more than 60,000 geese.

Alternative Sampling Frequencies

Establishments operating under a validated HACCP plan in accordance with 9 CFR 417.2(b) will be permitted to substitute an alternative frequency if the alternative is an integral part of the establishment's verification procedures for its HACCP plan. Establishments will not be allowed to use an alternative frequency if FSIS determines, and notifies the establishment in writing, that the alternative frequency is inadequate to verify the effectiveness of the establishment's process controls.

Sampling Plans

Establishments that slaughter sheep, goats, equines, ducks, geese, and guineas will prepare written specimen collection procedures. The procedures will include the identification of employees designated to collect samples, the location(s) of sampling, how sampling randomness is achieved, and how samples are handled to ensure sample integrity. The written procedures will be made available to FSIS upon request.

Sampling Locations

Establishments that slaughter sheep, goats, and equines will collect samples from chilled carcasses. Carcasses boned before chilling (hot boned) will be sampled after the final wash. For ducks, geese, and guineas, samples will be taken from the end of the chilling process, after the drip line. If the bird is boned before chilling, the sample will be taken from the end of the slaughter line instead of the end of the drip line.

Sampling Sites

Samples from sheep, goat, and equine carcasses will be taken by sponging tissue from three sites: the flank, brisket, and rump. The sponge is to be placed afterward in an amount of buffer to transfer any *E. coli* to a solution, which then is analyzed for *E. coli.* Hide-on carcasses will be sampled by sponging from inside the flank, inside the brisket, and inside the rump. Samples from ducks, geese, and guineas will be collected by taking whole birds from the end of the chilling process after the drip line and rinsing them in an amount of buffer appropriate to the type of bird being tested.

Recordkeeping

Establishments will enter test results onto a process control chart or table and record the results in terms of colony forming units per milliliter (cfu/ml) for poultry carcasses or per square centimeter (cfu/cm2) for livestock carcasses. Establishments will use the records to evaluate test results. These records will be maintained at the establishment for 12 months and must be made available to inspection program personnel upon request. Inspection program personnel will review results over time to verify effective and consistent process control.

Evaluation Criteria

Establishments will evaluate results using statistical process control techniques until such time as m/M criteria are established for these types of livestock and poultry. FSIS intends to give high priority in its baseline plan to collect data that will support establishing m/M criteria for ducks and geese, and sheep.

International Implementation

The Federal Meat Inspection Act and the Poultry Products Inspection Act require that meat and poultry products imported into the United States be produced under an inspection system that is equivalent to the U.S. inspection system. In determining the equivalency of a foreign country's eligibility to import meat or poultry products into the United States, FSIS evaluates the laws, policies, and administration of that country's inspection system. This assessment includes on-site reviews of individual establishments, laboratories, and other facilities within the foreign system. With this final rule, countries that export products of sheep, goats, equines, ducks, geese, and guineas to the United States must implement

equivalent generic *E. coli* sampling and testing programs as a condition of maintaining eligibility for access to the U.S. market.

The burden for demonstrating equivalence rests with the exporting country, and the United States is free to set any level of protection it considers appropriate to control or eliminate a foodborne hazard. Equivalent regulatory systems need not be identical. FSIS has established a level of protection that domestic establishments must achieve. Exporting countries may propose alternative methods of achieving equivalent levels of protection and are advised to consult with FSIS on any proposed alternatives that they believe will meet U.S. requirements.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant, and therefore, has not been reviewed by the Office of Management and Budget.

The Administrator made an initial determination that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

This final rule is an extension of the Pathogen Reduction/HACCP rule, which is economically significant. Many aspects of that economically significant rule, such as the public health risks associated with pathogens present in fecal contamination and the potential health benefits of pathogen reduction, are applicable to this rule. In the Final Regulatory Impact Assessment (FRIA)(61 FR 38945, July 25, 1996) for the Pathogen Reduction/HACCP rule, FSIS addressed these areas in detail.

By extending the requirement for generic *E. coli* testing to additional types of livestock and poultry, this final rule will increase the effectiveness of pathogen reduction efforts and generate proportional increases in predicted public health benefits. The benefits assessment in the FRIA was based on a proportional reduction assumption: that is, an assumption was made that a reduction in pathogens at the manufacturing level leads to a proportional reduction in foodborne illness. Public health benefits are quantified in terms of reduced cost of foodborne illness.

This final rule will affect an estimated 101 federally inspected livestock slaughter establishments and a smaller number of State inspected livestock slaughter establishments. The total of 101 federally inspected establishments includes 11 establishments that slaughter only sheep and goats, 82 establishments that slaughter cattle and/or swine but slaughter sheep or goats as their primary type of livestock, and eight establishments that slaughter equines. In addition, there are 574 establishments that slaughter sheep or goats but are not affected because they primarily slaughter cattle or swine.

This final rule also will affect an estimated 14 federally inspected poultry slaughter establishments and possibly a few State inspected poultry slaughter establishments. These include 12 federally inspected establishments that slaughter primarily ducks and two establishments that slaughter primarily geese. There are 14 establishments that also slaughter ducks and/or geese, but are not affected because they slaughter primarily chickens or turkeys. There are currently no establishments that slaughter guineas under Federal inspection.

Executive Order 12898

Pursuant to Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' FSIS has considered potential impacts of this final rule on environmental and health conditions in low-income and minority communities.

This final rule extends the sampling and testing requirements already applied to establishments that slaughter cattle, swine, chickens, and turkeys. As explained in the economic impact analysis above, the Final Regulatory Impact Assessment (FRIA) for the Pathogen Reduction/HACCP final rule addressed in detail the fact that this rule will generally benefit FSIS, the regulated industries, and consumers. The final rule will not require or compel meat or poultry establishments to relocate or alter their operations in ways that could adversely affect the public health or environment in low income and minority communities. Further, this final rule will not exclude any persons or populations from participation in FSIS programs, deny any persons or populations the benefits of FSIS programs, or subject any persons or populations to discrimination because of their race, color, or national origin.

Cost Analysis

This analysis is based on the same estimates and assumptions that were used to develop the FRIA for the Pathogen Reduction/HACCP rule and include:

(1) An average cost of $24 for collecting and analyzing a sample for generic *E. coli*.

(2) A cost of $640 for the preparation of a sampling plan. This estimate is based on 25 hours at $25.60 per hour, the average wage of a quality control manager.

(3) A cost of $403 per establishment for an estimated three out of four establishments that would require extra training for aseptic sampling.

(4) An estimate of 26 sample collections annually by very low volume slaughter establishments. (The proposed requirement is a minimum of 13.)

(5) An estimate of five minutes to record and review laboratory results for each sample by an employee earning $13.42 per hour.

Sheep, Goats, and Equines

Unless otherwise specified, this cost analysis is based on data from the Agency's Enhanced Economic Database. This database includes Animal Disposition Retrieval System (ADRS) data from FY 1993. Sheep and goat production were combined in the Enhanced Economic Database. Although the proposed rule treats sheep and goats as two separate types of livestock, the cost analysis is based on combined sheep and goat production. This has a minimal impact on the accuracy of the cost estimates.

There are 11 establishments that slaughter only sheep and goats. This final rule will extend mandatory generic *E. coli* testing to these establishments. Each of these 11 establishments will be required to develop a sampling plan at a cost of $640 per establishment or $7,040 in total. This cost would include items such as preparing a written plan, establishing sampling procedures, locating a laboratory and arranging for necessary supplies, and developing the statistical process control techniques to be used for analyzing results.

This analysis assumes that eight establishments (75 percent) would require training in aseptic sampling at a cost of $3,224 (8 times $403). Three of the eleven establishments will be very low volume establishments and will analyze 26 samples per year for a recurring cost of $1,872. Based on production data and a sampling rate of one in 300, the other eight establishments will analyze a total of 8,015 samples annually at a cost of $192,360. Recording and reviewing costs for 8,015 samples will require 668 hours annually and cost $8,970. The annual recording and reviewing costs for the three very low volume establishments will be $87 (6.5 hours at $13.43 per hour).

As discussed above, there are 82 establishments that slaughter cattle and/or swine but slaughter sheep or goats as their primary type of livestock. There

will be no additional cost for 58 of these establishments because these 58 are now required to conduct sampling as very low volume cattle or swine slaughter establishments and will be very low volume sheep or goat establishments under this rule. The impact on these 58 establishments will be a shift in the type of livestock sampled. The Agency is not aware of any basis to conclude that establishments could not make this shift without additional costs for sampling plan development.

The other 24 establishments within the 82 that slaughter cattle and/or swine and sheep or goats are now required to test cattle or swine. However, under this final rule, they will have to conduct additional analyses based on their sheep or goat production. Their sheep/goat production is greater than the larger of their cattle or swine production. As they shift from cattle or swine to sheep or goats, annual sampling will increase by 2,928 samples or $70,272 per year. Annual recording and reviewing costs will be $3,277 (244 hours at $13.43 per hour).

This final rule will also extend mandatory generic *E. coli* testing to 8 establishments that slaughter equines for human food. Based on FY 1995 ADRS data, these eight establishments will be required to conduct 469 analyses per year. It is assumed they will all have to develop sampling plans ($640 each) and that six will have to obtain training in aseptic sampling ($403 per establishment). Two of the eight establishments that slaughter equines will meet the definition for a very low volume establishment. The total recurring cost for 469 analyses will be $11,256. Recording and reviewing costs will be $525 per year (39 hours at $13.43 per hour).

In conclusion, there are 43 federally inspected livestock slaughter establishments that will experience increased costs under this final rule. The one time up-front costs will total $17,802, $5,642 for training in aseptic sampling and $12,160 for sampling plan development. The total recurring cost for the 43 establishments will be $288,619, $275,760 for sample collection and analysis and $12,859 for recording and reviewing test results.

All the costs discussed above for establishments that slaughter sheep, goats, and equines are summarized in Table 1.

TABLE 1.—COSTS FOR IMPLEMENTING GENERIC E. COLI SAMPLING PROGRAMS IN SHEEP, GOAT, AND EQUINE ESTABLISHMENTS

Production category	Number of establishments	Training for aseptic sampling	Sampling plan development	Sample collection and analysis (recurring)	Recording and review (recurring)
Exclusively Sheep or Goats with Annual Production over 6,000	8	$2,418	$5,120	$192,360	$8,970
Exclusively sheep or Goats with Annual Production under 6,000	3	806	1,920	1,872	87
Primarily Sheep or Goats with Annual Production over 6,000	24	.....	.....	70,272	3,277
Equine	8	2,418	5,120	11,256	525
Total	43	5,642	12,160	275,760	12,859

Ducks, Geese, and Guineas

The ADRS data show that 28 federally inspected establishments slaughtered ducks and/or geese in FY 1995. FSIS is not aware of any establishment slaughtering guineas. Six establishments slaughtered only the types of poultry covered by this final rule. This final rule extends mandatory generic *E. coli* testing to six federally inspected poultry establishments that are not currently required to test. There are eight poultry slaughter establishments that currently test chickens or turkeys, but slaughter more ducks or geese and, therefore, will shift their testing program to ducks or geese. Seven of these establishments will have to conduct more testing because they will not be very low volume establishments based on their duck or goose production. The eighth establishment will shift from a very low volume establishment that slaughters chickens to a very low volume establishment that slaughters ducks, and it and will not incur any additional costs.

In summary, under this final rule, 14 establishments will test ducks or geese. Two of these establishments will be very low volume establishments. All 14 poultry slaughter establishments affected by this final rule were included in the Pathogen Reduction/HACCP FRIA as very low volume poultry slaughter establishments, that is, annual chicken slaughter under 440,000 and annual turkey slaughter under 60,000. The methodology applied in the FRIA started with all 306 poultry slaughter establishments (FY 1993 ADRS data) in the Agency's Enhanced Economic Database. FSIS calculated the costs for 208 establishments processing more than 440,000 chickens annually and the costs for 48 establishments processing more than 60,000 turkeys annually. FSIS treated the remaining 50 poultry slaughter establishments as very low volume establishments.

This methodology most likely overestimated costs; more recent FY 1995 ADRS data include six poultry slaughter establishments processing ducks and/or geese exclusively. This cost analysis separates the costs already addressed and the incremental costs of basing sampling frequency upon duck and geese production. The costs already addressed that are actually costs of this final rule include the cost of six sampling plans at $640 per plan or $3,840; training in aseptic sampling for five establishments at $403 per establishment or $2,015; sample collection and analysis costs for 156 (6 multiplied by 26) samples per year at a cost of $24 per sample or $3,744; and recording and record review costs of $175. Using duck and geese production levels from FY 1995, five of the six establishments slaughtering only ducks and geese will have to collect and analyze an additional 2,281 samples per year at an annual cost of $54,744. The recording and reviewing costs for 2,281 samples will be $2,553 annually. The other establishment is a very low volume establishment.

As discussed above, there are seven establishments that are currently required to test for chickens or turkeys as very low volume establishments, but will have to conduct more analyses under this final rule because they will not be very low volume establishments based on their duck or goose production. These seven establishments will have to collect and analyze an additional 3,769 samples annually at a cost of $90,456. Recording and review costs at five minutes per sample will total $4,218 per year.

The total cost for extending testing to ducks, geese, and guineas includes a one-time cost of $5,855 for training and sampling plan development and an annual recurring sampling and recording cost of $155,890. The cost for requiring generic *E. coli* sampling in establishments that slaughter ducks, geese, and guineas are summarized in Table 2.

TABLE 2: COSTS FOR IMPLEMENTING GENERIC E. COLI SAMPLING PROGRAMS FOR DUCK, GOOSE, AND GUINEA ESTABLISHMENTS

Production category	Number of establishments	Training for aseptic sampling	Sampling plan development	Sample collection and analysis (recurring)	Recording and review (recurring)
Ducks and Geese only-Costs Included in FRIA	6	$2,015	$3,840	$3,744	$175
Ducks and Geese only-Costs not previously accounted for	[1] 5	.....	.....	54,744	2,553
Establishments Currently Required to test Chickens or Turkeys	7	.....	.....	90,456	4,218
Total	13	2,015	3,840	148,944	6,946

[1] Included in the 6 above.

Overall Summary of Cost Analysis

This final rule will extend mandatory generic *E. coli* sampling requirements to 25 federally inspected establishments, 11 that slaughter sheep and goats exclusively, eight that slaughter equines, and six that currently slaughter only ducks and/or geese. The nonrecurring up-front cost for these establishments will total $23,657. The annual recurring cost for collecting and analyzing 10,999 samples and recording and reviewing results for these 25 establishments will be $276,286. There are 31 establishments that currently test cattle, swine, chickens or turkeys that will have to increase their testing programs by 6,697 samples. The increase in annual 28 recurring costs for these 31 establishments will be $168,223.

The costs summarized in Tables 1 and 2 are maximum costs because the final rule will allow for establishments operating under a validated HACCP system to use sampling frequencies other than those specified in this final rule if the alternative sampling frequency is an integral part of the establishment's HACCP plan. The cost estimates in Tables 1 and 2 do not account for possible reductions in sampling frequencies.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Because this rule is final, (1) all state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Requirements

Abstract: As part of microbiological testing, each slaughter establishment will be required to develop written procedures outlining specimen collection and handling. The slaughter establishments will be responsible for entering the results into a statistical process control chart or table. The data and chart will be available for review by FSIS upon request.

Estimate of Burden: Agency subject matter experts estimate that it will take 25 hours for establishments to develop a microbial sampling and analysis plan. It will take an estimated 17.5 minutes to collect samples and 5 minutes per sample to enter data into charts, and then review and file the information.

This final rule will require 25 federally inspected establishments to develop sampling plans. FSIS estimates that each plan will require 25 hours to develop. Plan development for 25 establishments will require 625 burden hours. Fifty-six establishments will be required to collect samples and to record new or additional test results. These 56 establishments will be required to collect and record and review the results of 17,696 analyses, annually. To collect samples at 17.5 minutes per sample, 5,161 burden hours will be required. It will take 1,475 burden hours at 5 minutes per result to record and review results.

Respondents: Livestock and poultry product establishments.

Estimated Number of Respondents: 56.

Estimated Number of Responses per Respondents: 18,402.

Estimated Total Annual Burden on Respondents: 7,261 hours.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street, SW, Room 109, Washington, DC 20250–3700.

List of Subjects

9 CFR Part 310

Meat Inspection, Microbial testing.

9 CFR Part 381

Poultry and poultry products, Microbial testing.

For the reasons set forth in this preamble, 9 CFR chapter III is amended as follows:

PART 310—POST MORTEM INSPECTION

1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 310.25 is amended by revising the section heading, the first sentence of paragraph (a)(1) introductory text, paragraphs (a)(2)(ii), (a)(2)(iii), and the first sentence of (a)(2)(v)(A) to read as follows:

§ 310.25 Contamination with microorganisms; process control verification criteria and testing; pathogen reduction standards.

(a) * * *

(1) Each official establishment that slaughters livestock must test for *Escherichia coli* Biotype 1 (*E. coli*) * * *.

* * * * *

(2) * * *

(ii) Sample collection. The establishment must collect samples from all chilled livestock carcasses, except those boned before chilling (hot-boned), which must be sampled after the final wash. Samples must be collected in the following manner:

(A) For cattle, establishments must sponge or excise tissue from the flank, brisket and rump, except for hide-on calves, in which case establishments must take samples by sponging from

inside the flank, inside the brisket, and inside the rump.

(B) For sheep, goat, horse, mule, or other equine carcasses, establishments must sponge from the flank, brisket and rump, except for hide-on carcasses, in which case establishments must take samples by sponging from inside the flank, inside the brisket, and inside the rump.

(C) For swine carcasses, establishments must sponge or excise tissue from the ham, belly and jowl areas.

(iii) Sampling frequency. Slaughter establishments, except very low volume establishments as defined in paragraph (a)(2)(v) of this section, must take samples at a frequency proportional to the volume of production at the following rates:

(A) Cattle, sheep, goats, horses, mules, and other equines: 1 test per 300 carcasses, but a minimum of one sample during each week of operation.

(B) Swine: 1 test per 1,000 carcasses, but a minimum of one sample during each week of operation.

* * * * *

(v) * * *

(A) Very low volume establishments annually slaughter no more than 6,000 cattle, 6,000 sheep, 6,000 goats, 6,000 horses, mules, or other equines, 20,000 swine, or a combination of livestock not exceeding 6,000 cattle and 20,000 total of all livestock. * * *

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470, 7 CFR 2.18, 2.53.

Subpart K—Post Mortem Inspection; Disposition of Carcasses and Parts

4. Section 381.94 is amended by revising paragraph (a)(2)(iii), the first and second sentence of paragraph (a)(2)(v)(A), and table 1 in paragraph (a)(5)(i) as follows:

§ 381.94 Contamination with microorganisms; process control verification criteria and testing; pathogen reduction standards.

(a) * * *

(2) * * *

(iii) Sampling frequency. Slaughter establishments, except very low volume establishments as defined in paragraph (a)(2)(v) of this section, must take samples at a frequency proportional to the establishment's volume of production at the following rates:

(A) Chickens: 1 sample per 22,000 carcasses, but a minimum of one sample during each week of operation.

(B) Turkeys, Ducks, Geese, and Guineas: 1 sample per 3,000 carcasses, but a minimum of one sample during each week of operation.

* * * * *

(v) * * *

(A) Very low volume establishments annually slaughter no more than 440,000 chickens or 60,000 turkeys, 60,000 ducks, 60,000 geese, 60,000 guineas or a combination of all types of poultry not exceeding 60,000 turkeys and 440,000 birds total. Very low volume establishments that slaughter turkeys, ducks, geese, or guineas in the largest number must collect at least one sample during each week of operation after June 1 of each year, and continue sampling at a minimum of once each week the establishment operates until June 1 of the following year or until 13 samples have been collected, whichever comes first.

* * * * *

(5) * * *

(i) * * *

TABLE 1.—EVALUATION OF E. COLI TEST RESULTS

Types of poultry	Lower limit of marginal range (m)	Upper limit of marginal range (M)	Number of sample tested (n)	Maximum number permitted in marginal range (c)
Chickens	[1] 100	[1] 1,000	13	3
Turkeys	*NA	*NA	*NA	*NA
Ducks	*NA	*NA	*NA	*NA
Geese	*NA	*NA	*NA	*NA
Guineas	*NA	*NA	*NA	*NA

[1] CFU/ml.

*Values will be added upon completion of data collection programs.

* * * * *

Done at Washington, DC, on: November 18, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–30602 Filed 11–26–99; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

DATES: The amendments to part 201 (Regulation A) were effective November 16, 1999. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259; for users of Telecommunications Device for the Deaf (TDD), 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: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The ''basic discount rate'' is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit. In increasing the basic discount rate

from 4.75 percent to 5 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 25-basis-point increase in the discount rate was associated with a similar increase in the federal funds rate announced at the same time.

Although cost pressures appear generally contained, risks to sustainable growth persist. Despite tentative evidence of a slowing in certain interest-sensitive sectors of the economy and of accelerating productivity, the expansion of activity continues in excess of the economy's growth potential. As a consequence, the pool of available workers willing to take jobs has been drawn down further in recent months, a trend that must eventually be contained if inflationary imbalances are to remain in check and economic expansion continue.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.0	Nov. 16, 1999
New York	5.0	Nov. 18, 1999
Philadelphia	5.0	Nov. 18, 1999
Cleveland	5.0	Nov. 16, 1999
Richmond	5.0	Nov. 16, 1999
Atlanta	5.0	Nov. 17, 1999
Chicago	5.0	Nov. 18, 1999
St. Louis	5.0	Nov. 18, 1999
Minneapolis	5.0	Nov. 18, 1999
Kansas City	5.0	Nov. 16, 1999
Dallas	5.0	Nov. 17, 1999
San Francisco	5.0	Nov. 16, 1999

By order of the Board of Governors of the Federal Reserve System, November 22, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–30852 Filed 11–26–99; 8:45 a.m.]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–39; Amendment 39–11440; AD 99–24–15]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6 series turbofan engines, that currently requires initial and repetitive ultrasonic and eddy current inspections of high pressure compressor rotor (HPCR) stage 3-9 spools for cracks. This amendment defines more aggressive inspection intervals for certain HPCR stage 3–9 spools, adds CF6–80E1 engines to the inspection program, adds inspection requirements for spools manufactured from 8 inch diameter billet, adds inspection requirements for stage 3–5 blade slot bottoms, and adds inspection requirements for web and hub-to-web transition areas. This amendment is prompted by analysis of recent HPCR stage 3–9 spool inspection results and separations, and assessment of the adequacy of the existing program to prevent HPCR stage 3–9 spool cracking and separation. As a result of that assessment, the FAA has determined there is a need to make changes to the existing AD. The actions specified by this AD are intended to prevent HPCR stage 3–9 spool cracking and separation, which can result in an uncontained engine failure and aircraft damage.

DATES: Effective January 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 28, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. 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 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7742, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–23–03, Amendment 39–9423 (60 FR 57803, November 21, 1995), which is applicable to General Electric Company (GE) CF6–45, –50, –80A, –80C2 and –80E1 series turbofan engines, was published in the **Federal Register** on November 25, 1998 (63 FR 65136). That action proposed to define more aggressive inspection intervals for certain high pressure compressor rotor (HPCR) stage 3–9 spools, add CF6–80E1 engines to the inspection program, add inspection requirements for spools manufactured from 8-inch diameter

billet forgings, add a one-time inspection of the stage 3–5 blade slot bottoms, and add a one-time inspection of the web and hub-to-web transition areas.

Comments Received

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

Request for Clarification

One commenter states that the proposed rule needs simplification and clarification. The FAA concurs in part.

The FAA has outlined the organization of the compliance paragraphs in Note 2 of the Compliance Section. The FAA has added paragraph headings and references to applicable paragraphs for all Tables.

Request for Longer Transition Times

One commenter requests longer transition times, for example, by changing transition times that appear in the proposal as ''from 18 to 24 months'' to read ''from 36 to 48 months.'' The FAA does not concur, as no substantiating data was included with this comment and extensions to the transition times would increase risks to an unacceptable level .

Request for Extended Effective Date

One commenter requests that the final rule be published at least 60 days prior to the effective date. Two operators request that GE compliance aid software be available 60 days before date the AD becomes effective. The FAA concurs in part. The effective date of the AD has been set to 60 days from the date that the AD is published. GE is planning to offer to their customers computer software that will forecast spool cycles since new and cycles since last inspection and automatically compare those projections with the spool inspection limits in effect at any time in the future. In particular, the software would look at the transition plan change points to identify spools that will be affected when the next phase is effective. GE's intention is to have the software available concurrently with the publication of the AD, allowing 60 days to introduce the software before the AD becomes effective.

Comment on Economic Analysis

One commenter states that additional information should be included in the economic analysis, such as the cost of repeat inspection, cost of forced engine removals, cost of lost life for early replacement of spools, and incremental cost of early shop visits forced by inspection. The FAA concurs in part. The work hours stated in the proposed rule was based on an estimated average for a spool that includes the forecast percentage of forced engine removals and the incremental shop disassembly time for three inspections during a spool lifetime. The 10,500 cycle since new (CSN) reinstallation limit will affect approximately 68% of the spools. The average part lost life for all affected spools is estimated to be 12%. At the current catalogue price the total lost life for the 1,197 engines installed on US registered aircraft is $18,948,989. In addition, the cost of the stage 3–5 dovetail slot bottom and the stage 6–9 web repeat inspections is estimated to be 8 work hours at $60 per work hour for 389 engines installed on US registered aircraft, totaling $186,720. The FAA has revised the economic analysis accordingly.

Earlier Versions of Service Bulletins

One commenter states that web and slot bottom inspections performed in accordance with earlier revisions of the Service Bulletins (SBs) are evidence of compliance with the web and slot bottom inspections performed in accordance with the revisions of the SBs incorporated by reference in the AD. The FAA concurs. All changes to the web and web-to-hub transition inspection SBs and to the dovetail slot bottom inspection SBs to date have been administrative. Therefore, inspections performed to all revisions to date of those SBs are technically equivalent. Also, the FAA has added references to these earlier SBs for web and dovetail slot inspections.

Standard Practice Manuals

One commenter states that paragraph (g) of the Compliance Section should not reference specific revisions to Standard Practice Manuals because they may change, or specify working or later revision to the Standard Practice Manuals. The FAA does not concur. It is necessary to include references to the Standard Practice inspection procedures in Table 26 of the Compliance Section because some of the newer spool part numbers were not included in the earlier inspection SBs. Some of these parts have been inspected to the Standard Practices procedures in accordance with the Shop or Engine Manual serviceability inspection instructions. The inclusion of these Standard Practice procedures in Table 26 will enable operators to consider these inspections as compliance to the new AD. The references to the Standard Practices in Table 26 will only be applicable to spool inspections already completed. For the future, all parts requiring inspection under this AD will be included in the SBs also listed in Table 26 and inspections of those parts will be done to the SB requirements which will specify the Standard Practice procedures to be used. Any future approved changes to the Standard Practice procedures will be accompanied by revisions to the applicable SBs and will be processed as alternate methods of compliance (AMOC), if appropriate.

AMOCs

One commenter states that paragraph (k) of the Compliance Section should allow AMOC approved for the current AD 95–23–03 to be valid for compliance to the proposed rule. The FAA does not concur. Previously approved AMOC to AD 95–23–03 may not be considered as AMOC to this AD. However, these AMOC have been reviewed and all service documents that have been approved as AMOC for AD 95-23–03 were considered in formulating this new rule.

Table 26 Changes (Serviceable Spool)

One commenter states that web and slot bottom inspection SBs should be included in Table 26 of the Compliance Section, which defines the requirements for a serviceable spool. The FAA concurs. These SBs have been added to Table 26 of this final rule.

Engine Cycles vs. Calendar Time

One commenter states that the implementation of the transition plan should be governed by engine cycles rather than calendar time. The FAA does not concur. The use of engine cycles to control this aspect of the transition plan was considered. However, the goal of the overall transition plan is to maximize safety by transitioning to the new inspection plan as quickly as shop capacity permits. Calendar time limits were established to achieve that maximum rate of compliance within the limitations of shop capacity and spare engines for the operators most affected by the program.

Consistent Terminology

One commenter states that consistent terminology should be used throughout the AD. Specifically, the inspection tables use the term ''module level exposure'' but paragraph (h) only defines ''core module exposure.'' The FAA concurs. Paragraph (h) has been changed to define the term ''module level exposure'' in this final rule.

Request to Change Docket Number

One commenter states that the use of the same docket number (95–ANE–39) for the proposed rule was used for AD 95-23–03 and is confusing to airline computer systems and requests that this AD be given a new docket number. The FAA does not concur. All ADs related to the same unsafe condition are included in the same docket file to facilitate tracking of the history of an issue. The AD number in this final rule has changed but the docket number will remain the same.

Short Haul Operators' Concerns

One commenter states that the use of hard cyclic intervals has a significant impact on short haul operators. The comment implies that the proposal should provide relief for short haul operators by making the compliance intervals unrelated to engine cycles. The FAA does not concur. The underlying spool cracking is related to low cycle fatigue. The greater the number of cycles accumulated, the greater the risk for fatigue induced failure. Therefore, short haul operators or operators with fleets that accumulate a large number of cycles per year are more significantly at risk of spool failure. Hard time limits reflect the increased risk with increased cyclic exposure of the spools.

Reporting Requirement

One commenter requests that the reporting requirement for spools with rejectable inspections be changed to 5 calendar days from the time written notification is received from the inspection facility. The FAA does not concur and believes that 5 days from the detection of a rejectable indication is adequate for the reporting requirement.

Correcting Table References

One commenter notes that some Table references are incorrect. The FAA concurs and has corrected the Table references in this final rule.

Reinspection Limit Changes

One commenter states that the reinspection limits should be changed to be consistent with initial inspection limits. The FAA concurs. Tables 4, 5, and 6 have been changed to become consistent with paragraph (b)(4)(ii). Paragraph (c)(5)(i) has been revised from 3,500 CSN to 5,000 CSN to make the text consistent with Tables 11, 12, and 13. Paragraph (c)(6)(i) has been revised from 3,500 CSN to 5,000 CSN to make the text consistent with Tables 14, 15, and 16.

Spools Manufactured from 8-inch Diameter Billet 2-piece Forgings

One commenter states that repeat inspection requirements for spools manufactured from 8-inch diameter billet 2-piece forgings should be deleted. The FAA concurs. Cracks have not been observed to date in spools manufactured from 8-inch diameter billet forgings. The manufacturer has provided metallurgical and mechanical property data to the FAA indicating that dwell time fatigue cracks will not occur during the life of CF6 spools manufactured from 8'' diameter billet forgings. This final rule deletes the repeat inspection requirements for spools manufactured from 8″ diameter billet forgings.

Complexity of Inspection Intervals

One commenter states that the inspection intervals are complex. The commenter prefers that the repetitive inspection intervals not be based on Cycles At Last Inspection (CALI). The FAA does not concur. The inspection intervals are complicated but reflect the increased risk with increased cyclic exposure. Therefore, a repetitive inspection interval based on CALI is appropriate.

Additional Part Numbers

One commenter states that additional part numbers (P/Ns) should be added to the Applicability Section. The FAA concurs. These P/Ns, added since the publication of the proposed rule, identify spools that have been repaired for wear in the seal wire grooves. In the Applicability Section and paragraph (d) of this final rule, P/Ns 1854M95P07 and 1854M95P08 have been added.

Latest Revisions to Service Documents

One commenter states that the latest revisions to GE service documents revised to include new P/Ns, new inspection procedures, and new repeat inspection requirements should be included. The FAA concurs and the latest revisions to date of the GE service documents have been included in this final rule.

Reinspection Threshold for CF6–80A 13-inch Billet Diameter Spools

One commenter states that the reinspection threshold for the CF6–80A 13″ billet diameter spools should be changed to 15,000 cycles-since-new (CSN). The FAA does not concur. Adequate substantiation for changing the inspection requirements for these spools, which is required by the current AD 95–23–03, has not been provided.

Repeat Inspection Requirements

One commenter states that repeat inspection requirements for certain stage 3–5 dovetail slot bottoms (CF6–50 16″ billet, CF6–80A 16″ billet, CF6–80C2 13″ billet and CF6–180E1 9/10″ billet spools), stage 3–5 bores (CF6–50 16″ billet, CF6–80A 16″ billet, CF6–80C2 13″ billet and CF6–180E1 9/10″ billet spools) and stage 6–9 webs and web-to-hub transition areas (CF6–80C2 13″ billet, CF6–80C2 9/10″ billet, and CF6–80E1 9/10″ billet spools), should be added to the AD. The commenter also states that a 4,000 CIS limit on the number of cycles that could be accumulated between inspections should be added to the inspection program for CF6–50 and CF6–80A spools manufactured from 13″ billet. The FAA concurs. The need for these added inspections and cyclic limits was prompted by recent inspection results and an assessment of the existing inspection program to prevent spool cracking and separation.

Engine Shop Visit Definition

One commenter states that fan forward case replacement should be exempted from the engine shop visit definition.

The FAA concurs. The fan forward case replacement condition has been removed from the engine shop visit definition in this final rule.

Revised Economic Analysis

In this final rule, the economic impact has been changed in response to the comment on the economic analysis. There are approximately 4,506 engines of the affected design in the worldwide fleet. The FAA estimates that 1,197 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 219 work hours per engine to accomplish the required inspections. The total prorated life reduction on affected engines is approximately $18,948,989. Therefore, the revised total estimated cost of this AD on U.S. operators is $34,677,569.

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.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

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 removing Amendment 39–9423 (60 FR 57803, November 21, 1995) and by adding a new airworthiness directive, Amendment 39–11440, to read as follows:

99–24–15 General Electric Company: Amendment 39–11440. Docket 95–ANE–39. Supersedes AD 95–23–03, Amendment 39–9423.

Applicability: General Electric Company (GE) CF6–45, –50, –80A, –80C2 and –80E1 series turbofan engines, with High Pressure Compressor Rotor (HPCR) stage 3–9 spools, part numbers (P/Ns) 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1333M66G10, 1669M22G01, 1669M22G03, 1781M52P01, 1781M53G01, 1782M22G01, 1782M22G02, 1782M22G04, 1854M95P01, 1854M95P02, 1854M95P03, 1854M95P04, 1854M95P05, 1854M95P06, 1854M95P07, 1854M95P08, 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G07, 9136M89G08, 9136M89G09, 9136M89G10, 9136M89G11, 9136M89G17, 9136M89G18, 9136M89G19, 9136M89G20, 9136M89G21, 9136M89G22, 9136M89G27, 9136M89G28, 9136M89G29, 9253M85G01, 9253M85G02, 9273M14G01, 9331M29G01, and 9380M28P05 installed. These engines are installed on but not limited to Airbus A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 and MD–11 series aircraft.

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 (k) 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 HPCR stage 3–9 spool cracking and separation, which can result in an uncontained engine failure and aircraft damage, accomplish the following:

Abbreviations

(a) For the purpose of this AD, the following abbreviations apply:

(1) Cycles Since New (CSN).

(2) Cycles Since Last Inspection (CSLI).

(3) Cycles At Last Inspection (CALI).

(4) Engine Shop Visit (ESV).

Note 2: Paragraph (b) of this AD is only applicable to GE CF6–45/50 series engines. Paragraph (c) of this AD is only applicable to GE CF6–80A series engines. Paragraph (d) of this AD is only applicable to GE CF6–80C2 series engines. Paragraph (e) of this AD is only applicable to GE CF6–80E1 series engines.

CF6–45/50 series engines

(b) For HPCR stages 3–9 spools installed in CF6–45/50 series engines, eddy current and ultrasonic inspect for cracks as follows:

(1) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G07, 9136M89G08, 9136M89G09, 9136M89G17, 9136M89G18, 9136M89G19, 9136M89G21, 9136M89G22, 9136M89G27, 9136M89G29, 9253M85G01, 9253M85G02, 9273M14G01, and 9331M29G01, installed in GE CF6–45/–50 series engines, as follows:

Dovetail Slot Bottom Inspection

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE CF6–50 Alert Service Bulletin (ASB) No. 72–A1157, Revision 1, dated October 28, 1999 or any earlier version of this SB, perform eddy current and ultrasonic inspections in accordance with GE CF6–50 ASB No. 72–A1157, Revision 1, dated October 28, 1999, at the next piece-part exposure after 1,000 CSN.

(ii) For HPCR stage 3–9 spools with P/Ns 9136M89G08, 9253M85G02, 9273M14G01, and 9331M29G01 with Serial Numbers (S/Ns) listed in Table 801 of GE CF6–50 Shop Manual GEK50481, section 05–11–02 Time Limits, and with P/Ns 9136M89G02 and 9136M89G06, that have been previously inspected using the procedures in GE CF6–50 ASB No. 72–A1157, Revision 1, dated October 28, 1999 or any earlier version of this ASB, perform repeat inspections in accordance with GE CF6–50 ASB No 72–A1157, Revision 1, dated October 28, 1999, at piece-part exposure after 1,000 CSLI and 3,500 CSN.

Web and Web-to-Hub Transition Area Inspection

(iii) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE CF6–50 ASB No. 72–A1131, Revision 2, dated October 28, 1999 or any earlier version of this ASB, perform eddy current and ultrasonic inspections in accordance with GE CF6–50 ASB No. 72–A1131, Revision 2, dated October 28, 1999, at the next piece-part exposure after 1,000 CSN.

(iv) Remove from service, prior to further flight, HPCR stage 3–9 spools that equal or exceed the reject criteria established by ASB No. 72–A1157, Revision 1, dated October 28, 1999, or ASB No. 72–A1131, Revision 2, dated October 28, 1999, as applicable, and replace with a serviceable part.

Spools Manufactured from 16-inch Diameter Billet Forgings

(2) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G08, 9253M85G02, 9273M14G01, and 9331M29G01 with Serial Numbers (S/Ns) listed in Table 801 of GE CF6–50 Shop Manual GEK50481, section 05–11–02 Time Limits, and with P/Ns 9136M89G02 and 9136M89G06 installed in GE CF6–45/–50 series engines. Perform the inspections in accordance with GE CF6–50 ASB No. 72–A1108, Revision 3, dated November 12, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE Service Bulletin (SB) No. 72–888, Revision 6, dated December 22, 1995; or SB No. 72–1000, Revision 3, dated December 22, 1995; or ASB No. 72–A1108, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but prior to accumulating 3,500 CSN, or prior to exceeding 30 days from the effective date of this AD, whichever occurs later.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22, 1995; or SB No. 72–1000, Revision 3, dated December 22, 1995; or ASB No. 72–A1108, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 1, 2, or 3 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (b)(2)(v) of this AD.

Table 1 (reference paragraphs (b)(2)(ii), (iii), (v))

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI and 3,500 CSN, and before 3,500 CSLI.

Table 2 (reference paragraphs (b)(2)(ii),(iii),(v))

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI and 3,500 CSN, and before:

3,500 CSLI, if spool CALI is 0–6,500, or

9,500 CSN, if spool CALI is 6,501–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

Table 3 (reference paragraphs (b)(2)(ii),(iii),(v))

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI and 3,500 CSN, and before:

3,500 CSLI, if spool CALI is 0–5,000, or

8,500 CSN, if spool CALI is 5,001–5,500, or

3,000 CSLI, if spool CALI is 5,501–6,500, or

9,500 CSN, if spool CALI is 6,501–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 1, Table 2, or Table 3 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (b)(2)(v) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–50 ASB No. 72–A1108, Revision 3, dated November 12, 1999, and replace with a serviceable part.

(v) Use the Tables as follows:

(A) Use Table 1 from the effective date of this AD through 18 months from the effective date of this AD.

(B) Use Table 2 after 18 months from the effective date of this AD through 36 months from the effective date of this AD.

(C) Use Table 3 after 36 months from the effective date of this AD.

Spools Manufactured From 13-Inch Diameter Billet Forgings

(3) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G08, 9253M85G02, 9273M14G01, and 9331M29G01, with S/Ns not listed in Table 801 of GE CF6–50 Shop Manual GEK50481, section 05–11–02 Time Limits, and with P/Ns 9136M89G03, 9136M89G07, 9136M89G09, 9136M89G17, 9136M89G18, and 9253M85G01 installed in GE CF6–45/–50 series engines. Perform the inspections in accordance with GE CF6–50 ASB No. 72–A1108, Revision 3, dated November 12, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22, 1995; or SB No. 72–1000, Revision 3, dated December 22, 1995; or ASB No. 72–A1108, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 4,000 CSN, and, after 18 months after the effective date of this AD, not later than 4,000 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22, 1995; or SB No. 72–1000, Revision 3, dated December 22, 1995; or ASB No. 72–A1108, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, perform repeat inspections at the first piece-part exposure after both 1,000 CSLI and 4,000 CSN, but not later than the first ESV after both 2,000 CSLI and 4,000 CSN, and, after 18 months after the effective date of this AD, before 4,000 CSLI.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the first piece-part exposure after both 1,000 CSLI and 4,000 CSN, but not later than the first ESV after both 2,000 CSLI and 4,000 CSN, and, after 18 months after the effective date of this AD, before 4,000 CSLI.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–50 ASB No. 72–A1108, Revision 3, dated November 12, 1999, and replace with a serviceable part.

Spools Manufactured From 9 or 10-Inch Diameter Billet Forgings

(4) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G19, 9136M89G21, 9136M89G22, and 9136M89G27 installed in GE CF6–45/–50 series engines. Perform the inspections in accordance with GE CF6–50 ASB No. 72–A1108, Revision 3, dated November 12, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22, 1995; or SB No. 72–1000, Revision 3, dated December 22, 1995; or ASB No. 72–A1108, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 3,000 CSN, provided, however, from 19 through 36 months after the effective date of this AD, inspect not later than 9,500 CSN, and after 36 months after the effective date of this AD, inspect not later than 3,500 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22, 1995; or SB No. 72–1000, Revision 3, dated December 22, 1995; or ASB No. 72–A1108, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 4, 5, or 6 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (b)(4)(vi) of this AD.

Table 4 (reference paragraphs (b)(4)(ii), (iii), (vi))

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI and 3,500 CSN.

Table 5 (reference paragraphs (b)(4)(ii), (iii), (vi))

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI and 3,500 CSN, and before:

9,500 CSN, if spool CALI is 0–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

Table 6 (reference paragraphs (b)(4) (ii), (iii), (vi))

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI and 3,500 CSN, and before:

3,500 CSLI, if spool CALI is 0–5,000, or

8,500 CSN, if spool CALI is 5,001–5,500, or

3,000 CSLI, if spool CALI is 5,501–6,500, or

9,500 CSN, if spool CALI is 6,501–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 4, Table 5, or Table 6 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (b)(4)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–50 ASB No. 72–A1108, Revision 3, dated November 12, 1999, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 4 from the effective date of this AD through 18 months from the effective date of this AD.

(B) Use Table 5 after 18 months from the effective date of this AD through 36 months from the effective date of this AD.

(C) Use Table 6 after 36 months from the effective date of this AD.

Spools Manufactured from 8-inch Diameter Billet Forgings

(5) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 9136M89G29 installed in GE CF6–45/–50 series engines. Perform the inspections in accordance with GE CF6–50 ASB No. 72–A1108, Revision 3, dated November 12, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22,1995; or SB No. 72–1000,

Revision3, dated December 22, 1995; or ASB No. 72–A1108, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, or any of the combinations of service documents specified by Table 7 of this AD, inspect at the next piece-part exposure after 1,000 CSN.

Table 7 (reference paragraphs (b)(5)(i), and (c)(7)(i), and (d)(4)(i), and (e)(3)(i))

Either any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 71, dated October 1, 1995,

CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 72, dated November 15, 1996,

CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 74, dated May 1, 1998,

and any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–10, Revision 71, dated October 1, 1995,

CF6 Standard Practice Manual GEK9250 Procedures 70–32–10, Revision 72, dated November 15, 1996,

CF6 Standard Practice Manual GEK9250 Procedures 70–32–10, Revision 74, dated May 1, 1998,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–10, Revision 75, dated December 15, 1998,

or any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–13, Temporary Revision 70–25, dated August 26, 1996,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–13, Revision 72, dated November 15, 1996,

CF6 Standard Practice Manual GEK9250 Procedures 70–32–13, Revision 73, dated November 1, 1997,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–13, Revision 75, dated December 15, 1998,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–13, Temporary Revision 70–41, dated February 10, 1999,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–13, Revision 76, dated May 15, 1999,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–17, Temporary Revision 70–39, dated December 15, 1998,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–17, Revision 76, dated May 15, 1999,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–17, Temporary Revision 70–47, dated October 28, 1999,

and any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–14, Temporary Revision 70–26, dated August 26, 1996,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Revision 72, dated November 15, 1996,

CF6 Standard Practice Manual GEK9250 Procedures 70–32–14, Revision 73, dated November 1, 1997,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Revision 75, dated December 15, 1998,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Temporary Revision 70–42, dated February 10, 1999,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Revision 76, dated May 15, 1999,

CF6 Standard Practice Manual GEK9250 Procedures 70–32–18, Temporary Revision No. 70–40, dated December 15, 1998.

CF6 Standard Practice Manual GEK9250 Procedure 70–32–18, Revision 76, dated May 15, 1999,

CF6 Standard Practice Manual GEK9250 Procedure 70–32–18, Temporary Revision 70–48, dated October 28, 1999.

(ii) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–50 ASB No. 72–A1108, Revision 3, dated November 12, 1999, and replace with a serviceable part.

CF6–80A Series Engines

(c) For HPCR stages 3–9 spools installed in GE CF6–80A/–80A1/–80A2/–80A3 series engines, eddy current and ultrasonic inspect for cracks as follows:

(1) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G10, 9136M89G11, 9136M89G20, 9136M89G21, 9136M89G22, 9136M89G27, and 9136M89G28 installed in GE CF6–80A/–80A1/–80A2/–80A3 series engines, as follows:

Dovetail Slot Bottom Inspection

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE CF6–80A ASB No. 72–A0719, Revision 2, dated October 28, 1999 or any earlier version of this SB, perform eddy current and ultrasonic inspections in accordance with GE CF6–80A ASB No. 72–A0719, Revision 2, dated October 28, 1999, at the next piece-part exposure after 1,000 CSN.

(ii) For HPCR stage 3–9 spools with P/N 9136M89G10, with the following S/Ns: MPOM0054, MPOM7090, MPOM8303, MPOM8304, MPOM9263, MPOM9264, MPON0054, MPON0071, MPON0072, MPON1643, MPON4251, and MPON4253, installed in GE CF6–80A/–80A1/–80A2/–80A3 series engines, that have been previously inspected using the procedures in GE CF6–80A ASB No. 72–A0719, Revision 2, dated October 28, 1999, or any earlier version of this SB, perform repeat inspections in accordance with GE CF6–80A ASB No. 72–A0719, Revision 2, dated October 28, 1999, at each piece-part exposure after 1,000 CSLI and 3,500 CSN.

Web and Web-to-Hub Transition Area Inspection

(iii) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE CF6–80A ASB No. 72–A0691, Revision 3, dated October 28, 1999 or any earlier version of this SB, perform eddy current and ultrasonic inspections in accordance with GE CF6–80A ASB No. 72–A0691, Revision 3, dated October 28, 1999, at the next piece-part exposure after 1,000 CSN.

(iv) Remove from service, prior to further flight, HPCR stage 3–9 spools that equal or exceed the reject criteria established by the ASB No. 72–A0719, Revision 2, dated October 28, 1999, or ASB No. 72–A0691, Revision 3, dated October 28, 1999, as applicable, and replace with a serviceable part.

Spools Manufactured from 16-inch Diameter Billet Forgings

(2) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 9136M89G10, with the following S/Ns: MPOM0054, MPOM7090, MPOM8303, MPOM8304, MPOM9263, MPOM9264, MPON0054, MPON0071, MPON0072, MPON1643, MPON4251, and MPON4253 installed in GE CF6–80A/–80A1/–80A2/–80A3 series engines. Perform the inspections in accordance with GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but before accumulating 3,500 CSN, or prior to exceeding 30 days from the effective date of this AD, whichever is later.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 8, 9, or 10 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(2)(vi) of this AD.

Table 8 (reference paragraphs (c)(2)(ii),(iii),(vi))

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 3,500 CSN and 2,000 CSLI (for GE CF6–80A1/A3 engines) or 1,500 CSLI (for GE CF6–80A/A2 engines), and before 3,500 CSLI.

Table 9 (reference paragraphs (c)(2)(ii),(iii),(vi))

First piece part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 3,500 CSN and 2,000 CSLI (for GE CF6–80A1/A3 engines) or 1,500 CSLI (for GE CF6–80A/A2 engines), and before:

3,500 CSLI, if spool CALI is 0–6,500, or

9,500 CSN, if spool CALI is 6,501–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

Table 10 (reference paragraphs (c)(2)(ii),(iii),(vi))

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI (for GE CF6–

80A1/A3) or 1,500 CSLI (for GE CF6–80A/A2) and 3,500 CSN, and before:

3,500 CSLI, if spool CALI is 0–5,000, or

8,500 CSN, if spool CALI is 5,001–5,500, or

3,000 CSLI, if spool CALI is 5,501–6,500, or

9,500 CSN, if spool CALI is 6,501–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 8, Table 9, or Table 10 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(2)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 8 from the effective date of this AD through 18 months from the effective date of this AD.

(B) Use Table 9 after 18 months from the effective date of this AD through 36 months from the effective date of this AD.

(C) Use Table 10 after 36 months from the effective date of this AD.

CF6–80A/A2 Spools Manufactured from 13-inch Diameter Billet Forgings

(3) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 9136M89G10, with S/Ns other than those listed in paragraph (c)(2) of this AD, and P/N 9136M89G11, installed in GE CF6–80A/A2 series engines. Perform the inspections in accordance with GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN, but not later than the first ESV after 5,000 CSN, and, after 18 months after the effective date of this AD, not later than 5,000 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, perform repeat inspections at the first piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 1,500 CSLI and 5,000 CSN, and, after 18 months after the effective date of this AD, before 4,000 CSLI or 5,000 CSN, whichever is later.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the first piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 1,500 CSLI and 5,000 CSN, and, after 18 months after the effective date of this AD, before 4,000 CSLI or 5,000 CSN, whichever is later.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, and replace with a serviceable part.

CF6–80A1/A3 Spools Manufactured from 13-inch Diameter Billet Forgings

(4) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 9136M89G10, with S/Ns other than those listed in paragraph (c)(2) of this AD, and P/N 9136M89G11, installed in GE CF6–80A1/A3 series engines. Perform the inspections in accordance with GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 5,000 CSN, and, after 18 months after the effective date of this AD, not later than 5,000 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, perform repeat inspections at the first piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN, and, after 18 months after the effective date of this AD, before 4,000 CSLI or 5,000 CSN, whichever occurs later.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the first piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN, and, after 18 months after the effective date of this AD, before 4,000 CSLI or 5,000 CSN, whichever occurs later.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, and replace with a serviceable part.

CF6–80A1/A3 Spools Manufactured from 9 or 10-inch Diameter Billet Forgings

(5) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G20, 9136M89G21, 9136M89G22 and 9136M89G27, installed in GE CF6–80A1/A3 series engines. Perform the inspections in accordance with GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 3,000 CSN, provided, however, from 19 through 36 months after the effective date of this AD, inspect not later than 9,500 CSN, and after 36 months after the effective date of this AD, inspect not later than 5,000 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 11, 12, or 13 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(5)(vi) of this AD.

Table 11 (reference paragraphs (c)(5) (ii), (iii), (vi))

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN.

Table 12 (reference paragraphs (c)(5) (ii), (iii), (vi))

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN, and before:

9,500 CSN, if spool CALI is 0–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

Table 13 (reference paragraphs (c)(5)(ii),(iii),(vi))

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN, and before

5,000 CSN, if spool CALI is 0–1,500, or

3,500 CSLI, if spool CALI is 1,501–5,000, or

8,500 CSN, if spool CALI is 5,001–5,500, or

3,000 CSLI, if spool CALI is 5,501–6,500, or

9,500 CSN, if spool CALI is 6,501–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 11, Table 12, or Table 13 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(5)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or

exceed the reject criteria established by GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 11 from the effective date of this AD through 18 months from the effective date of this AD.

(B) Use Table 12 after 18 months from the effective date of this AD through 36 months from the effective date of this AD.

(C) Use Table 13 after 36 months from the effective date of this AD.

CF6–80A/A2 Spools Manufactured from 9 or 10-inch Diameter Billet Forgings

(6) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G20, 9136M89G21, 9136M89G22, and 9136M89G27 installed in GE CF6–80A/A2 series engines. Perform the inspections in accordance with GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 3,000 CSN, provided, however, from 19 through 36 months after the effective date of this AD, inspect not later than 9,500 CSN, and after 36 months after the effective date of this AD, inspect not later than 5,000 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 14, 15, or 16 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(6)(vi) of this AD.

Table 14 (reference paragraphs (c)(6)(ii), (iii), (vi))

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 1,500 CSLI and 5,000 CSN.

Table 15 (reference paragraphs (c)(6)(ii), (iii), (vi))

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 1,500 CSLI and 5,000 CSN, and before:

9,500 CSN, if spool CALI is 0–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

Table 16 (reference paragraphs (c)(6)(ii),(iii),(vi))

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 1,500 CSLI and 5,000 CSN, and before:

5,000 CSN, if spool CALI is 0–1,500, or

3,500 CSLI, if spool CALI is 1,501–5,000, or

8,500 CSN, if spool CALI is 5,001–5,500, or

3,000 CSLI, if spool CALI is 5,501–6,500, or

9,500 CSN, if spool CALI is 6,501–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 14, Table 15, or Table 16 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(6)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 14 from the effective date of this AD through 18 months from the effective date of this AD.

(B) Use Table 15 after 18 months from the effective date of this AD through 36 months from the effective date of this AD.

(C) Use Table 16 after 36 months from the effective date of this AD.

Spools Manufactured from 8-inch Diameter Billet Forgings

(7) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 9136M89G28 installed in GE CF6–80A/A1/A2/A3 series engines. Perform the inspections in accordance with GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or ASB No. 72–A0678, Revision 3, dated November 12, 1999, or any earlier versions of these SBs, or any of the combinations of service documents specified by Table 7 of this AD, inspect at the first piece-part exposure after both 1,000 CSN and the effective date of this AD.

(ii) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999, and replace with a serviceable part.

CF6–80C2 Series Engines

(d) For HPCR stages 3–9 spools installed in GE CF6–80C2 series engines, eddy current and ultrasonic inspect for cracks as follows:

(1) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1333M66G10, 1781M52P01, 1781M53G01, 1854M95P01, 1854M95P02, 1854M95P03, 1854M95P04, 1854M95P05, 1854M95P06, 1854M95P07, 1854M95P08, and 9380M28P05 installed in GE CF6–80C2 series engines, as follows:

Dovetail Slot Bottom Inspections

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE CF6–80C2 ASB No. 72–A0934, Revision 1, dated October 28, 1999 or any earlier version of this SB, perform eddy current and ultrasonic inspections in accordance with GE CF6–80C2 ASB No. 72–A0934, Revision 1, dated October 28, 1999, at the next piece-part exposure after 1,000 CSN.

(ii) For HPCR stage 3–9 spools with P/Ns 1781M52P01, 1854M95P02, 1854M95P05, and 9380M28P05, installed in GE CF6–80C2 series engines, that have been previously inspected using the procedures in GE CF6–80C2 ASB No. 72–A0934, Revision 1, dated October 28, 1999 or any earlier version of this SB, perform repeat inspections in accordance with GE CF6–80C2 ASB No. 72–A0934, Revision 1, dated October 28, 1999, at piece-part exposure after 1,000 CSLI and 3,500 CSN.

Web and Web-to-Hub Transition Area Inspections

(iii) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE CF6–80C2 ASB No. 72–A0848, Revision 4, dated November 12, 1999 or any earlier version of this SB, perform eddy current and ultrasonic inspections in accordance with GE CF6–80C2 ASB No. 72–A0848, Revision 4, dated November 12, 1999, at the next piece-part exposure after 1,000 CSN.

(iv) For HPCR stage 3–9 spools with P/Ns 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1781M52P01, 1781M53G01, 1854M95P01, 1854M95P02, 1854M95P03, 1854M95P04, 1854M95P05, 1854M95P06, 1854M95P07 and 9380M28P05, installed in GE CF6–80C2 series engines, that have been previously inspected using the procedures in GE CF6–80C2 ASB No. 72–A0848, Revision 4, dated November 12, 1999 or any earlier version of this SB, perform repeat inspections in accordance GE CF6–80C2 ASB No. 72–A0848, Revision 4, dated November 12, 1999, at piece-part exposure after 1,000 CSLI and 3,500 CSN.

(v) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by the ASB No. 72–A0934, Revision 1, dated October 28, 1999 or ASB No. 72–A0848, Revision 4, dated November 12, 1999, as applicable and replace with a serviceable part.

Spools Manufactured from 13-inch Diameter Billet Forgings

(2) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1781M52P01, 1854M95P02, 1854M95P05, and 9380M28P05 installed in GE CF6–80C2 series engines. Perform the inspections in

accordance with GE CF6–80C2 ASB No. 72–A0812, Revision 2, dated October 28, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE CF6–80C2 SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or ASB No. 72–A0812, Revision 2, dated October 28, 1999, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but prior to accumulating 3,500 CSN, or prior to exceeding 30 days from the effective date of this AD, whichever occurs later.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE CF6–80C2 SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or ASB No. 72–A0812, Revision 2, dated October 28, 1999, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 17, 18, or 19 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (d)(2)(vi) of this AD.

Table 17 (reference paragraphs (d)(2)(ii),(iii),(vi))

First piece-part or module level exposure after both 1,000 CSLI and 3500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before 3,500 CSLI.

Table 18 (reference paragraphs (d)(2)(ii),(iii),(vi))

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:

3,500 CSLI, if spool CALI is 0–6,500, or

9,500 CSN, if spool CALI is 6,501–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

Table 19 (reference paragraphs (d)(2)(ii),(iii),(vi))

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:

3,500 CSLI, if spool CALI is 0—5,000, or

8,500 CSN, if spool CALI is 5,001—5,500, or

3,000 CSLI, if spool CALI is 5,501—6,500, or

9,500 CSN, if spool CALI is 6,501—7,000, or

2,500 CSLI, if spool CALI is 7,001—8,000, or

10,500 CSN, if spool CALI is 8,001—8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 17, Table 18, or Table 19 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (d)(2)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80C2 ASB No. 72–A0812, Revision 2, dated October 28, 1999, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 17 from the effective date of this AD through 18 months from the effective date of this AD.

(B) Use Table 18 after 18 months from the effective date of this AD through 36 months from the effective date of this AD.

(C) Use Table 19 after 36 months from the effective date of this AD.

Spools Manufactured from 9 or 10-inch Diameter Billet Forgings

(3) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1781M53G01, 1854M95P01, 1854M95P03, 1854M95P04, 1854M95P06, and 1854M95P07 installed in GE CF6–80C2 series engines. Perform the inspections in accordance with GE CF6–80C2 ASB No. 72–A0812, Revision 2, October 28, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE CF6–80C2 SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or ASB No. 72–A0812, Revision 2, dated October 28, 1999, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 3,000 CSN, provided, however, from 19 through 36 months after the effective date of this AD, inspect not later than 9,500 CSN, and after 36 months after the effective date of this AD, inspect not later than 3,500 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE CF6–80C2 SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or ASB No. 72–A0812, Revision 2, dated October 28, 1999, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 20, 21, or 22 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (d)(3)(vi) of this AD.

Table 20 (reference paragraphs (d)(3)(ii),(iii),(vi))

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN.

Table 21 (reference paragraphs (d)(3)(ii),(iii),(vi))

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:

9,500 CSN, if spool CALI is 0–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

Table 22 (reference paragraphs (d)(3)(ii),(iii),(vi))

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:

3,500 CSLI, if spool CALI is 0–5,000, or

8,500 CSN, if spool CALI is 5,001–5,500, or

3,000 CSLI, if spool CALI is 5,501–6,500, or

9,500 CSN, if spool CALI is 6,501–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 20, Table 21, or Table 22 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (d)(3)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80C2 ASB No. 72–A0812, Revision 2, dated October 28, 1999, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 20 from the effective date of this AD through18 months from the effective date of this AD.

(B) Use Table 21 after 18 months from the effective date of this AD through 36 months from the effective date of this AD.

(C) Use Table 22 after 36 months from the effective date of this AD.

Spools Manufactured from 8-inch Diameter Billet Forgings

(4) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1333M66G10 and 1854M95P08 installed in GE CF6–80C2 series engines. Perform the inspections in accordance with GE CF6–80C2 ASB No. 72–A0812, Revision 2, dated October 28, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE CF6–80C2 SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or ASB No. 72-A0812, Revision 2, dated October 28, 1999, or any earlier versions of these SBs, or any of the combinations of service documents specified by Table 7 of this AD, inspect at the first piece-part exposure after both 1,000 CSN and the effective date of this AD.

(ii) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80C2 ASB No. 72–A0812, Revision 2, dated October 28, 1999, and replace with a serviceable part.

CF6–80E1 Series Engines

(e) For HPCR stages 3–9 spools installed in GE CF6–80E1 series engines, eddy current and ultrasonic inspect for cracks as follows:

(1) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1669M22G01, 1669M22G03, 1782M22G01, 1782M22G02, and 1782M22G04 installed in GE CF6–80E1 series engines, as follows:

Dovetail Slot Bottom Inspection

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE CF6–80E1 ASB No. 72–A0137, Revision 1, dated October 28, 1999 or any earlier version of this SB, perform eddy current and ultrasonic inspections in accordance with GE CF6–80E1 ASB No. 72–A0137, Revision 1, dated October 28, 1999, at the next piece-part exposure after 1,000 CSN.

(ii) For HPCR stage 3–9 spools with P/Ns 1669M22G01, 1669M22G03, 1782M22G01, and 1782M22G02 installed in GE CF6–80E1 series engines, that have been previously inspected using the procedures with GE CF6–80E1 ASB No. 72–A0137, Revision 1, dated October 28, 1999 or any earlier version of this SB, perform repeat inspections in accordance with GE CF6–80E1 ASB No. 72–A0137, Revision 1, dated October 28, 1999, at piece-part exposure after 1,000 CSLI and 3,500 CSN.

Web and Web-to-Hub Transition Area Inspection

(iii) For HPCR stage 3–9 spools that have not been previously inspected using the procedures GE CF6–80E1 ASB No. 72–A0126, Revision 2, dated October 28, 1999 or any earlier version of this SB, perform eddy current and ultrasonic inspections in accordance with GE CF6–80E1 ASB No. 72–A0126, Revision 2, dated October 28, 1999, at the next piece-part exposure after 1,000 CSN.

(iv) For HPCR stage 3–9 spools with P/Ns 1669M22G01, 1669M22G03, 1782M22G01, and 1782M22G02 installed in GE CF6–80E1 series engines, that have been previously inspected using the procedures in GE CF6–80E1 ASB No. 72–A0126, Revision 2, dated October 28, 1999 or any earlier version of this SB, perform repeat inspections in GE CF6–80E1 ASB No. 72–A0126, Revision 2, dated October 28, 1999, at piece-part exposure after 1,000 CSLI and 3,500 CSN.

(v) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by ASB No. 72–A0137, Revision 1, dated October 28, 1999 or ASB No. 72–A0126, Revision 2, dated October 28, 1999, as applicable, and replace with a serviceable part.

Spools Manufactured from 9 or 10-inch Diameter Billet Forgings

(2) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1669M22G01, 1669M22G03, 1782M22G01, and 1782M22G02 installed in GE CF6–80E1 series engines. Perform the inspections in accordance with GE CF6–80E1 ASB No. 72–A0135, Revision 1, dated October 28, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected in accordance with GE CF6–80E1 ASB No. 72–A0135, Revision 1, dated October 28, 1999 or any earlier version of this SB , or any of the combinations of service documents specified by Table 7 of this AD, inspect HPCR stage 3–9 spools at the first piece-part exposure after 1,000 CSN, but not later than the first ESV after 3,000 CSN, provided, however, from 19 through 36 months after the effective date of this AD, inspect not later than 9,500 CSN, and after 36 months after the effective date of this AD, inspect not later than 3,500 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected in accordance with GE CF6–80E1 ASB No. 72–A0135, Revision 1, dated October 28, 1999 or any earlier version of this SB , or any of the combinations of service documents specified by Table 7 of this AD, perform repeat inspections at the earliest occurrence of the requirements of Table 23, 24, or 25 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (e)(2)(vi) of this AD.

Table 23 (reference paragraphs (e)(2)(ii), (iii), (vi))

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN.

Table 24 (reference paragraphs (e)(2)(ii), (iii), (vi))

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:

9,500 CSN, if spool CALI is 0–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

Table 25 (reference paragraphs (e)(2)(ii), (iii), (vi))

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:

3,500 CSLI, if spool CALI is 0–5,000, or

8,500 CSN, if spool CALI is 5,001–5,500, or

3,000 CSLI, if spool CALI is 5,501–6,500, or

9,500 CSN, if spool CALI is 6,501–7,000, or

2,500 CSLI, if spool CALI is 7,001–8,000, or

10,500 CSN, if spool CALI is 8,001–8,500, or

2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 23, Table 24, or Table 25 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (e)(2)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80E1 ASB No. 72–A0135, Revision 1, dated October 28, 1999, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 23 from the effective date of this AD through 18 months from the effective date of this AD.

(B) Use Table 24 after 18 months from the effective date of this AD through 36 months from the effective date of this AD.

(C) Use Table 25 after 36 months from the effective date of this AD.

Spools Manufactured from 8-inch Diameter Billet Forgings

(3) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 1782M22G04 installed in GE CF6–80E1 series engines. Perform the inspections in accordance GE CF6–80E1 ASB No. 72–A0135, Revision 1, dated October 28, 1999, as follows:

(i) For HPCR stage 3–9 spools that have not previously been inspected in accordance with GE CF6–80E1 ASB No. 72–A0135, Revision 1, dated October 28, 1999, or any earlier version of this SB, or any of the service documents listed in Table 7 of this AD, inspect at first piece-part exposure after both 1,000 CSN and the effective date of this AD.

(ii) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80E1 ASB No. 72–A0135, Revision 1, dated October 28, 1999, and replace with a serviceable part.

Reporting Requirement

(f) Report within 5 calendar days of inspection the results of inspections that equal or exceed the reject criteria to: William Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (718) 238–7742, fax (781) 238–7199, as follows:

(1) Engine model in which the HPCR stage 3–9 spool was installed;

(2) P/N;

(3) S/N;

(4) Part CSN;

(5) Part CSLI;

(6) Date and location of inspection.

Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

Serviceable Part Definition

(g) For the purpose of this AD, a serviceable part for installation in an engine is defined as an HPCR stage 3-9 spool with less than 1,000 CSN or with less than 1,000 CSLI, in accordance with the inspection and pass/fail criteria contained in the applicable service documents or combinations of service documents provided by Table 26 of this AD.

Table 26 (reference paragraph (g))

GE CF6–50 SB No. 72–888, Revision 3, dated January 31, 1991,

GE CF6–50 SB No. 72–888, Revision 4, dated March 28, 1991,

GE CF6–50 SB No. 72–888, Revision 5, dated November 7, 1994,

GE CF6–50 SB No. 72–888, Revision 6, dated December 22, 1995,
GE CF6–50 SB No. 72–1000, Original, dated December 14, 1990,
GE CF6–50 SB No. 72–1000, Revision 1, dated March 28, 1991,
GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993,
GE CF6–50 SB No. 72–1000, Revision 3, dated December 22, 1995,
GE CF6–50 SB No. 72–1108, Original, dated November 6, 1995,
GE CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996,
GE CF6–50 ASB No. 72–A1108, Revision 2, dated October 28, 1999,
GE CF6–50 ASB No. 72–A1108, Revision 3, dated November 12, 1999,
GE CF6–50 SB No. 72–1157, Original, dated June 6, 1998,
GE CF6–50 ASB No. 72–A1157, Revision 1, dated October 28, 1999,
GE CF6–50 ASB No. 72–1131, Original, dated October 27, 1997,
GE CF6–50 ASB No. 72–A1131, Revision 1, dated March 12, 1998,
GE CF6–50 ASB No. 72–A1131, Revision 2, dated October 28, 1999,
GE CF6–80A SB No. 72–500, Revision 3, dated March 19, 1991,
GE CF6–80A SB No. 72–500, Revision 4, dated July 1, 1991,
GE CF6–80A SB No. 72–500, Revision 5, dated November 7, 1994,
GE CF6–80A SB No. 72–500, Revision 6, dated December 22, 1995,
GE CF6–80A SB No. 72–583, Original, dated December 20, 1990,
GE CF6–80A SB No. 72–583, Revision 1, dated March 18, 1991,
GE CF6–80A SB No. 72–583, Revision 2, dated July 15, 1991,
GE CF6–80A SB No. 72–583, Revision 3, dated July 24, 1991,
GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993,
GE CF6–80A SB No. 72–583, Revision 5, dated December 22, 1995,
GE CF6–80A SB No. 72–678, Original, dated November 6, 1995,
GE CF6–80A SB No. 72–678, Revision 1, dated July 29, 1996,
GE CF6–80A ASB No. 72–A0678, Revision 2, dated October 28, 1999,
GE CF6–80A ASB No. 72–A0678, Revision 3, dated November 12, 1999,
GE CF6–80A SB No. 72–691, Original, dated October 22, 1997,
GE CF6–80A ASB No. 72–A691, Revision 1, dated March 12, 1998,
GE CF6–80A ASB No. 72–A691, Revision 2, dated September 23, 1998,
GE CF6–80A ASB No. 72–A0691, Revision 3, dated October 28, 1999,
GE CF6–80A SB No. 72–719, Original, dated June 10, 1998,
GE CF6–80A SB No. 72–719, Revision 1, dated September 24, 1998,
GE CF6–80A ASB No. 72–A0719, Revision 2, dated October 28, 1999,
GE CF6–80C2 SB No. 72–418, Revision 2, May 14, 1991,
GE CF6–80C2 SB No. 72–418, Revision 3, November 7, 1994,
GE CF6–80C2 SB No. 72–418, Revision 4, December 22, 1995
GE CF6–80C2 SB No. 72–758, Original, dated November 7, 1994,
GE CF6–80C2 SB No. 72–758, Revision 1, dated December 22, 1995,
GE CF6–80C2 SB No. 72–812, Original, dated November 6, 1995,
GE CF6–80C2 SB No. 72–812, Revision 1, dated January 30, 1998,
GE CF6–80C2 ASB No. 72–A0812, Revision 2, dated October 28, 1999,
GE CF6–80C2 SB No. 72–848, Original, dated October 27, 1997,
GE CF6–80C2 SB No. 72–848, Revision 1, dated December 9, 1997,
GE CF6–80C2 ASB No. 72–A848, Revision 2, dated March 12, 1998,
GE CF6–80C2 ASB No. 72–A0848, Revision 3, dated October 28, 1999,
GE CF6–80C2 ASB No. 72–A0848, Revision 4, dated November 12, 1999,
GE CF6–80C2 SB No. 72–934, Original, dated June 10, 1998,
GE CF6–80C2 ASB No. 72–A0934, Revision 1, dated October 28, 1999,
GE CF6–80E1 ASB No. 72–A126, Original, dated January 27, 1998,
GE CF6–80E1 ASB No. 72–A126, Revision 1, dated March 21, 1998,
GE CF6–80E1 ASB No. 72–A0126, Revision 2, dated October 28, 1999,
GE CF6–80E1 ASB No. 72–A135, Original, dated August 13, 1998,
GE CF6–80E1 ASB No. 72–A0135, Revision 1, dated October 28, 1999,
GE CF6–80E1 SB No. 72–137, Original, dated June 9, 1998,
GE CF6–80E1 ASB No. 72–A0137, Revision 1, dated October 28, 1999.

Either any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 71, dated October 1, 1995,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 72, dated November 15, 1996,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 74, dated May 1, 1998,

and any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–10, Revision 71, dated October 1, 1995,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–10, Revision 72, dated November 15, 1996,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–10, Revision 74, dated May 1, 1998,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–10, Revision 75, dated December 15, 1998;

or any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–13, Temporary Revision 70–25, dated August 26, 1996,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–13, Revision 72, dated November 15, 1996,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–13, Revision 73, dated November 1, 1997,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–13, Revision 75, dated December 15, 1998,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–13, Temporary Revision 70–41, dated February 10, 1999,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–13, Revision 76, dated May 15, 1999,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–17, Temporary Revision 70–39, dated December 15, 1998,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–17, Revision 76, dated May 15, 1999,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–17, Temporary Revision 70–47, dated October 28, 1999,

and any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–14, Temporary Revision 70–26, dated August 26, 1996,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Revision 72, dated November 15, 1996.
CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Revision 73, dated November 1, 1997.
CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Revision 75, dated December 15, 1998,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Temporary Revision 70–42, dated February 10, 1999,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Revision 76, dated May 15, 1999,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–18, Temporary Revision 70–40, dated December 15, 1998.
CF6 Standard Practice Manual GEK9250 Procedure 70–32–18, Revision 76, dated May 15, 1999,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–18, Temporary Revision 70–48, dated October 28, 1999.

Definition of Module Level Exposure

(h) For the purpose of this AD, module level exposure is defined as separation of the fan module from the engine.

Definition of Piece-Part Exposure

(i) For the purpose of this AD, piece-part exposure is defined as disassembly and removal of the stage 3–9 spool from the HPC rotor structure, regardless of any blades, locking lugs, bolts or balance weights assembled to the spool.

Definition of ESV

(j) For the purpose of this AD, an ESV is defined as the introduction of an engine into a shop where the separation of a major engine flange will occur after the effective date of this AD. The following maintenance actions are not considered ESVs for the purpose of this AD:

(1) Introduction of an engine into a shop solely for removal of the compressor top case for airfoil maintenance;

(2) Introduction of an engine into a shop solely for removal or replacement of the Stage 1 Fan Disk;

(3) Introduction of an engine into a shop solely for replacement of the Turbine Rear Frame;

(4) Introduction of an engine into a shop solely for replacement of the Accessory and/or Transfer Gearboxes;

(5) Introduction of an engine into a shop solely for replacement of the Fan Forward Case;

(6) Introduction of an engine into a shop for any combination of the above specified exceptions.

Alternative Methods of Compliance

(k) 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 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(l) 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.

Incorporation by Reference

(m) The actions required by this AD shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
GE CF6–50 ASB No. 72–A1108 Total pages: 15.	1–15	3	November 12, 1999.
GE CF6–50 ASB No. 72–A1157 Total pages: 06.	1–6	1	October 28, 1999.
GE CF6–50 ASB No. 72–A1131 Total pages: 46.	1–46	2	October 28, 1999.
GE CF6–80A ASB No. 72–A0678 Total pages: 18.	1–18	3	November 12, 1999.
GE CF6–80A ASB No. 72–A0691 Total pages: 47.	1–47	3	October 28, 1999.
GE CF6–80A ASB No. 72–A0719 Total pages: 6.	1–6	2	October 28, 1999.
GE CF6–80C2 ASB No. 72–A0812 Total pages: 13.	1–13	2	October 28, 1999.
GE CF6–80C2 ASB No. 72–A0848 Total pages: 47.	1–47	4	November 12, 1999.
GE CF6–80C2 ASB No. 72–A0934 Total pages: 6.	1–6	1	October 28, 1999.
GE CF6–80E1 ASB No. 72–A0126 Total pages: 46.	1–46	2	October 28, 1999.
GE CF6–80E1 ASB No. 72–A0135 Total pages: 11	1–11	1	October 28, 1999.
GE CF6–80E1 ASB No. 72–A0137 Total pages: 6.	1–6	1	October 28, 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 General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. 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.

(n) This amendment becomes effective on January 28, 2000.

Issued in Burlington, Massachusetts, on October 18, 1999.

David A. Downey,

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

[FR Doc. 99–30724 Filed 11–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–14]

RIN 2120–AA66

Establishment of VOR Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes three Very High Frequency Omnidirectional Range (VOR) Federal airways located in the State of Alaska (AK). This action will improve the management of air traffic operations in the State of Alaska and enhance safety.

EFFECTIVE DATE: 0901 UTC, February 24, 2000.

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

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1999, the FAA proposed to amend 14 CFR part 71 (part 71) to establish four VOR Federal airways, V–603, V–605, V–617, and V–621 located in the State of Alaska (64 FR 2453). Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to the Notice, a flight inspection of the four proposed Victor Airways was performed. Three of the airways met the flight inspection requirements (V–603, V–617, and V–621). However, the proposed airway V–605, Biorka to Middleton, will only pass flight inspection at flight level 240 and higher, therefore the proposed V–605 was rescinded due to insufficient navigational aid coverage below flight level 180. Except for editorial changes, and the deletion of V–605, this amendment is the same as that proposed in the notice.

Alaskan VOR Federal airways are published in paragraph 6010(b) of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Alaskan VOR Federal airways listed in this document will be published subsequently in the Order.

The Rule

This action amends part 71 by establishing three VOR Federal airways, V–603, V–617, and V–621 located in the State of Alaska.

Prior to this action there were a number of uncharted nonregulatory routes that used the same routings as these VOR Federal airways. Those nonregulatory routings were used daily by air carrier and general aviation aircraft. The FAA is taking this action to establish these three VOR Federal airways for the following reasons: (1) The conversion of these uncharted nonregulatory routes to VOR Federal airways will add to the instrument flight rules (IFR) airway and route infrastructure in Alaska; (2) pilots will be provided with minimum en route altitudes and minimum obstruction clearance altitudes information; (3) this amendment will establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (4) addition of these routes will improve the management of air traffic operations and thereby enhance safety.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6010(b)—Alaskan VOR Federal Airways

* * * * *

V–603 [New]

From Elfee, AK, NDB, 20 AGL; to Dillingham, AK.

* * * * *

V–617 [New]

From Homer, AK; to Johnstone Point, AK.

* * * * *

V–621 [New]

From Barrow, AK, VOR; to Atqasuk, AK, NDB.

* * * * *

Issued in Washington, DC, on November 22, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–30889 Filed 11–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 990914255–9255–01]

RIN 0648–AN28

Hawaiian Islands Humpback Whale National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule; effective date and modifications.

SUMMARY: Pursuant to the Hawaiian Islands National Marine Sanctuary Act and the National Marine Sanctuaries Act, NOAA developed the comprehensive final management plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or the Sanctuary). NOAA issued final regulations on March 28, 1997, to implement that plan and govern the conduct of activities within the Sanctuary. Congress and the Governor of the State of Hawaii (Governor) had forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review those regulations and management plan. After the forty-five day review period, the regulations would become final and take effect, except that any term or terms of the regulations or management plan the Governor certified to the Secretary of Commerce as unacceptable would not take effect in the area of the Sanctuary lying within the seaward boundary of the State.

During the forty-five day review period the Governor submitted to the Secretary of Commerce a certification that implementation of the management plan and certain regulations were unacceptable unless specific amendments were made to the regulations. In response to the Governor's certification, NOAA amended those regulations certified as unacceptable to incorporate the Governor's changes. Consequently, upon their effective date the regulations, as modified by this rule, and management plan, in their entirety, will apply throughout the Sanctuary, including within State waters of the Sanctuary.

This rule amends the regulations published in the March 28, 1997, **Federal Register**, in response to the Governor's certification, and announces the effective date of the regulations.

EFFECTIVE DATE: The final rule published on March 28, 1997, at 62 FR 14799 as amended by the revision of 15 CFR part 922, subpart Q in this document is effective December 29, 1999.

ADDRESSES: The Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared to implement the Sanctuary designation was released on February 18, 1997. Copies of the FEIS/MP, and the March 28, 1997, **Federal Register** document are available on request to the Hawaiian Islands Humpback Whale National Marine Sanctuary Office, 726 South Kihei Road, Kihei, Maui, Hawaii, 96753; or the Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West

Highway, SSMC–4, 11th Floor, Silver Spring, Maryland, 20910.

FOR FURTHER INFORMATION CONTACT: Allen Tom, Sanctuary Manager, Kihei, Maui, Hawaii, (808) 879–2818 (Maui), (808) 541–3184 (Oahu) or (800) 831–4888 (inter-island toll-free).

SUPPLEMENTARY INFORMATION:

I. Introduction

The HIHWNMS was designated by the Hawaiian Islands National Marine Sanctuary Act (HINMSA; Title II, Subtitle C, Pub. L. No. 102–587) which was signed into law on November 4, 1992. The HINMSA directed the Secretary of Commerce to develop a comprehensive management plan and regulations for the Sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection, Research, and Sanctuaries Act of 1972), as amended, 16 U.S.C. 1431 *et seq.* The NMSA authorizes the designation of national marine sanctuaries and the development of management plans and regulations for national marine sanctuaries to protect their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The authority of the Secretary to designate national marine sanctuaries and implement designated sanctuaries was delegated to the Under Secretary of Commerce for Oceans and Atmosphere by the Department of Commerce, Organization Order 10–15, § 3.01(x) (Jan. 26, 1996). The authority to administer the other provisions of the NMSA was delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83–38, Directive 05–50 (Sept. 21, 1983, as amended).

II. Forty-five Day Review Period Under the National Marine Sanctuaries Act and Hawaiian Islands National Marine Sanctuary Act

NOAA published final regulations on March 28, 1997, (62 FR 14799) to implement the HIHWNMS management plan and govern the conduct of activities within the HIHWNMS. Under the NMSA and HINMSA, Congress and the Governor had forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review the terms of designation (i.e., management plan and regulations). After forty-five days, the regulations would become final and take effect, except that any term or terms the Governor certified within the forty-five day period to the Secretary of Commerce as unacceptable would not take effect in the area of the Sanctuary lying within the seaward boundary of the State. The following discusses the Governor's actions during the forty-five day period and corresponding modifications to the final regulations made by NOAA in response to those actions.

Certification by the Governor of Hawaii

On June 5, 1997, during the forty-five day review period under the NMSA and HINMSA, the Governor of the State of Hawaii certified by letter to the Secretary of Commerce that implementation of the management plan and certain regulations were unacceptable in State waters. However, the management plan and regulations certified as unacceptable would be acceptable if NOAA amended the regulations and the intergovernmental Compact Agreement (Compact), developed by the State and NOAA, as requested in the Governor's certification letter. NOAA has amended the regulations and the Compact to incorporate the modifications requested by the Governor in his letter. By doing so, the regulations and management plan, as modified, are acceptable to the Governor and, therefore, will apply within State waters of the Sanctuary upon the effective date of these regulations.

The following is the text of the June 5, 1997, letter from the Governor of Hawaii to the Secretary of Commerce.

June 5, 1997.

Dr. D. James Baker,

Under Secretary and Administrator, National Oceanic and Atmospheric Administration, Herbert C. Hoover Building, Room 5128, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dear Dr. Baker: This is to inform you that I have agreed to include selected portions of State waters within the boundary of the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS). It is our intention to create a State-Federal partnership with the National Oceanic and Atmospheric Administration (NOAA) for management of the Sanctuary under the provisions of the HIHWNMS management plan, implementing regulations, and the intergovernmental compact agreement, with certain conditions to be applied to the portions of the Sanctuary within State waters. It is my understanding that if the conditions set forth below are not met, the Sanctuary designation and regulations shall not take effect and become final in State waters.

It is also my understanding that the inclusion of State waters within the Sanctuary boundary does not convey title to the Federal government; nor does the State relinquish authority over any State-owned submerged lands, waters or other State-owned resources, including the power to lease or otherwise encumber the same.

In accordance with subsection 304(b)(1) of the National Marine Sanctuaries Act, the following terms are certified as unacceptable in state waters:

1. Sanctuary emergency regulations unless and until first approved by the Governor. Accordingly, the following sentence shall be added to section 922.185 CFR as published on March, 28, 1997: ''Emergency regulations shall not take effect in Hawaii territorial waters until approved by the Governor of Hawaii.''

2. Sanctuary fees for allowed public uses unless first approved by the Governor.

3. Requirements for the State of Hawaii or county governments to provide funding for the implementation of the Sanctuary management plan, regulations, or the intergovernmental compact agreement.

4. Sanctuary fishing regulations in State waters unless established by the Board of Land and Natural Resources.

5. NOAA's Preferred Sanctuary boundary in State waters except the waters:

a. from Kailiu Point eastward to Mokolea Pt. on Kauai;

b. from Puaena point northward to Mahie Point (just south of Kahana Bay) and from the Ala Wai Canal (Diamond Head side) eastward to Makapuu Pt. on Oahu;

c. from Ilio Pt. south and eastward to Cape Halawa on Molokai;

d. from Lipoa Point south to Hanamanioa Lighthouse on Maui;

e. all State waters surrounding Lanai;

f. from Upolu Pt. south to Keahole Pt. on Hawaii.

Accordingly, NOAA shall amend 15 C.F.R. Section 181 and Appendix A to the HIHWNM Sanctuary Regulations to reflect the State Boundary Selected.

6. Implementation of the management plan in its entirety unless the Intergovernmental Compact Agreement includes the following:

a. The Governor shall designate a State employee to serve as an equal partner to work in consultation with the Sanctuary Manager for the oversight of Sanctuary operations. The State of Hawaii and NOAA shall manage the Sanctuary through a cooperative partnership and consult on all management activities throughout the Sanctuary. The intent of this partnership is that the final resolution of any management issues resulting in policy conflicts between the State and NOAA shall be decided by the managing partners consistent with State and Federal laws.

b. The State reserves the right to initiate proposed changes to the management plan, and NOAA, if necessary, shall initiate the Federal rule promulgation process required to make revisions to Sanctuary regulations requested by the State.

c. The goals and objectives of the Sanctuary management plan were developed to complement and coordinate existing management efforts, and, in part, to address some of the objectives and policies contained in the National Marine Fisheries Service (NMFS) Final Recovery Plan (Recovery Plan) for the Humpback Whale. Throughout the implementation of the management plan, therefore, NOAA's Sanctuaries & Reserves

Division in coordination with the State, will consult with NMFS to evaluate the effectiveness of existing management efforts in achieving those objectives and policies, including whether additional measures (e.g., regulations or critical habitat) to protect the humpback whale and its habitat are needed. Prior to making a final decision on whether to designate critical habitat for humpback whales in Hawaii state waters under the Endangered Species Act, NOAA will fully involve and consult with the State.

d. The designation of the Sanctuary does not limit or restrict in any way State or federal government actions to respond to oil or hazardous material spill. The Sanctuary will work within established procedures of the Oceania Regional Response Team for oil or hazardous material spill response and planning.

e. Section 304(e) of the National Marine Sanctuaries Act requires the Secretary of Commerce to review the Sanctuary's Management Plan and implementing regulations every five years, evaluate the substantive progress toward implementing the management plan and goals for the Sanctuary, especially the effectiveness of the site-specific management techniques, and revise the management plan as necessary to fulfill the purposes and policies of the Act. When the Management Plan and implementing regulations for the HIHWNMS are re-evaluated, the Secretary of Commerce will re-propose the management plan and regulations in their entirety and the State of Hawaii will have the opportunity to review the Management Plan and regulations, in their entirety, and indicate if any of all of the terms are unacceptable, in which case the unacceptable terms shall not take effect in State waters.

Accordingly, the following provisions shall be added to 15 CFR section 922.180: ''Section 304(e) of the National Marine Sanctuaries Act requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will re-propose the Sanctuary regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary.''

We believe that implementation of the plan provides for balanced protection of Hawaii's endangered State marine mammal and its marine habitat, and advances the state and federal commitment to jointly manage these resources. We look forward to that continuing relationship.

With warmest personal regards,

Aloha,

Benjamin J. Cayetano.

cc: Mr. Allen Tom, NOAA

NOAA's Response to Governor's Certification

In response to the Governor's certification of June 5, 1997, NOAA has amended those regulations certified by the Governor as being unacceptable in State waters. With the modifications, the entire regulations and management plan are accepted by the Governor and will apply throughout the Sanctuary, including within State waters of the Sanctuary, upon their effective date. The basis and purpose of the changes to the regulations are as follows.

(1) Per item number 1 of the Governor's letter which certified as unacceptable in State waters emergency regulations unless first approved by the Governor, § 922.185 of subpart Q is amended by adding ''Emergency regulations shall not take effect in Hawaii State waters until approved by the Governor of Hawaii.'' This is consistent with the management plan which provides that any new regulation or substantive modification to existing Sanctuary regulations will require the Governor's approval in order to take effect in State waters of the Sanctuary.

(2) Item 2 of the Governor's certification certified as unacceptable in State waters Sanctuary user fees unless first approved by the Governor. However, by law NOAA is precluded from instituting any user fees under the HINMSA or NMSA for any activity within the Sanctuary or any use of the Sanctuary or its resources. Consequently, no amendment to the Sanctuary regulations is necessary. By law, the term ''user fee'' does not include any fee authorized by section 310 of the NMSA (Special Use Permits); any gift or donation received under section 311 of the NMSA; or any monetary or in-kind contributions under section 316 of the NMSA.

(3) Item 3 of the Governor's certification certified as unacceptable in State waters requirements for the State of Hawaii or County governments to provide funding for the implementation of the management plan, regulations or Intergovernmental Compact Agreement. No changes were made to the regulations as regards this item of the Governor's certification because there is no regulatory component necessary for its implementation. There is no mandate in the management plan for the State or counties to provide funding for the Sanctuary. Further, as stated in the March 28, 1997, **Federal Register** document, the final regulations contain no Federal mandates and therefore are not subject to the Unfunded Mandates Reform Act of 1995.

(4) Per item number 4 of the Governor's letter which certified as unacceptable in State waters Sanctuary fishing regulations unless established by the State of Hawaii's Board of Land and Natural Resources, NOAA amended § 922.184 of subpart Q by adding a new paragraph (c) to read ''Any Sanctuary fishery regulations shall not take effect in Hawaii State waters until established by the State Board of Land and Natural Resources.'' The Governor's certification did not specify a particular regulation to be amended, but NOAA determined that an appropriate place for such provision is in the Sanctuary specific regulations at a new § 922.184(c) of subpart Q. Again, this provision is consistent with the portion of the management plan that provides that any new regulation must be approved by the State (Governor) in order to take effect in State waters of the Sanctuary.

(5) Per item number 5 of the Governor's letter which certified as unacceptable in State waters NOAA's preferred Sanctuary boundary, except the waters:

a. from Kailiu Point, eastward to Mokolea Point on Kauai;

b. from Puaena Point northward to Mahie Point (just south of Kahana Bay) and from the Ala Wai Canal (Diamond Head side) eastward to Makapuu Point on Oahu;

c. from Ilio Point south and eastward to Cape Halawa on Molokai;

d. from Lipoa Point south to Hanamanioa Lighthouse on Maui;

e. all State waters around Lanai;

f. from Upolu Point south to Keahole Point on Hawaii;

NOAA has amended § 922.181 and Appendix A to subpart Q to reflect the modified final Sanctuary boundary to accommodate the Governor's requested changes and to clarify boundary end points. The following list summarizes the changes made, in consultation with the state, to NOAA's preferred alternative boundary listed in the final management plan and regulations. Unless otherwise stated, the boundary goes from the shoreline to the 100 fathom (600 feet) isobath.

Kauai

The location of the western boundary point (Kailiu Point) remains unchanged. The eastern boundary point was changed from Makahuena Point to Mokolea Point to reflect the Governor's letter. Both Hanamaulu Bay and Nawiliwili Harbor were removed from the excluded harbors list since they are no longer physically located within the Sanctuary boundary.

North Oahu

No changes were made to the location of Puaena Point and Mahie Point as identified in the final management plan. However, the final language states from ''Puaena Point *eastward* to Mahie Point (just south of Kahana Bay)'' using *eastward* instead of *northward* to more

accurately reflect the location of the point.

South Oahu

The Governor's letter requested that the Oahu western boundary point start from the Ala Wai Canal (Diamond Head side). Further consultation with the State of Hawaii clarified the location of this point to be at the Kapahulu Groin in Waikiki, which is the intersection of a perpendicular line from where the Ala Wai Canal begins (near Diamond Head) and the ocean. The Ala Wai Small Boat Basin was removed from the excluded harbors list since it no longer is physically located within the Sanctuary boundary. NOAA also generated two closure bounds (see bounds #21 and #22 on Figure 2 in Appendix A to the final rule) to clarify that Kaupa Pond (Hawaii Kai) is not included in the boundary. The original boundary file given to NOAA from the state mistakenly included this area. The two closure bounds were drawn at the outer side of the bridges for the coast highway crossing the two outlets.

Maui County (Maui, Molokai, Lanai, Penguin Bank)

The final boundary around Maui County was modified to reflect the Governor's request to include the areas from Cape Halawa, Molokai south and westward to Ilio Point, and from Lipoa Point, Maui south to the Hanamanioa Lighthouse. No changes were made to the boundary around Lanai or Penguin Bank. In consultation with the State of Hawaii, the boundary between Cape Halawa, Molokai and Lipoa Point, Maui (across the deepwater Pailolo Channel) was redrawn as a straight line to simplify the boundary. NOAA generated additional boundary coordinates to construct the boundary around the northeast shore of Kahoolawe. This line follows a 3 nautical mile arc around the island of Kahoolawe, which is not included within the Sanctuary, and intersects the 100 fathom line. NOAA also provided some coordinates for a technical closure correction of the boundary in an area north of Kahoolawe (see bound #11 in Figure 2, Appendix A to the final rule). This is an area of complex bathymetry, where the 100 fathom isobath varies tremendously. NOAA and the State agreed to simplify the boundary in the area by drawing a line across the area, thus eliminating the area of complex bathymetry. This was depicted in both the draft and final environmental impact statements and management plans. Kahului Harbor on Maui was removed from the excluded harbors list since it no longer is physically located within the Sanctuary boundary.

Hawaii (Big Island)

The Sanctuary boundary around the Big Island was modified to reflect the Governor's letter requesting that the boundary start at Upolu Pt. and go south to Keahole Point. Hilo Harbor, Honokohau Boat Harbor, and Keauhou Bay boat harbors were removed from the excluded harbor list since they are no longer physically located within the Sanctuary boundary.

These boundary changes made in response to the Governor's certification are within the range of boundary alternatives contained in the draft and final environmental impact statements/management plans for the Sanctuary, and within the scope of the boundary identified in the final regulations published on March 28, 1997. The list of ports and harbors excluded from the Sanctuary boundary has also been modified according to the revised final Sanctuary boundary.

(6) Per item number 6 of the Governor's letter which certifies as unacceptable in State waters the implementation of the management plan unless the Intergovernmental Compact Agreement and § 922.180 is amended to add a provision regarding a five year review of the management plan and regulations, § 922.180 of subpart Q is amended by adding:

> Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of the management plan or regulations as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

A corresponding amendment, as well as other amendments to address elements of item 6 of the Governor's letter, have also been made to the Compact Agreement which was signed by the Governor on May 4, 1998. The modification to the regulation essentially codifies the requirement under the NMSA to conduct reviews of Sanctuary management plans and regulations every five years. In the HIHWNMS context, NOAA has determined that at the conclusion of the five year review of the Sanctuary, it will repropose the regulations and management plan for the Governor's review, similar to the forty-five day review period under the NMSA that preceded this notice.

For clarity, this document publishes the revised Sanctuary specific regulations at 15 CFR part 922, subpart Q in their entirety, which will replace subpart Q as published in the March 28, 1997 **Federal Register** document. Consequently, subpart Q as published in this rule and all remaining regulations in the March 28, 1997, rule shall become effective December 29, 1999.

III. Summary of the Changes to the Final Regulations at Subpart Q

The following summarizes the Sanctuary regulations at 15 CFR part 922, subpart Q, as modified by this document. Except as noted below, this section remains the same as in the March 28, 1997, **Federal Register** document. With the changes, the final rule published on March 28, 1997, at 62 FR 14799, and the revision of 15 CFR part 922, subpart Q, in this document shall apply throughout the Sanctuary, including within State waters of the Sanctuary, on December 29, 1999.

Section 922.180 sets forth the purpose of the regulations—to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. Section 922.180 also describes the five-year review of the management plan and regulations for the Sanctuary.

Section 922.181 and Appendix A to subpart Q set forth the boundary of the Sanctuary. Appendix A provides a text description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The Sanctuary boundary is also depicted in Figures 1–3. Digital files, available in three common formats (ESRI Shape File, MapInfo Tables, and an ASCII Exchange Format) are available from the Sanctuary office in Kihei, Maui, at the address listed above. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as supplied by State of Hawaii through the Office of Planning GIS Office, the agreed lateral boundary and exclusion areas, and the 100 fathom

isobath digitized from the following 1:80,000 scale NOAA nautical charts:

19327—West Coast of Hawaii (9th ED, 4/29/89),
19347—Channels between Molokai, Maui, Lanai, and Kahoolawe (17th ED, 12/13/97),
19351—Channels between Oahu, Molokai, and Lanai (8th ED, 7/01/1989),
19357—Island of Oahu (20th ED, 9/21/1996), and
19381—Island of Kauai (8th ED, 7/17/1993)].

For the portion of the Lanai region of the HIHWNMS west of Chart 19351, [157°42.8′ west] the 100 fathom contour was derived from the 1:250,000 chart 19340—*Hawaii to Oahu* (24th ED, 1/09/1993).

All digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

Section 922.184(c) provides that any Sanctuary fishing regulations will not take effect in State waters until established by the State Board of Land and Natural Resources.

Section 922.185 provides that where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or imminent risk of such destruction of, loss of, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. No emergency regulation will take effect in State waters of the Sanctuary until approved by the Governor of Hawaii.

IV. Miscellaneous Rulemaking Requirements

Except as noted below, this section remains the same as in the March 28, 1997 **Federal Register** notice.

National Marine Sanctuaries Act

Section 304 of the National Marine Sanctuaries Act provides that Congress and the Governor have forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review the terms of designation (i.e., regulations and management plan). After forty-five days, the regulations would become final and take effect, except that any term or terms of the regulations or management plan the Governor certified to the Secretary of Commerce as unacceptable would not take effect in the State waters portion of the Sanctuary. The forty-five day review period began on March 28, 1997, the date the final regulations were published in the **Federal Register**, and concluded on June 6, 1997. During that period the Governor submitted to the Secretary a certification that the management plan and certain regulations were unacceptable unless specific amendments were made to such regulations. NOAA amended those regulations certified as unacceptable by incorporating the Governor's changes. Consequently, upon their effective date the regulations, as revised by this **Federal Register** document, and management plan, in their entirety, will apply throughout the Sanctuary, including within State waters of the Sanctuary.

Administrative Procedure Act

The final Sanctuary regulations at 15 CFR part 922, subpart Q, which were promulgated on March 28, 1997, through notice and comment rulemaking, have been amended pursuant to and consistent with the procedures required under the National Marine Sanctuaries Act and Hawaiian Islands National Marine Sanctuary Act. The NMSA and HINMSA provide that during the review period of forty-five day continuous session of Congress, the Governor may certify to the Secretary of Commerce any regulation as unacceptable and, if the Governor so certifies, the regulation shall not take effect in the State waters portion of the Sanctuary. As the changes requested by the Governor and herein made by NOAA are within the scope of the proposed and final rules, additional prior notice and opportunity for public comment are not required by 5 U.S.C. 553. The basis and purpose of the changes to the final regulations requested by the Governor have been set forth above.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: October 29, 1999.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended by revising subpart Q to read as follows:

Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary

Section
922.180 Purpose.
922.181 Boundary.
922.182 Definitions.
922.183 Allowed activities.
922.184 Prohibited activities.
922.185 Emergency regulations.
922.186 Penalties; appeals.
922.187 Interagency cooperation.

Appendix A to Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas

Authority: 16 U.S.C. 1431 *et seq.* and subtitle C, title II, Pub. L. 102–587, 106 Stat. 5055.

Subpart Q—[Revised]

§ 922.180 Purpose.

(a) The purpose of the regulations in this subpart is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities; to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing, and for the long-term survival of their species; and to achieve the other purposes and policies of the HINMSA and NMSA.

(b) These regulations may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations

contained in this part that would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

(c) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of such management plan or regulations as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

(1) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

(2) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

(3) To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

(4) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

(5) To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

(b) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

Hawaii (Big Island)

Kawaihae Boat Harbor & Small Boat Basin

Lanai

Kaumalapau Harbor, Manele Harbor

Maui

Lahaina Boat Harbor
Maalaea Boat Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor

Oahu

Kuapa Pond (Hawaii Kai)

(c) The coordinates of the lateral extents of each boundary area within the Sanctuary boundary appear in Appendix A of this subpart Q.

§ 922.182 Definitions.

(a) *Acts* means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301–2307 of Pub. L. 102–587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 *et seq.*).

Adverse impact means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

Alteration of the seabed means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

Habitat means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

Military activities means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department of Defense and the military forces of a foreign nation.

Sanctuary means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

Sanctuary resource means any humpback whale, or the humpback whale's habitat within the Sanctuary.

Shoreline means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

Take or taking a humpback whale means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure a humpback whale, or to attempt to engage in any such conduct. The term includes, but is not limited to, any of the following activities: collecting any dead or injured humpback whale, or any part thereof; restraining or detaining any humpback whale, or any part thereof, no matter how temporarily; tagging any humpback whale; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any humpback whale.

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

§ 922.183 Allowed activities.

(a) All activities except those prohibited by § 922.184 may be undertaken in the Sanctuary subject to any emergency regulations promulgated pursuant to § 922.185, subject to the interagency cooperation provisions of section 304(d) of the NMSA [16 U.S.C. 1434(d)] and § 922.187 of this subpart, and subject to the liability established by section 312 of the NMSA and § 922.46 of this part. All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State, or county authority of competent jurisdiction.

(b) Included as activities allowed under the first sentence of paragraph (a) of this § 922.183 are all classes of military activities, internal or external to the Sanctuary, that are being or have been conducted before the effective date of these regulations, as identified in the Final Environmental Impact Statement/Management Plan. Paragraphs (a)(1) through (a)(5) of § 922.184 do not apply to these classes of activities, nor are these activities subject to further consultation under section 304(d) of the NMSA.

(c) Military activities proposed after the effective date of these regulations are also included as allowed activities under the first sentence of paragraph (a) of this § 922.183. Paragraphs (a)(1) through (a)(5) of § 922.184 apply to these classes of activities unless—

(1) they are not subject to consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or

(2) upon consultation under section 304(d) of the NMSA and § 922.187 of this subpart, NOAA's findings and recommendations include a statement that paragraphs (a)(1) through (a)(5) of

§ 922.184 do not apply to the military activity.

(d) If a military activity described in paragraphs (b) or (c)(2) of this § 922.183 is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or if the modified activity is likely to destroy, cause the loss of, or injure any Sanctuary resource not considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, the modified activity will be treated as a new military activity under paragraph (c) of this section.

(e) If a proposed military activity subject to section 304(d) of the NMSA and § 922.187 of this subpart is necessary to respond to an emergency situation and the Secretary of Defense determines in writing that failure to undertake the proposed activity during the period of consultation would impair the national defense, the Secretary of the military department concerned may request the Director that the activity proceed during consultation. If the Director denies such a request, the Secretary of the military department concerned may decide to proceed with the activity. In such case, the Secretary of the military department concerned shall provide the Director with a written statement describing the effects of the activity on Sanctuary resources once the activity is completed.

§ 922.184 Prohibited activities.

(a) The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted.

(1) Approaching, or causing a vessel or other object to approach, within the Sanctuary, by any means, within 100 yards of any humpback whale except as authorized under the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*;

(2) Operating any aircraft above the Sanctuary within 1,000 feet of any humpback whale except as necessary for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA;

(3) Taking any humpback whale in the Sanctuary except as authorized under the MMPA and the ESA;

(4) Possessing within the Sanctuary (regardless of where taken) any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA;

(5) Discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing any material or other matter outside the Sanctuary if the discharge or deposit subsequently enters and injures a humpback whale or humpback whale habitat, provided that such activity:

(i) requires a Federal or State permit, license, lease, or other authorization; and

(ii) is conducted:

(A) without such permit, license, lease, or other authorization, or

(B) not in compliance with the terms or conditions of such permit, license, lease, or other authorization.

(6) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either of the Acts or any regulations issued under either of the Acts.

(b) The prohibitions in paragraphs (a)(1) through (a)(5) of this § 922.184 do not apply to activities necessary to respond to emergencies threatening life, property or the environment; or to activities necessary for valid law enforcement purposes. However, while such activities are not subject to paragraphs (a)(1) through (a)(5) of this § 922.184, this paragraph (b) does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

(c) Any Sanctuary fishery regulations shall not take effect in Hawaii State waters until established by the State Board of Land and Natural Resources.

§ 922.185 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii. Emergency regulations shall not take effect in State waters of the Sanctuary until approved by the Governor of Hawaii.

§ 922.186 Penalties; appeals.

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this subpart is subject to a civil penalty of not more than $100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

(c) A person subject to an action taken for enforcement reasons for violation of these regulations or either of the Acts may appeal pursuant to the applicable procedures in 15 CFR Part 904.

§ 922.187 Interagency Cooperation.

Under section 304(d) of the NMSA, Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director. The Federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director will attempt to provide coordinated review and analysis of all environmental requirements.

Appendix A to Subpart Q—Hawaiian Islands Humpback Whale, National Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas.

Appendix A provides a text and pictoral (see Figures 1–3) description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The lateral extents (bounds) of each boundary area are closed by straight lines defined by at least two points. It may be necessary to extend these lines beyond the defining points to intersect the actual 100 fathom contour or the shoreline. Each point corresponds to a bounds number indicated in Figure 2. Digital files of the Sanctuary boundary (available in three common formats, ESRI Shape File, MapInfo Table, and an ASCII Exchange Format) are available from the Sanctuary office in Kihei, Maui, at the address listed above or by calling (808) 879–2818. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as

supplied by State of Hawaii through the Office of Planning GIS Office, the NOAA and State of Hawaii agreed upon lateral boundary and exclusion areas, and the 100 fathom isobath digitized from the following 1:80,000 scale NOAA nautical charts-19327—West Coast of Hawaii (9th ED, 4/29/89),

19347—Channels between Molokai, Maui, Lanai, and Kahoolawe (17th ED, 12/13/97),

19351—Channels between Oahu, Molokai, and Lanai (8th ED, 7/01/1989),

19357—Island of Oahu (20th ED, 9/21/1996), and

19381—Island of Kauai (8th ED, 7/17/1993)].

For the portion of the Lanai region of the HIHWNMS west of Chart 19351,[157°42.8′ west] the 100 fathom contour was derived from the 1:250,000 chart 19340—Hawaii to Oahu (24th ED, 1/09/1993).

All digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

Sanctuary Boundary

A. As defined by the specific lateral boundaries in B, and except for excluded areas described in paragraph C of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams (see Figure 1):

1. To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

2. To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

3. To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

4. To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

5. To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

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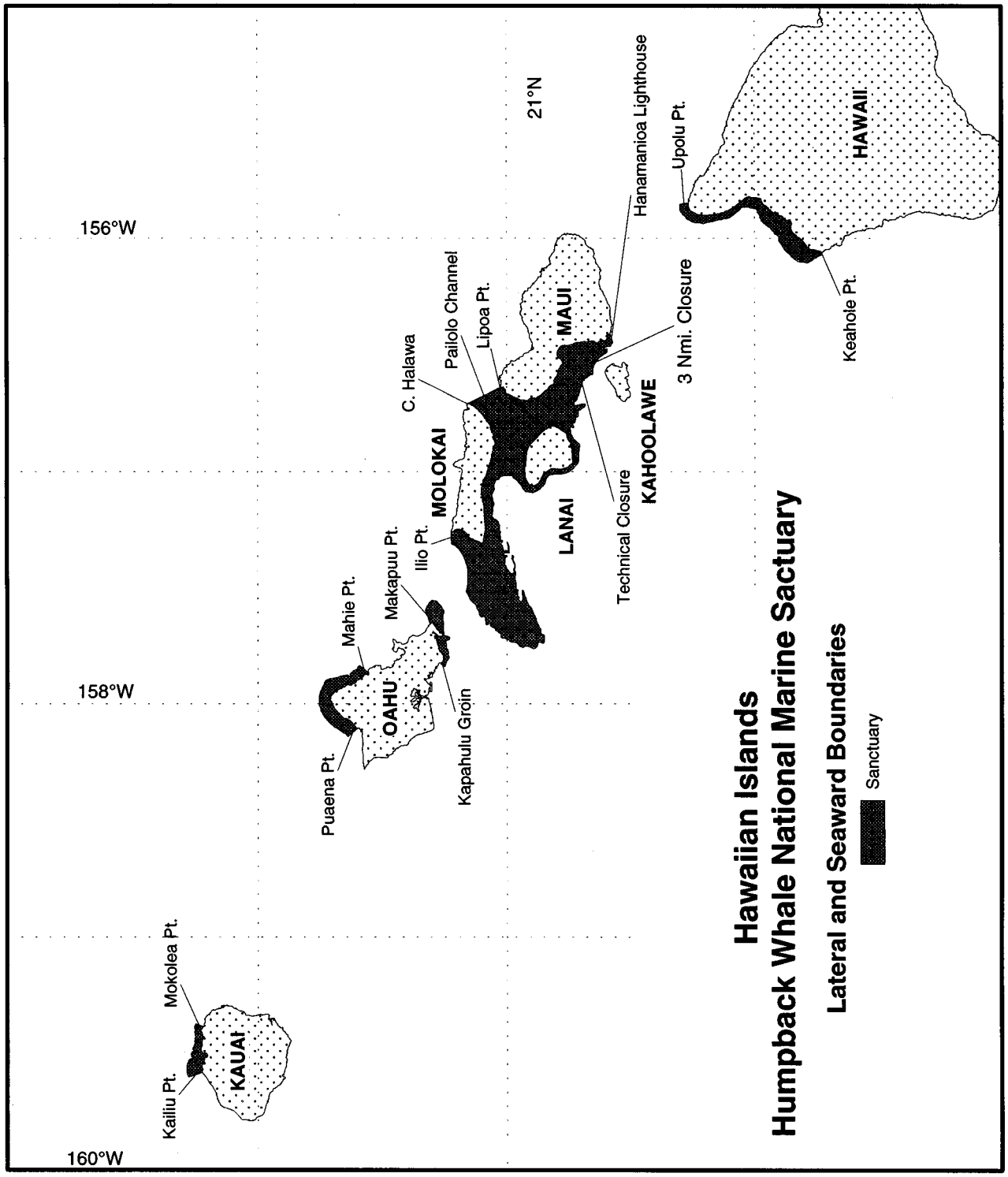

Figure 1

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B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (see Figure 2).

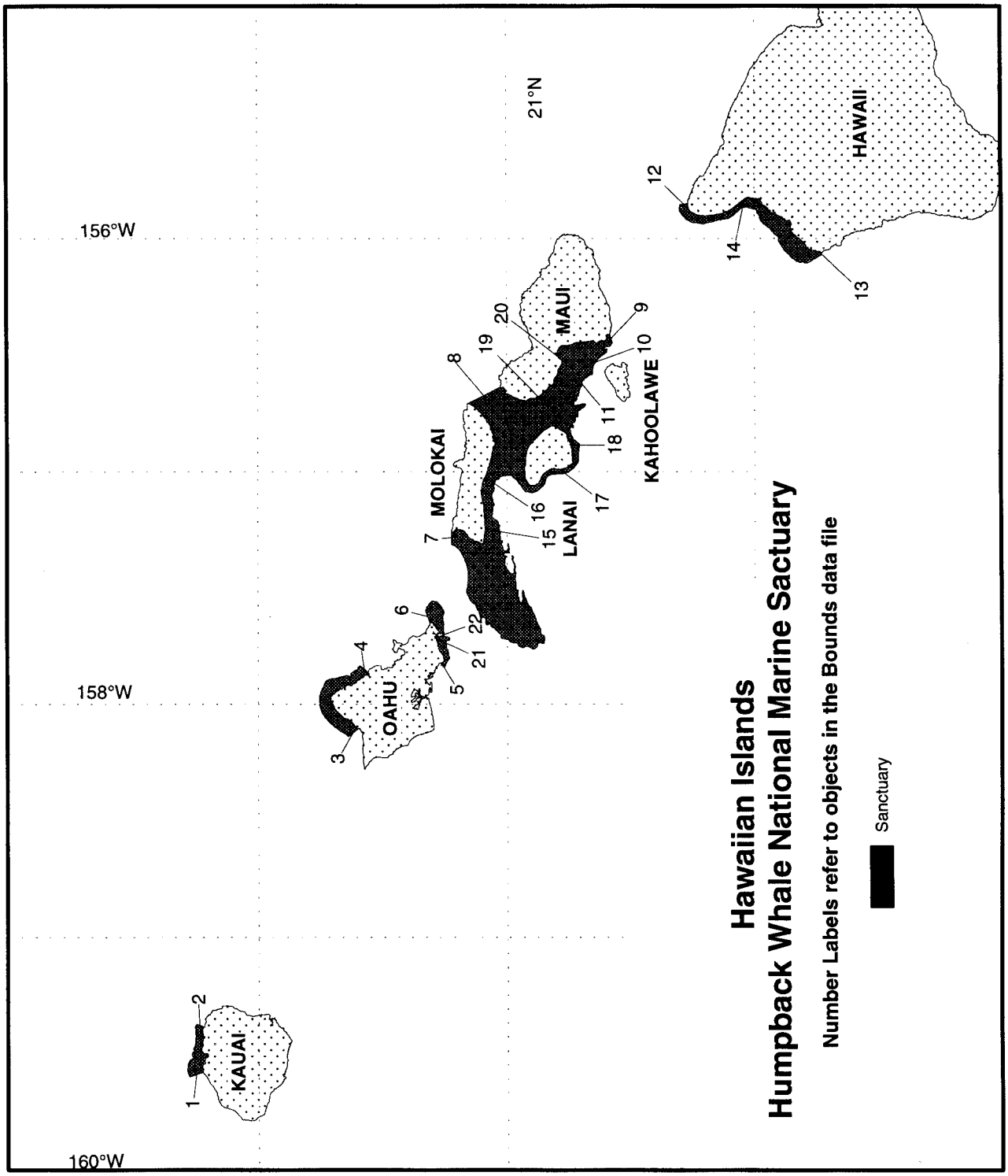

Figure 2

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Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
1	Kailiu Pt., Kauai	2	22°13′24.7″	−159°34′52.2″
			22°16′33.5″	−159°35′59.4″
2	Mokolea Pt., Kauai	2	22°13′29.9″	−159°22′55.8″
			22°14′55.4″	−159°22′19.3″
3	Puaena Pt., N. Oahu	2	21°38′24.6″	−158°8′26.0″
			21°36′8.4″	−158°6′24.5″
4	Mahie Pt., N. Oahu	2	21′33′37.3″	−157°51′51.9″
			21°35′32.2″	−157°50′5.5″
5	Kapahulu Groin, S. Oahu	3	21°15′5.7″	−157°50′27.5″
			21°16′6.1″	−157°49′25.7″
			21°16′6.2″	−157°49′23.8″
6	Makapuu Pt., S. Oahu	2	21°18′39.6″	−157°38′56.7″
			21°19′44.7″	−157°35′46.1″
7	Ilio Pt, Molokai	2	21°13′25.7″	−157°18′45.8″
			21°13′27.0″	−157°15′14.4″
8	Pailolo Channel, C. Halawa to Lipoa Pt.	2	21°1′29.8″	−156°38′22.0″
			21°9′29.5″	−156°42′37.2″
9	Hanamanoia Lighthouse, Maui	2	20°34′21.8″	−156°26′51.1″
			20°34′58.4″	−156°24′45.2″
10	3 Nmi. closure around Kahoolawe	51	20°35′58.1″	−156°29′32.0″
			20°35′59.9″	−156°29′33.0″
			20°36′3.9″	−156°29′35.5″
			20°36′6.6″	−156°29′36.9″
			20°36′16.3″	−156°29′43.1″
			20°36′25.7″	−156°29′49.9″
			20°36′34.6″	−156°29′57.3″
			20°36′39.9″	−156°30′2.2″
			20°36′43.8″	−156°30′5.5″
			20°36′50.8″	−156°30′12.1″
			20°36′59.0″	−156°30′16.5″
			20°37′8.7″	−156°30′22.7″
			20°37′18.1″	−156°30′29.5″
			20°37′27.0″	−156°30′36.8″
			20°37′35.5″	−156°30′44.8″
			20°37′43.4″	−156°30′53.4″
			20°37′50.9″	−156°31′2.4″
			20°37′56.4″	−156°31′10.0″
			20°37′59.0″	−156°31′13.2″
			20°38′6.0″	−156°31′22.7″
			20°38′8.6″	−156°31′26.8″
			20°38′10.8″	−156°31′29.9″
			20°38′17.2″	−156°31′39.9″
			20°38′18.9″	−156°31′43.0″
			20°38′23.4″	−156°31′48.4″
			20°38′30.3″	−156°31′58.0″
			20°38′36.6″	−156°32′7.9″
			20°38′42.4″	−156°32′18.3″
			20°38′43.4″	−156°32′20.5″
			20°38′46.4″	−156°32′25.9″
			20°38′51.5″	−156°32′36.7″
			20°38′56.0″	−156°32′47.7″
			20°38′59.8″	−156°32′59.1″
			20°39′3.0″	−156°33′10.7″
			20°39′4.0″	−156°33′15.7″
			20°39′4.4″	−156°33′17.0″
			20°39′5.3″	−156°33′21.1″
			20°39′6.8″	−156°33′28.7″
			20°39′8.6″	−156°33′40.7″
			20°39′8.9″	−156°33′44.4″
			20°39′9.7″	−156°33′49.6″
			20°39′10.1″	−156°33′53.8″
			20°39′11.0″	−156°34′0.3″
			20°39′12.1″	−156°34′12.4″
			20°39′12.5″	−156°34′24.4″
			20°39′12.4″	−156°34′25.4″
			20°39′12.6″	−156°34′30.5″
			20°39′12.2″	−156°34′42.6″
			20°39′11.8″	−156°34′47.7″
			20°39′11.7″	−156°34′48.9″
			20°39′11.3″	−156°34′55.8″
11	Technical Closure	2	20′41′39.2″	−156°37′7.5″
			20°41′45.0″	−156°38′3.6″
	North of Kahoolawe			

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
12	Upolu Pt., Hawaii (Big Island)	2	20′16″5.3″ 20°17′59.9″	−155°51′0.5″ −155°51′17.2″
13	Keahole Pt., Hawaii (Big Island)	2	19°43′39.6″ 19°43′41.5″	−156′3′42.7″ −156°4′14.5″

C. Excluded Ports and Harbors Bounds (see Figure 3).

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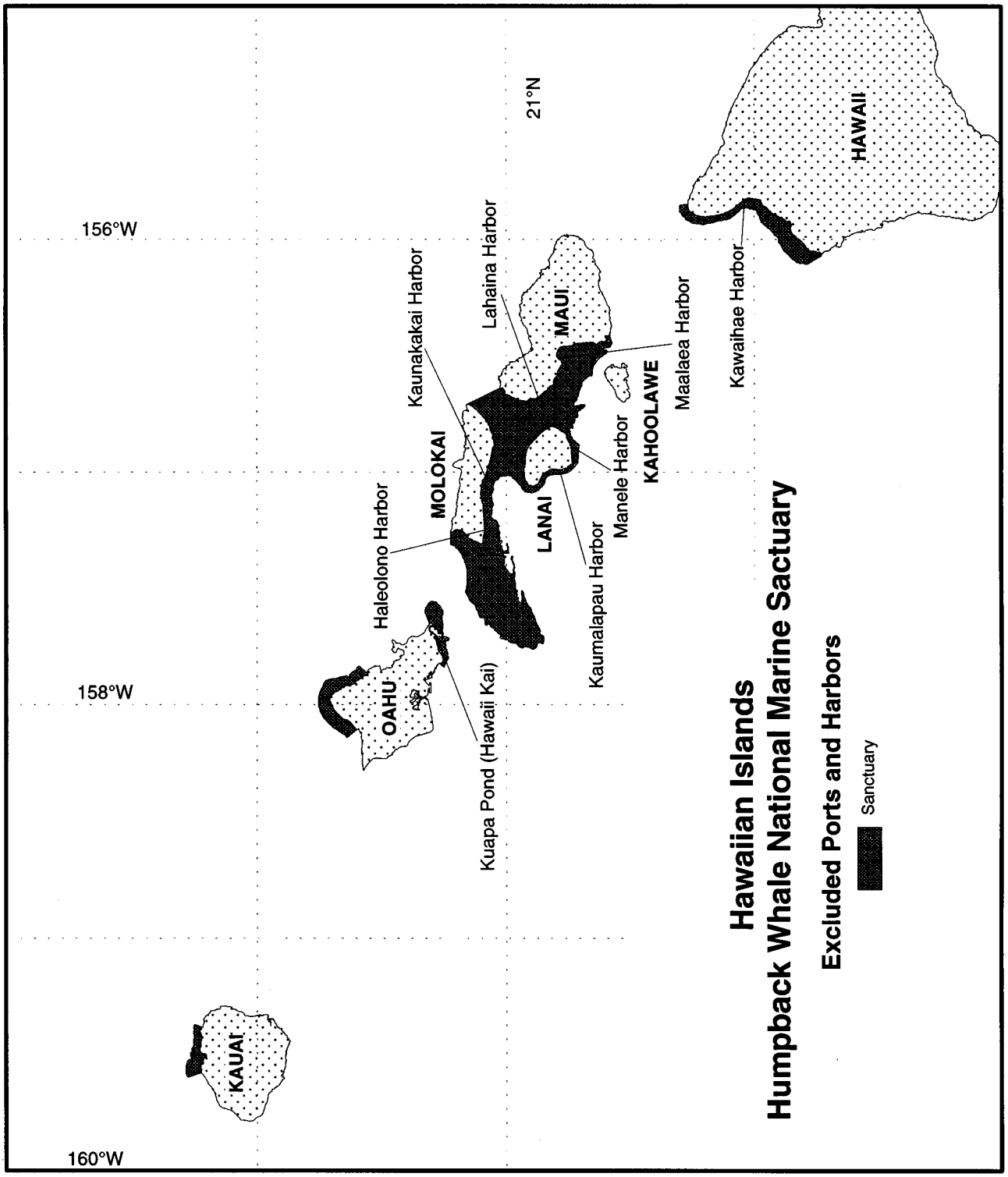

Figure 3

BILLING CODE 3510–08–C

Bound No. (Fig.2)	Geographic Name	No. of Points	Latitude	Longitude
14	Kawaihae Harbor, Big Island exclusion	2	20°2′14.3″	−155°50′2.5″
			20°2′25.3″	−155°49′57.7″
15	Haleolono Harbor, Molokai exclusion	2	21°5′3.5″	−157°14′58.6″
			21°5′4.8″	−157°14′55.2″
16	Kaunakakai Harbor, Molokai exclusion	4	21°5′13.9″	−157°1′35.7″
			21°4′49.2″	−157°1′58.3″
			21°4′38.5″	−157°1′41.2″
			21°5′7.4″	−157°1′15.0″
17	Kaumalapau Harbor, Lanai exclusion	2	20°47′9.2″	−156°59′32.2″
			20°47′1.1″	−156°59′31.3″
18	Manele Harbor, Lanai exclusion	2	20°44′33.2″	−156°53′12.9″
			20°44′35.2″	−156°53′14.1″
19	Lahaina Harbor, Maui exclusion	2	20°52′18.3″	−156°40′45.0″
			20°52′18.8″	−156°40′44.0″
20	Maalaea Harbor, Maui exclusion	2	20°47′32.1″	−156°30′35.0″
			20°47′24.8″	−156°30′39.6″
21	Western closure Kuapa Pond (Hawaii Kai), Oahu	2	21°17′7.0″	−157°43′7.7″
			21°17′6.5″	−157°43′7.0″
22	Eastern closure Kuapa Pond (Hawaii Kai), Oahu	2	21°16′53.3″	−157°42′42.7″
			21°16′51.9″	−157°42′40.3″

[FR Doc. 99–29967 Filed 11–26–99; 8:45 am]
BILLING CODE 3510–08–p

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Statement of Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions to reflect the division of the Directorate for Epidemiology and Health Sciences into separate directorates for epidemiology and for health sciences.

EFFECTIVE DATE: November 29, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301–504–0980.

SUPPLEMENTARY INFORMATION: The Commission has separated the former Directorate for Epidemiology and Health Sciences into a separate Directorate for Epidemiology and a separate Directorate for Health Sciences. To reflect this change, § 1000.27 is being revised to remove descriptions of the health sciences functions that have been incorporated in a new § 1000.28. Some editorial changes have also been made. Section 1000.12(c), listing the organizational units reporting to the Assistant Executive Director for Hazard Identification and Reduction, is being revised to separately list the Directorate for Epidemiology and the Directorate for Health Sciences.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and functions (government agencies).

Accordingly, part 1000 is amended as follows:

PART 1000—[AMENDED]

1. The authority citation for part 1000 continues to read as follows:

Authority: 5 U.S.C. 552(a).

2. Paragraph (c) of section 1000.12 is revised to read as follows:

§ 1000.12 Organizational structure.

* * * * *

(c) The following units report directly to the Assistant Executive Director for Hazard Identification and Reduction:

(1) Directorate for Economic Analysis;

(2) Directorate for Epidemiology;

(3) Directorate for Health Sciences;

(4) Directorate for Engineering Sciences;

(5) Directorate for Laboratory Sciences.

§§ 1000.28 and 1000.29 [Redesignated as §§ 1000.29 and 1000.30]

3. Sections 1000.28 and 1000.29 are redesignated as sections 1000.29 and 1000.30 respectively.

4. Section 1000.27 is revised to read as follows:

§ 1000.27 Directorate for Epidemiology.

The Directorate for Epidemiology, managed by the Associate Executive Director for Epidemiology, is responsible for the collection and analysis of data on injuries and deaths associated with consumer products. The Directorate has two divisions: the Data Systems Division and the Hazard Analysis Division. The Data Systems Division operates the national data collection systems which provide the data that serve as the basis for the Commission's estimates of the numbers of deaths and injuries associated with consumer products. These data systems include the National Electronic Injury Surveillance System, a nationally representative sample of hospital emergency departments; a death certificate file, which contains data obtained from death certificates on deaths associated with consumer products; and the Injury and Potential Injury Incident file, which contains information on incidents associated with consumer products, based on news clips, medical examiner reports, hotline reports, internet complaints, referrals, etc. The Hazard Analysis Division conducts statistical analysis of these data and conducts epidemiologic studies to estimate the numbers of injuries and deaths associated with various consumer products and to examine factors associated with these injuries and deaths. In addition, staff in

the Hazard Analysis Division design special studies, design and analyze data from experiments for testing of consumer products, and provide statistical expertise and advice to Commission staff in support of regulation development.

5. Section 1000.28 is added to read as follows:

§ 1000.28 Directorate for Health Sciences.

The Directorate for Health Sciences is managed by the Associate Executive Director for Health Sciences and is responsible for reviewing and evaluating the human health effects and hazards related to consumer products and assessing exposure, uptake and metabolism, including information on population segments at risk. Directorate staff conducts health studies and research in the field of consumer product-related injuries. The Directorate performs risk assessments for chemical, physiological and physical hazards based on methods such as medical injury modeling, and on injury and incident data for mechanical, thermal, chemical and electrical hazards in consumer products. It provides the Commission's primary source of scientific expertise for implementation of the Poison Prevention Packaging Act and the Federal Hazardous Substances Act. The Directorate assists in the development and evaluation of product safety standards and test methods based on scientific and public health principles. It provides support to the Commission's regulatory development and enforcement activities. It manages hazard identification and analysis, and hazard assessment and reduction projects as assigned. The Directorate provides liaison with the National Toxicology Program, the Department of Health and Human Services (including the Food and Drug Administration, the Centers for Disease Control and Prevention, the National Institutes of Health), the Occupational Health and Safety Administration, the Environmental Protection Agency, other federal agencies and programs, and other organizations concerned with reducing the risk to consumers from exposure to consumer product hazards. The Directorate is responsible for managing and safeguarding confidential business information received from the Environmental Protection Agency in accordance with the requirements of that agency.

Dated: November 23, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–30939 Filed 11–26–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8844]

RIN 1545–AV16

Treatment of Changes in Elective Entity Classification

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations describing how elective changes in classification will be treated for federal tax purposes. The final regulations affect business entities and their members. The final regulations provide guidance to taxpayers who elect to change an entity's classification for Federal tax purposes.

DATES: *Effective Date:* These regulations are effective November 29, 1999.

Applicability Dates: These regulations apply on or after November 29, 1999. However, taxpayers may choose to apply certain provisions in these regulations before November 29, 1999 as specified in § 301.7701–2(e) and § 301.7701–3(g)(4).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Dan Carmody, (202) 622–3080 (not a toll-free number); concerning international issues, Mark Harris, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1997, proposed amendments to the regulations under §§ 301.6109–1, 301.7701–2, and 301.7701–3 [REG–105162–97] were published in the **Federal Register** (62 FR 55768). A number of comments were received on the proposed regulations. The public hearing scheduled for February 24, 1998, was canceled because no one requested to speak. After considering the submitted comments, the IRS and Treasury adopt the proposed amendments to the regulations under §§ 301.6109–1, 301.7701–2, and 301.7701–3 as revised by this Treasury decision.

Explanation of Provisions

I. Characterization of Elective Changes in Classification

There are four possible changes in classification of an eligible entity by election under § 301.7701–3: (i) A partnership elects to be an association taxable as a corporation (association); (ii) an association elects to be a partnership; (iii) an association elects to be disregarded as an entity separate from its owner (disregarded entity); and (iv) a disregarded entity elects to be an association. The proposed regulations provide a form that each elective conversion would be treated as having for federal tax purposes. Under the proposed regulations, there is only one form for each elective conversion, and taxpayers could not elect to have a different form apply to the elective conversion.

A. Elective Conversions Treated as Having One Form

Commentators recommended that taxpayers be allowed to choose which form to apply to an elective conversion. This would allow taxpayers to avoid having to take the actual steps of a conversion to produce the most favorable tax results. A commentator suggested that the lack of choice in the proposed regulations is inconsistent with the intent of the check-the-box regulations, which adopted an elective regime for classifying eligible entities.

Because elective conversions are transactions without actual form, the IRS and Treasury believe that it is appropriate to provide that only one transaction form will be applied to each type of elective conversion. Furthermore, while the check-the-box regulations provide an elective regime for classifying eligible entities, the elective regime was not intended to substitute for actual transactions in all situations. Instead, the purpose of implementing the regime was to simplify an area of the law where legal distinctions previously drawn in determining an entity's classification were no longer meaningful. While the factors considered under prior law did not meaningfully distinguish between business organizations, taxpayers still were required to expend considerable resources to ensure that they obtained the classification they desired. Small business organizations often lacked the resources and expertise to achieve their desired tax classification. This was viewed as unfair.

The IRS was also expending considerable resources providing guidance on these classification issues. These same concerns generally are not

present in determining the form of a conversion transaction. Therefore, the final regulations maintain only one form for each type of elective conversion.

B. Form of Conversion From Association to Partnership

The proposed regulations provide that an elective conversion of an association to a partnership is deemed to have the following form: The association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership.

A commentator suggested that the proposed form for an elective conversion of an association to a partnership may not minimize the tax consequences of such a conversion under certain circumstances. The commentator suggested that the proposed form should be available as an election, but that the default form should be a deemed transfer of assets and liabilities from the electing corporation to a newly formed partnership for interests in the partnership followed immediately by a liquidation of the electing corporation.

The IRS and Treasury believe that under current law a voluntary formless change from an association to a partnership should be treated as a liquidation of the corporation followed by a contribution of assets to the partnership. See Rev. Rul. 63–107 (1963–2 C.B. 71). Moreover, if the assets were deemed contributed by the electing corporation to the partnership for partnership interests followed by a liquidation of the corporation, the application of section 704(c) (contribution of appreciated property), section 708 (partnership termination), and section 754 (elective adjustments to the basis of partnership assets) could be somewhat complex and difficult for taxpayers and the IRS to administer. Therefore, the proposed form for the elective conversion of an association to a partnership is adopted without change.

C. Timing of Elective Changes in Classification

The proposed regulations provide that a classification election takes effect at the start of the day for which the election is effective. Any transactions that are deemed to occur because of a change in classification are treated as occurring immediately before the close of the day before the effective date of the election. The owners of the entity when the election is effective may be different from the owners of the entity when the conversion transactions are deemed to occur. To ensure that the taxpayers who recognize the tax consequences of a conversion election approve of the election, the proposed regulations require that the election be signed by every owner on the date of the deemed conversion transactions.

A commentator indicated that purchasers who wish to make a classification election effective as of their first day of ownership may endure a burden in obtaining the consents of previous owners. The commentator recommended that the deemed conversion transactions be treated as occurring at the start of the day for which the election is effective, eliminating the need to obtain the consent of prior owners. Under this suggestion, purchasers of an association who wish to elect partnership treatment effective as of the first day of ownership would be treated as owning both stock and partnership interests on that first day of ownership. This would result in the purchasers being responsible for a corporate return for their transitory period of corporate ownership. See § 1.6012–2.

The IRS and Treasury intended that the proposed timing rule generally would be beneficial for taxpayers. The IRS and Treasury believe that any burden imposed by this rule is outweighed by the transactional flexibility that this rule provides. Accordingly, the suggested change to the timing rule is not adopted.

Another commentator noted a conflict between the proposed timing rule and the deemed transactions under section 338. Section 338 allows a purchasing corporation to treat its stock purchase of another corporation as an asset purchase. Under section 338, a purchasing corporation may elect to treat the target corporation as: (1) Selling its assets at fair market value on the acquisition date, and (2) a new corporation that purchased all of the assets at the beginning of the day after the acquisition date. If the purchaser also makes a classification election for the target effective for the purchaser's first day of ownership, the timing of the deemed liquidation under § 301.7701–3(g)(1) would conflict with the timing of the deemed transactions required by section 338.

To address the issue, the final regulations specify that if section 338 applies, an election to convert the target corporation's classification cannot be effective before the day after the acquisition date of the target corporation. Additionally, the deemed liquidation and conversion under § 301.7701–3(g)(1) will occur immediately after the completion of the section 338 transactions. These rules follow the approach of § 1.338–2(c)(1)(i), which provides that when a target corporation liquidates on the acquisition date, the liquidation is treated as occurring on the following day and immediately after the deemed purchase of assets. If a taxpayer makes an election under section 338 (without a section 338(h)(10) election) regarding a target corporation that is subsequently deemed liquidated under these final regulations, the target corporation must file a final or deemed sale return as a C corporation reflecting the deemed sale. See § 1.338–1(e).

Commentators also expressed concern over the effect the proposed timing rule would have on a sequence of elections when a number of corporations are owned through a single ownership chain. If the elections are all effective for the same date, the effect of the interaction of the timing rule with section 332 is unclear. For example, P corporation owns 100 percent of the interest of an eligible entity classified as an association (S1), which owns directly 100 percent of the interest of an eligible entity classified as an association (S2). P wants to convert S1 and S2 to disregarded entities on the same day; however, if both deemed liquidations are treated as occurring simultaneously, it is not clear that section 332 nonrecognition treatment would be available for both liquidations. The final regulations clarify that in such a situation, unless another order is specified for the elections, S1 will be treated as liquidating into P immediately before S2 liquidates into P.

Commentators suggested that this situation could be addressed by allowing taxpayers to make elections effective by the hour, instead of only at the start of the day. The IRS and Treasury believe that the clarification in the final regulations appropriately addresses the treatment of successive elections. Therefore, the final regulations maintain the rule that conversion elections take effect at the start of the day on which the election is effective.

II. Taxpayer Identifying Numbers and Disregarded Entities

The proposed regulations provide clarification of the rules regarding taxpayer identifying numbers (TINs). The proposed regulations restate the rule that when an entity's classification changes under § 301.7701–3, it retains its employer identification number (EIN). The proposed regulations also clarified the rule that a disregarded entity must use its owner's TIN for

federal tax purposes. Furthermore, when a disregarded entity becomes respected as a separate entity, it must use its own EIN and not the TIN of the single owner.

One commentator asked for clarification regarding the use of TINs and EINs in the proposed regulations. TINs include EINs, social security numbers (SSNs), and IRS individual taxpayer identification numbers (ITINs). The regulations require that a disregarded entity report under the owner's TIN. The regulations refer to a taxpayer's TIN because the term TIN encompasses not only an EIN, but also an SSN and an ITIN.

Another commentator suggested that the proposed regulations were too restrictive and prohibited a disregarded entity from applying for and receiving its own TIN. The regulations do not prevent a single member disregarded entity from applying for and receiving its own TIN. The regulations merely provide that, except as otherwise provided in regulations or other guidance, the single owner disregarded entity must use the owner's TIN for federal tax purposes and not the EIN of the disregarded entity. Notice 99–6 (1999–3 I.R.B. 1) provides guidance on the limited circumstances under which a disregarded entity may use its own EIN.

III. Rules for Foreign Entities

These final regulations also contain rules relating to certain foreign entities.

A. Foreign Per Se Entities

The final check-the-box regulations provided a list of the names of certain foreign business entities that are treated as corporations for federal tax purposes. In response to comments from taxpayers, the proposed regulations clarified those provisions. Specifically, clarifications were made with respect to certain business entities formed in Finland, Malaysia, Malta, Mexico, and Norway. These final regulations adopt the proposed regulation's clarifications.

These final regulations also clarify the treatment of an entity formed in Trinidad and Tobago that is specified in the final check-the-box regulations. Prior to April 1997, Trinidad and Tobago's Companies Act distinguished between public and private limited companies. Effective April 1997, Trinidad and Tobago's Companies Act was amended and now only provides for limited companies (and no longer provides for private limited companies). Accordingly, these final regulations have been modified to take into account that change. The effective date of these final regulations with regard to an entity formed in Trinidad and Tobago has been modified so as not to disadvantage taxpayers who relied on the final check-the-box regulations. These final regulations provide that the rule with regard to an entity formed in Trinidad and Tobago will be effective on or after November 29, 1999. Accordingly, this rule only affects those entities which were formed (or made affirmative elections) on or after November 29, 1999.

These regulations also clarify the exception to per se corporate treatment for Canadian companies and corporations. When the final check-the-box regulations were promulgated, the only company or corporation that could be formed where the liability of all of its members was unlimited pursuant to any federal or provincial statute (as opposed to through side agreements of the members), was a Nova Scotia Unlimited Liability Company (NSULC). However, in order to avoid changing the regulations if any other province, or the federal government, subsequently allowed for the formation of unlimited liability companies by statute, these regulations did not specifically list the NSULC. In response to questions from taxpayers, the regulation is clarified, with effect from January 1, 1997, by specifically naming the NSULC, while still providing for any other unlimited liability company that might subsequently be allowed by any other federal or provincial statute.

B. Foreign Eligible Entities

Proposed regulations that provide a special rule for certain foreign eligible entities are published elsewhere in this issue of the **Federal Register**. In addition, the IRS and Treasury are still studying what, if any, consequences occur when a foreign eligible entity that is not relevant for federal tax purposes files an entity classification election. The IRS and Treasury continue to request comments on this topic.

IV. Changes in Number of Members of an Entity

The proposed regulations provide that an entity's classification may change as a result of a change in the number of its members. Specifically, an eligible entity classified as a partnership will become a disregarded entity when the entity's membership is reduced to one member, and a disregarded entity will be classified as a partnership when the entity has more than one member. The final regulations adopt these provisions without substantive change. Guidance on the federal tax consequences of such changes has been provided in Rev. Rul. 99–5 (1999–6 I.R.B. 8) and Rev. Rul. 99–6 (1999–6 I.R.B. 6).

Effective Date

These regulations are applicable on or after November 29, 1999. In response to comments, however, the final regulations include a provision allowing taxpayers to apply the regulations retroactively for elective entity conversions that occurred before November 29, 1999. Taxpayers may apply the final regulations retroactively only if all taxpayers involved in the transaction follow the regulations. The rules contained in § 301.6109–1(h) are applicable as of January 1, 1997. Certain changes to § 301.7701–2(b)(8) may be applied before the effective date as specified in § 301.7701–2(e).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Dan Carmody and Jeff Erickson, Office of Chief Counsel (Passthroughs and Special Industries) and Mark Harris and Philip Tretiak, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6109–1 is amended as follows:

1. Paragraph (d)(2)(ii) is removed and reserved.

2. Paragraph (h) is redesignated as paragraph (i) and the first sentence of newly designated paragraph (i)(1) is amended by removing the language ''paragraph (h)'' and adding ''paragraph (i)'' in its place.

3. A new paragraph (h) is added.

The addition reads as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(h) *Special rules for certain entities under § 301.7701–3*—(1) *General rule.* Any entity that has an employer identification number (EIN) will retain that EIN if its federal tax classification changes under § 301.7701–3.

(2) *Special rules for entities that are disregarded as entities separate from their owners*—(i) *When an entity becomes disregarded as an entity separate from its owner.* Except as otherwise provided in regulations or other guidance, a single owner entity that is disregarded as an entity separate from its owner under § 301.7701–3, must use its owner's taxpayer identifying number (TIN) for federal tax purposes.

(ii) *When an entity that was disregarded as an entity separate from its owner becomes recognized as a separate entity.* If a single owner entity's classification changes so that it is recognized as a separate entity for federal tax purposes, and that entity had an EIN, then the entity must use that EIN and not the TIN of the single owner. If the entity did not already have its own EIN, then the entity must acquire an EIN and not use the TIN of the single owner.

(3) *Effective date.* The rules of this paragraph (h) are applicable as of January 1, 1997.

* * * * *

Par. 3. Section 301.7701–2 is amended as follows:

1. Paragraph (b)(8)(i) is amended by revising the entries for Finland, Malta, Norway, and Trinidad and Tobago.

2. Paragraph (b)(8)(ii)(A) is redesignated as paragraph (b)(8)(ii)(A)(*1*) and revised.

3. Paragraph (b)(8)(ii)(B) is redesignated as paragraph (b)(8)(ii)(A)(*2*).

4. Paragraph (b)(8)(ii) heading and introductory text are redesignated as paragraph (b)(8)(ii)(A) heading and introductory text, and a new paragraph heading is added for paragraph (b)(8)(ii).

5. Paragraphs (b)(8)(ii)(A)(*3*) and (b)(8)(ii)(B) are added.

6. Paragraphs (b)(8)(iii), (b)(8)(iv), and (e) are revised.

The revisions and additions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(i) * * *

Finland, Julkinen Osakeyhtio/Publikt Aktiebolag

* * * * *

Malta, Public Limited Company

* * * * *

Norway, Allment Aksjeselskap

* * * * *

Trinidad and Tobago, Limited Company

* * * * *

(ii) *Clarification of list of corporations in paragraph (b)(8)(i) of this section*—(A) Exceptions in certain cases. * * *

* * * * *

(*1*) With regard to Canada, a Nova Scotia Unlimited Liability Company (or any other company or corporation all of whose owners have unlimited liability pursuant to federal or provincial law).

* * * * *

(*3*) With regard to Malaysia, a Sendirian Berhad.

(B) *Inclusions in certain cases.* With regard to Mexico, the term Sociedad Anonima includes a Sociedad Anonima that chooses to apply the variable capital provision of Mexican corporate law (Sociedad Anonima de Capital Variable).

(iii) *Public companies.* For purposes of paragraph (b)(8)(i) of this section, with regard to Cyprus, Hong Kong, and Jamaica, the term Public Limited Company includes any Limited Company that is not defined as a private company under the corporate laws of those jurisdictions. In all other cases, where the term Public Limited Company is not defined, that term shall include any Limited Company defined as a public company under the corporate laws of the relevant jurisdiction.

(iv) *Limited companies.* For purposes of this paragraph (b)(8), any reference to a Limited Company includes, as the case may be, companies limited by shares and companies limited by guarantee.

* * * * *

(e) *Effective date.* Except as otherwise provided in this paragraph (e), the rules of this section apply as of January 1, 1997. The reference to the Finnish, Maltese, and Norwegian entities in paragraph (b)(8)(i) of this section is applicable on November 29, 1999. The reference to the Trinidadian entity in paragraph (b)(8)(i) of this section applies to entities formed on or after November 29, 1999. Any Maltese or Norwegian entity that becomes an eligible entity as a result of paragraph (b)(8)(i) of this section in effect on November 29, 1999 may elect by February 14, 2000 to be classified for federal tax purposes as an entity other than a corporation retroactive to any period from and including January 1, 1997. Any Finnish entity that becomes an eligible entity as a result of paragraph (b)(8)(i) of this section in effect on November 29, 1999 may elect by February 14, 2000 to be classified for federal tax purposes as an entity other than a corporation retroactive to any period from and including September 1, 1997.

Par. 4. Section 301.7701–3 is amended as follows:

1. A sentence is added at the end of paragraph (c)(1)(iii).

2. A sentence is added at the end of paragraph (c)(1)(iv).

3. Paragraph (c)(2)(iii) is added.

4. A heading is added to paragraph (d)(1).

5. Paragraph (f) is redesignated as paragraph (h) and newly designated paragraph (h)(1) is revised.

6. Paragraphs (f) and (g) are added.

The revision and additions read as follows:

§ 301.7701–3 Classification of certain business entities.

* * * * *

(c) * * *

(1) * * *

(iii) *Effective date of election.* * * * If a purchasing corporation makes an election under section 338 regarding an acquired subsidiary, an election under paragraph (c)(1)(i) of this section for the acquired subsidiary can be effective no earlier than the day after the acquisition date (within the meaning of section 338(h)(2)).

(iv) *Limitation.* * * * An election by a newly formed eligible entity that is effective on the date of formation is not considered a change for purposes of this paragraph (c)(1)(iv).

* * * * *

(2) * * *

(iii) *Changes in classification.* For paragraph (c)(2)(i) of this section, if an election under paragraph (c)(1)(i) of this section is made to change the classification of an entity, each person

who was an owner on the date that any transactions under paragraph (g) of this section are deemed to occur, and who is not an owner at the time the election is filed, must also sign the election. This paragraph (c)(2)(iii) applies to elections filed on or after November 29, 1999.

(d) *Special rules for foreign eligible entities*—(1) *Definition of relevance.*

* * *

* * * * *

(f) *Changes in number of members of an entity*—(1) *Associations.* The classification of an eligible entity as an association is not affected by any change in the number of members of the entity.

(2) *Partnerships and single member entities.* An eligible entity classified as a partnership becomes disregarded as an entity separate from its owner when the entity's membership is reduced to one member. A single member entity disregarded as an entity separate from its owner is classified as a partnership when the entity has more than one member. If an elective classification change under paragraph (c) of this section is effective at the same time as a membership change described in this paragraph (f)(2), the deemed transactions in paragraph (g) of this section resulting from the elective change preempt the transactions that would result from the change in membership.

(3) *Effect on sixty month limitation.* A change in the number of members of an entity does not result in the creation of a new entity for purposes of the sixty month limitation on elections under paragraph (c)(1)(iv) of this section.

(4) *Examples.* The following examples illustrate the application of this paragraph (f):

Example 1. A, a U.S. person, owns a domestic eligible entity that is disregarded as an entity separate from its owner.

On January 1, 1998, *B*, a U.S. person, buys a 50 percent interest in the entity from *A*. Under this paragraph (f), the entity is classified as a partnership when *B* acquires an interest in the entity. However, *A* and *B* elect to have the entity classified as an association effective on January 1, 1998. Thus, B is treated as buying shares of stock on January 1, 1998. (Under paragraph (c)(1)(iv) of this section, this election is treated as a change in classification so that the entity generally cannot change its classification by election again during the sixty months succeeding the effective date of the election.) Under paragraph (g)(1) of this section, *A* is treated as contributing the assets and liabilities of the entity to the newly formed association immediately before the close of December 31, 1997. Because *A* does not retain control of the association as required by section 351, *A*'s contribution will be a taxable event. Therefore, under section 1012, the association will take a fair market value basis in the assets contributed by *A*, and *A* will have a fair market value basis in the stock received. *A* will have no additional gain upon the sale of stock to *B*, and *B* will have a cost basis in the stock purchased from *A*.

Example 2. (i) On April 1, 1998, *A* and *B*, U.S. persons, form *X*, a foreign eligible entity. *X* is treated as an association under the default provisions of paragraph (b)(2)(i) of this section, and *X* does not make an election to be classified as a partnership. *A* subsequently purchases all of *B*'s interest in *X*.

(ii) Under paragraph (f)(1) of this section, *X* continues to be classified as an association. *X*, however, can subsequently elect to be disregarded as an entity separate from *A*. The sixty month limitation of paragraph (c)(1)(iv) of this section does not prevent *X* from making an election because *X* has not made a prior election under paragraph (c)(1)(i) of this section.

Example 3. (i) On April 1, 1998, *A* and *B*, U.S. persons, form *X*, a foreign eligible entity. *X* is treated as an association under the default provisions of paragraph (b)(2)(i) of this section, and *X* does not make an election to be classified as a partnership. On January 1, 1999, *X* elects to be classified as a partnership effective on that date. Under the sixty month limitation of paragraph (c)(1)(iv) of this section, *X* cannot elect to be classified as an association until January 1, 2004 (i.e., sixty months after the effective date of the election to be classified as a partnership).

(ii) On June 1, 2000, *A* purchases all of *B*'s interest in *X*. After *A*'s purchase of *B*'s interest, *X* can no longer be classified as a partnership because *X* has only one member. Under paragraph (f)(2) of this section, *X* is disregarded as an entity separate from *A* when *A* becomes the only member of *X*. *X*, however, is not treated as a new entity for purposes of paragraph (c)(1)(iv) of this section. As a result, the sixty month limitation of paragraph (c)(1)(iv) of this section continues to apply to *X*, and *X* cannot elect to be classified as an association until January 1, 2004 (i.e., sixty months after January 1, 1999, the effective date of the election by *X* to be classified as a partnership).

(5) *Effective date.* This paragraph (f) applies as of November 29, 1999.

(g) *Elective changes in classification*—(1) *Deemed treatment of elective change*—(i) *Partnership to association.* If an eligible entity classified as a partnership elects under paragraph (c)(1)(i) of this section to be classified as an association, the following is deemed to occur: The partnership contributes all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners.

(ii) *Association to partnership.* If an eligible entity classified as an association elects under paragraph (c)(1)(i) of this section to be classified as a partnership, the following is deemed to occur: The association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership.

(iii) *Association to disregarded entity.* If an eligible entity classified as an association elects under paragraph (c)(1)(i) of this section to be disregarded as an entity separate from its owner, the following is deemed to occur: The association distributes all of its assets and liabilities to its single owner in liquidation of the association.

(iv) *Disregarded entity to an association.* If an eligible entity that is disregarded as an entity separate from its owner elects under paragraph (c)(1)(i) of this section to be classified as an association, the following is deemed to occur: The owner of the eligible entity contributes all of the assets and liabilities of the entity to the association in exchange for stock of the association.

(2) *Effect of elective changes.* The tax treatment of a change in the classification of an entity for federal tax purposes by election under paragraph (c)(1)(i) of this section is determined under all relevant provisions of the Internal Revenue Code and general principles of tax law, including the step transaction doctrine.

(3) *Timing of election*—(i) *In general.* An election under paragraph (c)(1)(i) of this section that changes the classification of an eligible entity for federal tax purposes is treated as occurring at the start of the day for which the election is effective. Any transactions that are deemed to occur under this paragraph (g) as a result of a change in classification are treated as occurring immediately before the close of the day before the election is effective. For example, if an election is made to change the classification of an entity from an association to a partnership effective on January 1, the deemed transactions specified in paragraph (g)(1)(ii) of this section (including the liquidation of the association) are treated as occurring immediately before the close of December 31 and must be reported by the owners of the entity on December 31. Thus, the last day of the association's taxable year will be December 31 and the first day of the partnership's taxable year will be January 1.

(ii) *Coordination with section 338 election.* A purchasing corporation that makes a qualified stock purchase of an eligible entity taxed as a corporation may make an election under section 338 regarding the acquisition if it satisfies

the requirements for the election, and may also make an election to change the classification of the target corporation. If a taxpayer makes an election under section 338 regarding its acquisition of another entity taxable as a corporation and makes an election under paragraph (c) of this section for the acquired corporation (effective at the earliest possible date as provided by paragraph (c)(1)(iii) of this section), the transactions under paragraph (g) of this section are deemed to occur immediately after the deemed asset purchase by the new target corporation under section 338.

(iii) *Application to successive elections in tiered situations.* When elections under paragraph (c)(1)(i) of this section for a series of tiered entities are effective on the same date, the eligible entities may specify the order of the elections on Form 8832. If no order is specified for the elections, any transactions that are deemed to occur in this paragraph (g) as a result of the classification change will be treated as occurring first for the highest tier entity's classification change, then for the next highest tier entity's classification change, and so forth down the chain of entities until all the transactions under this paragraph (g) have occurred. For example, Parent, a corporation, wholly owns all of the interest of an eligible entity classified as an association (S1), which wholly owns another eligible entity classified as an association (S2), which wholly owns another eligible entity classified as an association (S3). Elections under paragraph (c)(1)(i) of this section are filed to classify S1, S2, and S3 each as disregarded as an entity separate from its owner effective on the same day. If no order is specified for the elections, the following transactions are deemed to occur under this paragraph (g) as a result of the elections, with each successive transaction occurring on the same day immediately after the preceding transaction S1 is treated as liquidating into Parent, then S2 is treated as liquidating into Parent, and finally S3 is treated as liquidating into Parent.

(4) *Effective date.* This paragraph (g) applies to elections that are filed on or after November 29, 1999. Taxpayers may apply this paragraph (g) retroactively to elections filed before November 29, 1999 if all taxpayers affected by the deemed transactions file consistently with this paragraph (g).

(h) *Effective date*—(1) *In general.* Except as otherwise provided in this section, the rules of this section are applicable as of January 1, 1997.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 2, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–30504 Filed 11–26–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05–99–094]

RIN 2115–AA97

Safety Zone; Chesapeake Bay, Whitehall Bay, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone covering all waters within a 2,000 foot radius of each of three Very Low Frequency (VLF) towers located between Greenbury Point and Possum Point, near Annapolis, Maryland. Potts and Callahan, Inc. will be demolishing the three towers with explosives. This safety zone is intended to restrict maritime traffic in order to protect mariners from the hazards associated with the demolition.

DATES: This rule is effective from 10 a.m. to 12 p.m. Eastern Standard Time on December 3, 1999, and on December 5, 1999.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 05–99–094 and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Ron Houck, Port Safety and Security Section, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with the requirements of 5 U.S.C. 553(B), the Coast Guard finds that good cause exists for not publishing a NRPM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We were not notified of the date of the planned demolition until October 20, 1999. There was not sufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the effective date of this regulation would be contrary to the public interest because action is needed to safeguard mariners during the demolition.

Background and Purpose

Potts and Callahan, Inc. notified us of the planned removal of the Very Low Frequency (VLF) radio towers and array for the U.S. Naval Academy. On December 3, 1999, Potts and Callahan, Inc. will demolish, with explosives, three Very Low Frequency (VLF) towers and array located between Greenbury Point and Possum Point, near Annapolis, Maryland. December 5, 1999 has been designated as an alternate date, if inclement weather precludes demolition on December 3, 1999. The demolition will use 200 pounds of explosives in the form of linear shape charges. Due to the need for vessel control during the demolition, maritime traffic will be temporarily restricted to provide for the safety of transiting vessels.

Regulatory Evaluation

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, l979). This regulation affects a limited area for a limited time and advance notice will allow mariners to plan their transit around the scheduled event.

Small Entities

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the affected area from 10 a.m. to 12 p.m. on December 3, 1999. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The demolition of the radio towers will only take two hours, the area affected is small, and vessel traffic can pass safely around the safety zone. Therefore, Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this rule on State, local, and tribal governments, in the aggregate, and the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1532) because it will not result in the expenditure of $100,000,000 in any one year by State, local, or tribal governments, in the aggregate, or the private sector.

Collection of Information

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

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final rule does not have implications for federalism under that Order.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this temporary final rule is categorically excluded from further environmental documentation. This regulation will have no impact on the environment.

List of Subjects

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.T05–094 to read as follows:

§ 165.T05–094 Safety Zone; Chesapeake Bay, Whitehall Bay, Annapolis, MD.

(a) *Location.* The following area is a safety zone: All waters of the Chesapeake Bay and its tributaries within a 2,000 feet radius of the following three coordinates: Latitude 38°58′56″N, Longitude 076°26′58″W; Latitude 38°59′08″N, Longitude 076°26′49″W; and Latitude 38°59′18″N, Longitude 076°27′00″W; [NAD 1983]

(b) *Effective date.* This section is effective from 10 a.m. to 12 p.m., on December 3, 1999. If the demolition is postponed due to inclement weather, then this section is effective from 10 a.m. to 12 p.m. Eastern Standard Time on December 5, 1999.

(c) *Captain of the Port* means the Commanding Officer of Coast Guard Activities Baltimore, Baltimore, Maryland, or any Coast Guard Commissioned, Warrant or Petty Officer who has been authorized by the Captain of the Port to act on his behalf

(d) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones in 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port. The Coast Guard vessels enforcing the safety zone can be contacted on VHF-FM channels 13 and 16. The Captain of the Port can also be contacted by telephone at (410) 576–2520.

(3) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by the Captain of the Port.

(ii) Proceed only as directed by the Captain of the Port.

Dated: November 8, 1999.

C.L. Miller,

Captain, U.S. Coast Guard, Captain of the Port of Baltimore.

[FR Doc. 99–30882 Filed 11–26–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 011499B]

RIN 0648–AL56

Fisheries of the Northeastern United States; Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP; Correction

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

ACTION: Correction to a final rule.

SUMMARY: NMFS corrects a final rule for Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP that was published on October 26, 1999, that omitted several sentences from the regulations.

DATES: Effective November 26, 1999.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, Fishery Policy Analyst, 978–281–9221.

Need for Correction

In the final rule document, FR Doc. 99–27921, beginning on page 57587 in the issue of Tuesday, October 26, 1999, in § 648.5 several sentences were inadvertently removed from paragraphs of the section due to oversights in preparing the amendatory language. These deletions would remove requirements from the regulations that were not intended to be removed. Section 648.107 was incorrectly numbered and would unintentionally replace a previously published section. Therefore, that section is renumbered as § 648.108. Because of the renumbering, the references in §§ 648.127 and 648.147 are corrected by a nomenclature change.

Correction

Accordingly, the publication on October 26, 1999, of the final rule document (I.D. 011499B), which was the subject of FR Doc. 99–27921, is corrected as follows:

§ 648.5 [Corrected]

1. On page 57593, in the 1st column, in § 648.5, in paragraph (a), add to the

end the following two sentences, ''An operator permit issued pursuant to part 649 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.''

2. On page 57593, in the 1st column, in § 648.5, in paragraph (d), add to the end, the following sentence, ''The applicant must also provide two recent (no more than 1 year old), color, passport-size photographs.''

§ 648.107 [Corrected]

3. On page 57595, in the 1st column, revise amendatory instruction 13 and the section heading to read as follows:

13. Section 648.108 is added under Subpart G to read as follows:

§ 648.108 Framework adjustments to management measures.

* * * * *

4. On page 57595, in the 2nd and 3rd columns, in § 648.127(a) and (a)(1) through (a)(4), the reference to ''648.107'' should read ''648.108'' each time it appears.

5. On page 57595, in the 3rd column, in § 648.147(a) and (a)(1) through (a)(4), the reference to ''648.107'' should read ''648.108'' each time it appears.

Dated: November 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–30914 Filed 11–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990226056–9213–02; I.D. 122498C]

RIN 0648–AL31

Northeast Multispecies Fishery; Amendment 9 to the Northeast Multispecies Fishery Management Plan; Correction

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

ACTION: Final rule; correction.

SUMMARY: The final rule to implement measures contained in Amendment 9 to the Northeast Multispecies Fishery Management Plan (FMP) was published on Friday, October 15, 1999. The final rule contained an error in the numbering of a paragraph related to vessel and individual commercial permits. This document corrects the error.

DATES: Effective November 15, 1999.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 978–281–9221 or e-mail at regina.l.spallone@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The final rule to implement measures contained in Amendment 9 to the Northeast Multispecies FMP was published on October 15, 1999 (64 FR 55821). In § 648.4 of the final rule, amendatory instruction 3 indicated that paragraph (c)(2)(iii)(A) was revised. This amendatory instruction should have indicated that paragraph (c)(2)(iii) was revised. This correction to the final rule corrects the error contained in the October 15, 1999, final rule. Amendatory instruction 3 and the related regulatory text is reprinted in its entirety to avoid any confusion on the part of the reader.

Correction

Accordingly, the publication on October 15, 1999, of the final rule to implement Amendment 9 to the Northeast Multispecies FMP (I.D. 122498C), which was the subject of document FR Doc. 99–26839, is corrected as follows:

On page 55825, second column, amendatory instruction 3 and the numbering of the regulatory text are corrected to read as follows:

3. In § 648.4, paragraph (c)(2)(iii) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

* * * * *

(c) * * *

(2) * * *

(iii) An application for a limited access multispecies permit must also contain the following information: For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day gillnet designation must indicate the number of gillnet tags that he/she is requesting and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel informing him/her of the costs associated with this tagging requirement and directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

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

Dated: November 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–30912 Filed 11–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone off Alaska

CFR Correction

In Title 50 of the Code of Federal Regulations, part 600 to End, revised as of October 1, 1998, § 679.21 is corrected in paragraph (d)(3)(i) by revising ''Aftny'' to read ''After'' and reinstating the following text between the words ''After'' and ''weekly''.

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(3) * * *

(i) *Notification.* After consultation with the Council, NMFS will publish notification in the **Federal Register** specifying the proposed halibut PSC limit for vessels using trawl gear.

(ii) *Bycatch allowance.* The halibut PSC limit specified for vessels using trawl gear may be further apportioned as bycatch allowances to the fishery categories listed in paragraph (d)(3)(iii) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (d).

(iii) *Trawl fishery categories.* For purposes of apportioning the trawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round–weight equivalents of these GOA groundfish species for which a TAC has been specified under § 679.20:

(A) *Shallow–water species fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate catch of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species'' that is greater than the retained aggregate amount of other GOA groundfish species or species group.

(B) *Deep–water species fishery.* Fishing with trawl gear during any * * * .

[FR Doc. 99–55539 Filed 11–26– 99; 8:45 am]

BILLING CODE 1505-01-p

Proposed Rules

Federal Register
Vol. 64, No. 228
Monday, November 29, 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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2430

Amendment of Equal Access to Justice Act Attorney Fees Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Proposed rule.

SUMMARY: The Federal Labor Relations Authority (FLRA) proposes to amend its regulations implementing the Equal Access to Justice Act (EAJA) by adopting a cost of living adjustment to the maximum rate for the calculation of attorney fees permitted under the EAJA. Specifically, the FLRA proposes to use the Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, U.S. City Average, All Items to create an inflation-based adjustment to the statutory cap on attorney fees. The FLRA also proposes modifying the rules to allow an applicant to request an increase to the maximum fees rate based on special factors.

DATES: Comments must be received on or before January 13, 2000.

ADDRESSES: Mail or deliver written comments to the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW, Room 415, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW, Washington, DC 20424–0001, or by telephone at (202) 482–6540.

SUPPLEMENTARY INFORMATION: The EAJA, 5 U.S.C. 504(b)(1)(A) (1994 & Supp. III 1997), provides that an agency may not award attorney fees in excess of $125 per hour (or $75 for proceedings commenced prior to March 29, 1996), unless the agency determines by regulation that a higher fee is justified by (1) an increase in the cost of living or (2) some special factor. In a recent decision, 55 FLRA (No. 72) 444 (Apr. 30, 1999), responding to petitions requesting an adjustment to the EAJA fees cap, the FLRA announced its intention to engage in the instant rulemaking to consider appropriate criteria for increasing the maximum rate based on cost of living and other special factors. The FLRA also announced in that decision its intention to amend its regulations implementing the EAJA to permit recovery, in conjunction with adversary adjudications commenced on or after March 29, 1996, of attorney fees not to exceed $125.00 per hour. This was accomplished through the promulgation of the final rule published at 64 FR 30861 (Jun. 9, 1999).

Cost of Living

The FLRA proposes to allow for an increase in the maximum EAJA attorney fees rate based on cost of living increases. For guidance in this regard, the FLRA has looked to the National Transportation Safety Board's EAJA regulations, 49 CFR part 826, and its statement in its proposed rulemaking regarding the cost of living adjustment to the statutory cap (57 FR 60785) (Dec. 22, 1992). The FLRA proposes an inflation-based adjustment to the statutory cap based on the Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (CPI–U). This CPI–U is the generally understood ''cost of living'' index that is widely used as a price inflator in labor and contract matters.

To determine the appropriate attorney fees rate, adjusted for cost of living, the statutory cap ($125 or $75) is multiplied by an inflation factor. The inflation factor is the CPI–U for the year that legal services were rendered divided by the CPI–U for the base year. Phrased as a formula, the calculation is:

$$\frac{\text{CPI-U-Year of Service}}{\text{CPI-U-Base Year}} \times \$125 \text{ (or } \$75) / \text{hr} = \text{Adjusted Rate}$$

The base year for calculations premised on the $75 statutory cap is 1981. The base year for calculations premised on the $125 statutory cap is 1995.

To illustrate how the calculation works, two examples are provided.

Example 1: The maximum rate for attorney fees for services provided in 1993 is $119/hr, based on the following calculation:

$$\text{Adjusted Rate} = \frac{144.5 \ \ (\text{CPI-U-1993})}{90.9 \ \ \ (\text{CPI-U-1981})} \times \$75 / \text{hr}$$

Example 2: The maximum rate for attorney fees for services provided in 1997 is $132, based on the following calculation:

$$\text{Adjusted Rate} = \frac{160.5 \ (\text{CPI-U-1997})}{152.4 \ (\text{CPI-U-1995})} \times \$125 / \text{hr}$$

The FLRA seeks comments and suggestions concerning its proposed method of adjusting the statutory fee cap.

Other Specific Factors

The FLRA is seeking comment on whether to also amend its EAJA regulations to allow for an adjustment to the statutory fees cap based on ''special factors.'' We note that the Federal Mine Safety and Health Review Commission has recently amended its regulations to allow fee increases based on special factors, 61 FR 66961 (Nov. 12, 1998).

The EAJA, 5 U.S.C. 504(b)(1)(A), lists as a special factor the ''limited availability of attorneys qualified to handle certain types of proceedings.'' This phrase refers to a narrow category of attorneys who have ''some distinctive knowledge or specialized skill'' such as those who practice patent law. *Pierce* v. *Underwood*, 487 U.S. 552, 572 (1988). Without specifying what other special factors may exist, the Supreme Court noted that they ''must be such as are not of broad and general application.'' *Id.* at 573.

The FLRA reiterates that it is unclear whether expertise in administrative practice before the FLRA qualifies as a ''special factor.'' *See* 55 FLRA at 448 n.4 (citing *F.J. Vollmer Co., Inc.* v. *Magaw*, 102 F.3d 591, 598–99 (D.C. Cir. 1994); *Waterman Steamship Corp.* v. *Maritime Subsidy Bd.*, 901 F.2d 1119, 1124 (D.C. Cir. 1990)).

The FLRA proposes revising § 2430.5 to provide that requests for special factor increases in fees are submitted to the administrative law judge assigned to the matter, and thereafter subject to Authority review. The FLRA asks commentators to address two questions. First, is it appropriate to establish a regulation allowing for increases due to special factors? Second, assuming that such a regulation is established, what, if any, specific criteria should the regulation set out to be considered in analyzing a request for such an increase? As currently proposed, the regulation does not list any specific criteria.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant economic impact on a substantial number of small entities, because this rule applies to Federal employees, Federal agencies, and labor organizations representing Federal employees.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulation contains no additional information collection or record keeping requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2430

Administrative practice and procedure, Equal access to justice, Government employees, Labor-management relations.

For the reasons stated in the preamble, the FLRA amends 5 CFR part 2430 as follows:

PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES

1. The authority citation for part 2430 is revised to read as follows:

Authority: 5 U.S.C. 504.

2. Revise § 2430.4(a) to read as follows:

§ 2430.4 Allowable fees and expenses.

(a)(1)(i) No award for the fee of an attorney or agent under these rules may exceed $125.00 per hour, or for adversary adjudications commenced prior to March 29, 1996, $75.00 per hour, indexed to reflect cost of living increases as follows:

$$\frac{\text{CPI-U-Year of Service}}{\text{CPI-U-Base Year}} \times \$125 \text{ (or } \$75) \text{ / hr} = \text{Adjusted Rate}$$

(ii) The cost of living index to be used is the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (CPI–U). If legal services are provided during more than one year, each year shall be calculated separately. If an annual average CPI–U for a particular year is not yet available, the prior year's annual average CPI–U shall be used.

(2) No award to compensate an expert witness may exceed the highest rate that the Authority pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

* * * * *

3. Revise § 2430.5 to read as follows:

§ 2430.5 Rulemaking on maximum rates for attorney fees.

If warranted by special factors, attorney fees may be awarded at a rate higher than that established in § 2430.4. Any such increase in the rate for attorney fees shall be made only upon a petition submitted by the applicant, pursuant to § 2430.6. Determinations regarding fee adjustments are subject to Authority review as specified in § 2430.13.

Dated: November 23, 1999.

Solly Thomas,

Executive Director.

[FR Doc. 99–30897 Filed 11–26–99; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Ch. I

[Docket No. OST–1996–1880]

Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of postponement of meeting.

SUMMARY: In a document published in the **Federal Register**, the Department announced its intention to convene a public meeting on November 30, 1999, to discuss the possibility of commencing a rulemaking to require certain additional accommodations for deaf and hard-of-hearing air travelers under the Air Carrier Access Act of 1986. This notice announces the postponement of that meeting until January 18, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, by phone at (202) 366–9310 (voice) or (202) 755–7687 (TTY), or email at bob.ashby@ost.dot.gov.

SUPPLEMENTARY INFORMATION: The Department finds it necessary at this time to postpone the meeting it announced in its November 19, 1999, **Federal Register** notice. 64 FR 63279, November 19, 1999. Some key participants informed us that they would be better able to make informed presentations at a later date, and others were unavailable on the originally scheduled date. The Department continues to place the highest priority on making air travel accessible to deaf and hard-of-hearing persons. The Department has rescheduled the meeting for January 18, 2000.

Issued in Washington, DC, on November 23, 1999.

Robert C. Ashby,

Deputy Assistant General Counsel for Regulation and Enforcement.

[FR Doc. 99–31080 Filed 11–26–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105162–97]

RIN 1545–AV16

Special Basis Rules for Transfer of Property by a Partnership to a Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of proposed regulations.

SUMMARY: This document partially withdraws certain proposed regulations relating to special basis adjustments under section 743. The withdrawal is in response to the publication of subsequent proposed regulations (REG–209682–94) addressing the same subject matter.

FOR FURTHER INFORMATION CONTACT: Daniel Carmody at (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1997, the IRS published in the **Federal Register** (62 FR 55768) proposed regulations under section 743 of the Internal Revenue Code (the proposed regulations). Section 1.743–2 of the proposed regulations addresses the effect of the special basis adjustment under section 743 for partnerships that participate in section 351 exchanges. This issue is addressed in the proposed regulations published in the **Federal Register** on January 29, 1998 (63 FR 4408), which contain general guidance on basis adjustments under section 743. Therefore, this document withdraws § 1.743–2 of the proposed regulations published in the **Federal Register** on October 28, 1997 (62 FR 55768).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, proposed amendments to 26 CFR part 1 relating to § 1.743–2 are withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–30506 Filed 11–26–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–110385–99]

RIN–1545–AX39

Changes in Entity Classification: Special Rule for Certain Foreign Eligible Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations addressing certain transactions that occur within a specified period of time before or after a change in entity classification. The proposed regulations prevent, in limited circumstances, the use of changes in entity classification to alter a taxpayer's Federal tax consequences. Under these regulations, a change in classification by a foreign eligible entity that was originally classified as an association taxable as a corporation (and, but for this regulation, would be classified as an entity disregarded as an entity separate from its owner) will be invalidated in certain limited circumstances. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by February 28, 2000. Requests to speak (with outlines of oral comments) at the public hearing scheduled for January 31, 2000, must be submitted by January 10, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–110385–99), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–110385–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax__regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mark D. Harris, (202) 622–3860 (not a toll-free number); concerning submissions and the hearing, LaNita VanDyke, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the current Procedure and Administration Regulations (26 CFR Part 301) relating to the classification of entities for Federal tax purposes. On December 18, 1996, the IRS and the Treasury Department published final regulations (61 FR 66584) relating to the classification of business organizations under section 7701. The regulations (the check-the-box regulations) replaced the increasingly formalistic entity classification rules with a simpler, elective regime. The new rules were

designed to ease administrative burdens for taxpayers and the government. They were not, however, intended to change the application of substantive Internal Revenue Code (Code) provisions.

In the preamble to the check-the-box regulations, the IRS and Treasury expressed concern about potential improper uses of the check-the-box regulations involving partnerships:

> [I]n light of the increased flexibility under an elective regime for the creation of organizations classified as partnerships, Treasury and the IRS will continue to monitor carefully the uses of partnerships in the international context and will take appropriate action when partnerships are used to achieve results that are inconsistent with the policies and rules of particular Code provisions or of U.S. tax treaties.

On October 28, 1997, the IRS and Treasury issued a notice of proposed rulemaking (62 FR 55768) under section 7701. These regulations specify the tax consequences resulting from an election to change the Federal tax classification of an eligible entity (the conversion regulations). The conversion regulations also provide that the tax consequences of an elective change in the classification of an entity for Federal tax purposes are determined under all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine. Those final regulations are issued elsewhere in this issue of the **Federal Register**.

As indicated in the preamble to the check-the-box regulations, the IRS and Treasury have been monitoring the manner in which taxpayers have used the check-the-box regulations since their enactment. The focus has been to determine whether taxpayers use the regulations in a manner inconsistent with the application of any Code provisions, and, if so, what, if any, action is appropriate. The preamble to the check-the-box regulations cited the use of partnerships as a primary concern. However, it has become apparent to the IRS and Treasury that taxpayers may attempt to use entities that are disregarded as entities separate from their owners (disregarded entities), in addition to partnerships, to achieve results, in relation to certain transactions, that are inconsistent with the policies and rules of particular Code sections or tax treaties. These regulations are intended to address inappropriate Federal tax consequences that would otherwise result from certain of these transactions under a number of international provisions of the Code. These provisions include the rules governing source of income under sections 861 through 865, foreign tax credit limitation categories under section 904, the disposition of ownership interests under Subpart F (sections 951 through 964), and outbound transfers under section 367 (in this last case, leading to a different result than that outlined in the example in the preamble to the section 367(a) regulations (63 FR 33550)).

The IRS and Treasury considered several responses to these transactions and determined that a special rule completely revoking the entity's classification as a disregarded entity was the most equitable and administrable approach. Of the responses considered, the IRS and Treasury believe that this approach also gives the greatest certainty to all parties involved in the transactions covered by this rule.

Explanation of Provisions

This special rule is limited in scope. It only applies to ''extraordinary transactions'' (such as sales of a part or whole interest) that occur within a period commencing one day before and ending 12 months after the date that a foreign eligible entity changed its classification to disregarded entity status, provided that the entity had been classified as an association taxable as a corporation within the 12-month period prior to the extraordinary transaction. The rule also applies to certain ''shelf'' entities that might be used in an attempt to circumvent the 12-month rule. In these cases, the entity would not be treated as a disregarded entity, and instead would be classified as an association taxable as a corporation for all purposes. The regulations provide rules specifying from what date this classification as an association taxable as a corporation will be applicable. Examples of these provisions are included in the regulations.

This special rule will not apply to an extraordinary transaction if a taxpayer establishes to the satisfaction of the Commissioner that the classification as a disregarded entity does not materially alter the Federal tax consequences of the extraordinary transaction.

The IRS and Treasury do not intend that this regulation will invalidate an entity classification election in the absence of a separate extraordinary transaction, even though the deemed consequences of such election under the conversion regulations may constitute an extraordinary transaction. In the preamble to the conversion regulations, however, the IRS and Treasury requested comments on the appropriate tax consequences of an entity classification election made by a foreign eligible entity that is not relevant for Federal tax purposes (*e.g.*, with respect to the basis of property or earnings and profits of the entity). No comments have been received. The IRS and Treasury continue to study and solicit comments on this important issue and are considering whether, in certain circumstances, the election, combined with another event whereby the entity becomes relevant, should be considered to be inappropriate and, therefore, invalid under these regulations.

If an entity made a classification election pursuant to § 301.7701–3(c) to be disregarded, and that election was considered a change in classification, that entity would normally be subject to the 60-month limitation on elections under § 301.7701–3(c)(1)(iv). However, if that classification election under § 301.7701–3(c) is invalid under this regulation, then the election to be a disregarded entity shall not constitute an election for all Federal tax purposes, including the limitation on elections under § 301.7701–3(c)(1)(iv).

These regulations do not prevent the Commissioner from applying all applicable common law doctrines to any extraordinary transaction to which this rule applies, in any administrative or judicial proceeding (and create no inference as to the treatment of such transactions occurring prior to the effective date of these regulations). Conversely, the Commissioner may also provide administrative relief from these regulations by published guidance.

The IRS and Treasury will continue to monitor potentially improper uses of the check-the-box regulations involving partnerships and disregarded entities, and will take appropriate action when such uses achieve results that are inconsistent with the policies and rules of particular Code provisions or of U.S. tax treaties.

This special rule does not apply to the transactions described in the proposed regulations on hybrid branch transactions published in the **Federal Register** on July 13, 1999 (64 FR 37727), issued pursuant to Notice 98–35 (1998–27 IRB 35). These proposed regulations apply only to dispositions of interests in disregarded entities in extraordinary transactions.

The IRS and Treasury request comments with respect to the special rule contained herein. In particular, the IRS and Treasury request comments on the specific types of transactions which should be excluded from the application of the special rule. When this proposed regulation is finalized, the IRS and Treasury intend to issue guidance that will identify specific transactions that will be excluded from the application of this special rule.

Grandfathered Foreign Per Se Entities

The check-the-box regulations allowed for certain corporations under § 301.7701–2(b)(8)(i) to be treated as partnerships if certain conditions enumerated in § 301.7701–2(d)(1) were satisfied. However, upon the occurrence of certain events, such an entity's ''grandfathered status'' could be terminated. See § 301.7701–2(d)(3)(i). The IRS and Treasury are concerned that taxpayers have been trafficking in these types of entities. Accordingly, these proposed regulations would add a new provision to § 301.7701–2(d)(3)(i) which terminates an entity's ''grandfather status'' when one or more persons, who were not owners of the entity as of November 29, 1999, become owners of 50 percent or more of the interests in the entity.

Relevance

The check-the-box regulations provide a special rule when the Federal tax classification of a foreign eligible entity is no longer relevant. The rule states that if the classification of a foreign eligible entity which was previously relevant for Federal tax purposes ceases to be relevant for sixty consecutive months, the entity's classification will initially be determined under the default classification when the classification of the foreign eligible entity again becomes relevant (hereinafter 60-month rule). Several practitioners have requested guidance on whether the act of filing an entity classification election (Form 8832, Entity Classification Election) causes an entity to be relevant for purposes of the 60-month rule. Practitioners also have requested clarification regarding whether a newly formed foreign eligible entity, that has never been relevant, is subject to the 60-month rule.

These proposed regulations provide that if a foreign eligible entity files an entity classification election, it is considered relevant on the effective date of the election for purposes of the 60-month rule. However, if the foreign eligible entity is otherwise not relevant within the meaning of § 301.7701–3(d)(1)(i), then for purposes of applying the 60-month rule the entity will be considered to be not relevant on the day after the date the entity classification election was effective.

The preamble to the conversion regulations stated that a foreign eligible entity that is not relevant has a Federal tax classification. The proposed regulations clarify that such an entity is subject to the 60-month rule. However, the proposed regulations provide an exception for a foreign eligible entity that was never relevant (within the meaning of § 301.7701–3(d)(1)) during its existence. Such entity's classification will initially be determined pursuant to the provisions of § 301.7701–3(b)(2) when the entity first becomes relevant.

Proposed Effective Date

Except as otherwise specified, these regulations are proposed to apply as of the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed regulation and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 31, 2000, beginning at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic by (preferably a signed original and eight (8) copies) January 10, 2000. However, comments not to be presented at the hearing must be submitted by February 28, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Mark D. Harris, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Par. 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7701–2 is amended by:

1. Removing the language ''or'' at the end of paragraph (d)(3)(i)(B).
2. Removing the period at the end of paragraph (d)(3)(i)(C) and adding ''; or'' in its place.
3. Adding paragraph (d)(3)(i)(D).
4. Adding a sentence at the end of paragraph (e).

The additions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(d) * * *

(3) * * *

(i) * * *

(D) The date any person or persons, who were not owners of the entity as of November 29, 1999, own in the aggregate a 50 percent or greater interest in the entity.

* * * * *

(e) *Effective date.* * * * However, paragraph (d)(3)(i)(D) of this section applies on or after the date final regulations are published in the **Federal Register**.

Par. 3. Section 301.7701–3 is amended as follows:

1. The text of paragraph (d)(1) following the paragraph heading is

redesignated as paragraph (d)(1)(i), and a paragraph heading is added for paragraph (d)(1)(i).

2. Paragraph (d)(1)(ii) is added.

3. Paragraph (d)(2) is revised.

4. Paragraphs (d)(3) and (d)(4) are added.

5. Paragraph (h) is redesignated as paragraph (i).

6. A new paragraph (h) is added.

The revision and addition reads as follows:

§ 301.7701–3 Classification of certain business entities.

* * * * *

(d) *Special rules for foreign eligible entities*—(1) *Definition of relevance*—(i) *General rule.* * * *

(ii) *Deemed relevance*—(A) *General rule.* For purposes of this section, except as provided in paragraph (d)(1)(ii)(B) of this section, a foreign eligible entity that files Form 8832 (Entity Classification Election) shall be deemed to be relevant only on the date the entity classification election is effective.

(B) *Exception.* If a foreign eligible entity is relevant within the meaning of paragraph (d)(1)(i) of this section, then the rule in paragraph (d)(1)(ii)(A) of this section shall not apply.

(2) *Entities that were never relevant.* If a foreign eligible entity's Federal tax classification has never been relevant (as defined in paragraph (d)(1) of this section), then the entity's classification will initially be determined pursuant to the provisions of paragraph (b)(2) of this section when the entity first becomes relevant (as defined in paragraph (d)(1)(i) of this section).

(3) *Special rule when classification is no longer relevant.* If the classification of a foreign eligible entity is not relevant for sixty consecutive months, the entity's classification will initially be determined under the default classification when the classification of the foreign eligible entity becomes relevant. The date that the classification of a foreign entity is not relevant is the date an event occurs that causes the classification to no longer be relevant, or, if no event occurs in a taxable year that causes the classification to be relevant, then the date is the first day of that taxable year.

(4) *Effective date.* Paragraphs (d)(1)(ii), (d)(2), and (d)(3) of this section apply on or after the date final regulations are published in the **Federal Register**.

* * * * *

(h) *Special rule when foreign entities that are disregarded as entities separate from their owner are used in an extraordinary transaction*—(1) *General rule*—(i) *When an eligible entity becomes disregarded as an entity separate from its owner.* Notwithstanding any other provision of this section, a foreign eligible entity classified as an entity that is disregarded as an entity separate from its owner, will instead be classified as an association taxable as a corporation, if—

(A) A 10-percent or greater interest in the foreign eligible entity is sold, exchanged, transferred or otherwise disposed of in one or more transactions (collectively, extraordinary transactions) that occur (or are treated as occurring) in the period commencing one day before and ending 12 months after the effective date of that foreign eligible entity's change in classification to an entity that is disregarded as an entity separate from its owner; and

(B) The foreign eligible entity was previously classified as an association taxable as a corporation at any time within the 12-month period prior to the date of the commencement of the extraordinary transaction.

(ii) *Period of reclassification.* If paragraph (h)(1)(i) of this section applies, the foreign eligible entity shall be treated as an association taxable as a corporation (and no intervening Federal tax classification will be valid) from and including the date that the foreign eligible entity ceased to be classified as an association taxable as a corporation.

(2) *Shelf entities*—(i) *Acquisition of assets from another entity.* A foreign eligible entity, classified as an entity that is disregarded as an entity separate from its owner, will instead be classified as an association taxable as a corporation, if—

(A) It acquires the assets of one or more foreign business entities (which were classified as associations taxable as corporations at any time within the 12-month period prior to the date of the commencement of the extraordinary transaction) in a transaction or series of related transactions in which gain or loss is not recognized (for Federal tax purposes), in whole or in part (acquisition transaction);

(B) After the acquisition transaction (or transactions), the acquired assets comprise more than 80 percent of the value of the assets of the entity that is disregarded as an entity separate from its owner; and

(C) Such entity is subsequently involved in an extraordinary transaction within 12 months of the date on which the acquisition transaction (or the last of such transactions) is completed.

(ii) *Calculation of value of entities.* For purposes of calculating the ratio of assets under paragraph (h)(2)(i)(B) of this section, cash and marketable securities of an entity shall not be included to the extent that the cash and marketable securities exceed the reasonable needs of that entity's business.

(iii) *Period of reclassification.* If paragraph (h)(2)(i) of this section applies, the foreign eligible entity shall be treated as an association taxable as a corporation from and including the date of the acquisition transaction, or, if the acquisition transaction involves a series of related transactions, the date of the last of such transactions.

(3) *Exception.* The rules in paragraphs (h)(1) and (2) of this section will not apply to an extraordinary transaction if a taxpayer establishes to the satisfaction of the Commissioner that the classification as an entity that is disregarded as an entity separate from its owner does not materially alter the Federal tax consequences of the extraordinary transaction. The Commissioner may also provide exceptions to paragraphs (h)(1) and (2) of this section by published guidance (see § 601.601(d)(2) of this chapter).

(4) **Examples.** The following examples illustrate the rules of this paragraph (h). These examples assume that all foreign entities (FC) are eligible entities that are classified as associations taxable as corporations, and all U.S. entities (P) are corporations, unless otherwise specified. The examples are as follows:

Example 1. (i) *Facts.* P owns 100 percent of FC1. P plans to sell FC1. An entity classification election under paragraph (c) of this section is made for FC1 such that FC1 is now classified as an entity disregarded as an entity separate from its owner (P). P sells FC1 to an unrelated third party within 12 months of the effective date of the entity classification election.

(ii) *Result.* The sale of FC1, an entity that is disregarded as an entity separate from its owner which was previously classified as an association taxable as a corporation, is an extraordinary transaction, and because it occurred within 12 months of the effective date of the entity classification election, it is subject to the rule of paragraph (h)(1) of this section. Under paragraph (h)(1) of this section, the entity classification election to treat FC1 as an entity that is disregarded as an entity separate from its owner is invalid, and FC1 remains classified as an association taxable as a corporation as if there had been no election to be disregarded as an entity separate from its owner. Therefore, P is taxed as if it sold the stock of FC1, and not the assets of FC1.

Example 2. (i) *Facts.* The facts are the same as *Example 1*, except that an entity classification election is not made for FC1. P wishes to avoid the result in *Example 1*, and not be subject to paragraph (h)(1) of this section. P had formed FC2 two years before the date of the extraordinary transaction. At that time, P had elected for FC2 to be treated as an entity that is disregarded as an entity separate from P. Since that time, FC2 has

conducted no business activities and has held no assets. P causes FC1 to merge into FC2 (under foreign law), with FC2 surviving, in a transaction in which gain or loss is not recognized for Federal tax purposes. On the same day, P sells FC2 to an unrelated third party.

(ii) *Result*. The sale of FC2 is an extraordinary transaction. Furthermore, despite the fact that FC2 was formed two years before the date of the extraordinary transaction, paragraph (h)(2) of this section treats FC2 as an association taxable as a corporation. This is because more than 80 percent of FC2's post-merger assets were acquired from FC1. Thus, the extraordinary transaction is subject to the rule of paragraph (h)(2) of this section, and has the same result as *Example 1*.

(5) *Effective date*. This paragraph (h) applies on or after the date final regulations are published in the **Federal Register**.

* * * * *

C.O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 99–30505 Filed 11–26–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Negotiated Rulemaking Advisory Committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC). Notice is also given of the location of the meeting. This meeting will be open to the public.

DATES: The meeting is scheduled for December 16th, 1999. The meeting will begin at 8:00 a.m. on December 16th.

ADDRESSES: The meeting will be held at the Hyatt Regency Washington—400 New Jersey Avenue, NW, Washington, D.C. 20001; Telephone (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington DC 20210, (202) 693–1999.

SUPPLEMENTARY INFORMATION: On May 11, 1994, OSHA established the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC)(59 FR 24389) in accordance with the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act of 1990 (NRA) and section 7(b) of the Occupational Safety and Health Act (OSH Act). OSHA appointed representatives from labor, industry, public interests and government agencies to the Committee.

SENRAC began negotiations in mid June, 1994, and met eleven times over an 18-month period. On December 1, 1995, SENRAC agreed on a recommended regulatory text for a revised steel erection standard. In its Notice of Proposed Rulemaking (NPRM), OSHA based its proposed regulatory text on the Committee's recommendations. In addition, the NPRM included a summary and explanation of the provisions, set out the legal tests that OSHA standards must meet and solicited public comments and evidence on the proposed rule. In addition, OSHA asked the public for comments and evidence on specific issues related to the Committee's recommendations. The Committee approved OSHA's NPRM on July 24, 1997. At that time, OSHA stated that it would consult with the Committee prior to the issuance of the final standard.

OSHA's proposed rule for steel erection was published in the **Federal Register** on August 13, 1998. OSHA received 367 sets of comments in response to the notice. A public hearing was held from December 1, 1998, through December 11, 1998, in Washington, DC. Approximately 50 individuals/panels provided testimony on various topics in the proposed rule. Interest was expressed on a number of issues, including controlling contractors, fall protection, providing bolt holes in joists over 40′, controlled decking zones, the scope of subpart R and slippery surfaces (both structural steel and decking). OSHA received 55 comments during the post-hearing comment period that ended April 12, 1999.

Now, the Agency has completed an analysis of the record evidence and has developed a draft final steel erection standard. OSHA is convening this meeting for the purposes of consulting with the SENRAC Committee prior to the issuance of the final standard.

All interested parties are invited to attend the Committee meeting at the time and place indicated above. No advanced registration is required. Seating will be available to the public on a first-come, first-served basis. Persons with disabilities who need special accommodations should contact the Facilitator by December 9, 1999.

During the meeting members of the general public may informally request permission to address the Committee.

After the meeting, minutes of the meeting and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N–2625, 200 Constitution Ave., NW, Washington, DC 20210; telephone (202) 693–2350. Copies of these materials may be obtained by sending a written request to the Facilitator.

The Facilitator, Philip J. Harter, can be reached at Suite 404, 2301 M Street, NW, Washington, DC 20037; telephone (202) 887–1033, FAX (202) 887–1036.

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, pursuant to section 3 of the Negotiated Rulemaking Act of 1990 (104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*); and Section 7(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1597, Title 29 U.S.C. 656).

Signed at Washington, DC, this 18th day of November, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–30822 Filed 11–26–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–126–FOR]

Pennsylvania Regulatory Program

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

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

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Pennsylvania regulatory program (Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment revises certain portions of 25 Pennsylvania Code Chapter 86, Surface and Underground Mining: General, pertaining to ownership and control, bonding, civil penalties and areas unsuitable for mining. The amendments are intended to revise the Pennsylvania program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received on or before 4 p.m. on

December 29, 1999. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on December 27, 1999. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on December 14, 1999.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking (or administrative) record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking (or administrative) record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center (Amtrack), 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation, 400 Market Street, P.O. Box 8476, Harrisburg, Pennsylvania 17101, Telephone: (717) 783–2267.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 **Federal Register** (47 FR 33079). Subsequent actions concerning the regulatory program amendments are identified at 30 CFR 938.15.

II. Discussion of the Proposed Amendment

By letter dated November 2, 1999 (Administrative Record No. PA–845.02), the Pennsylvania Department of Environmental Protection (PADEP) submitted a proposed amendment to its program pertaining to ownership and control, bonding, civil penalties and areas unsuitable for mining.

PADEP proposes to amend certain provisions of 25 Pennsylvania Code Chapter 86, Surface and Underground Coal Mining: General, as follows:

Section 86.1. Definitions

1. Owned or controlled or owns or controls. PADEP proposes to change this terminology by substituting the word ''and'' for the second ''or'' so it now reads—Owned or controlled and owns or controls. PADEP also proposes to modify subparagraph (iii)(E) by deleting the specified percentages of 10–50% and including a reference to percentages in the Federal regulations instead.

2. Related party. PADEP proposes to exclude from this definition persons who are excluded as owners or controllers based on a percentage of ownership under the definition of ''owned or controlled and owns or controls'.

3. Willful Violation. PADEP proposes to add this definition which states that a willful violation is an act or omission which violates the acts, this chapter, Chapter 87, 88, 89, or 90, or a permit condition required by them, committed by a person who intends the result which actually occurs.

Section 86.124(a)(6) Areas Unsuitable for Mining

PADEP proposes to remove language allowing petitions for unsuitability to be submitted after an administratively complete surface mining permit has been filed and the first newspaper notice has been published. PADEP also proposes to add a statement that the Department will provide written notice to the petitioner with a statement of its findings.

Section 86.152(d) Adjustments (Bond Amount)

PADEP proposes to add section (d) to require notification of proposed adjustments to bond amounts to the permittee, the surety and any person with a property interest in collateral who have requested such notification. The proposed rule also adds language providing the permittee an opportunity for informal conference on the adjustment.

Section 86.156 Form of the Bond

PADEP proposes to add a self bond to the type of bonds the Department may accept in new subsection (3). Existing subsection (3) is re-numbered as (4) and modified to substitute the term ''bonding instruments'' for surety and collateral bonds and bond. Existing subsections (4) and (5) are re-numbered as (5) and (6), respectively.

Section 86.160 Combination of Bonding Instruments

PADEP proposes to change the title of this section from ''Surety/collateral combination bond'' to that above, and to further modify the section to include self bonds as part of the combination of bonds that may be accepted.

Section 86.171 Procedures for Seeking Release of Bond

PADEP proposes to add a phrase to this section that requires the Department to inspect a site for bond release within 30 days or as soon thereafter as weather conditions permit.

Section 86.182 Procedures

PADEP proposes to add new subsection (a) which requires the Department to notify the permittee and surety of its intent to forfeit the bond. Existing subsections regarding bond forfeiture currently lettered as (a) through (g) are re-lettered as (b) through (h) without modification.

Section 86.193 Assessment of Penalty

PADEP proposes to increase the threshold for assessment of a penalty from $1000 to $1100 in subsections (b) and (c). PADEP also proposes to drop mandatory penalties for violations of conducting surface mining activities off the permitted area by deleting subsections (d) through (g).

Section 86.194 System for Assessment of Penalties

PADEP proposes to add language in subsection (b)(1)(vi) allowing an additional civil penalty amount up to the statutory limit to be assessed in extraordinary circumstances.

PADEP also proposes to specify $3,000 as the upper limit to be assessed based on seriousness in subsection (b)(1).

PADEP also proposes to modify subsection (b)(2), Culpability, by lowering the maximum limit from $1500 to $1200. Also, the proposed minimum limit for violations of willful or reckless conduct are to be assessed a minimum of $260, down from $2000.

PADEP also proposes to change the criteria for credit to be given for speed of compliance in subsection (b)(3).

PADEP also proposes to delete the phrase ''without limitation'' in subsection (b)(4).

PADEP also proposes to reduce the review period for the history of previous violations from two years to one in subsection (b)(6).

PADEP proposes to add new subsection (f) entitled ''Revision of civil penalty'' . Subsection (1) is added and explains that the Department may revise a civil penalty calculated in accordance with dollar limits included in subsection (b) and that the basis for revision would be fully explained and documented. New subsection (2) is added to explain that if the Department revises the civil penalty, the Department will use the general criteria in subsection (b) and will give a written explanation of the basis for the revision to the person to whom the order was issued.

Section 86.195(c) Penalties Against Corporate Officers

PADEP proposes to add new subsection (c) which provides for a stay and withdrawal of individual civil penalties under certain conditions.

Section 86.201 Procedures for Assessment of Civil Penalties

PADEP proposes to add new subsection (a) to allow operators to submit information to the Department and the inspector concerning violations within 15 days of service of a notice of violation or order. Existing subsections (a) through (d) are re-lettered (b) through (e), respectively. PADEP also proposes to add new subsection (f) to restrict the use of certain evidence in formal review proceedings. Existing subsection (f) is re-lettered as (g).

Section 86.202 Final Action

PADEP proposes to change the title of this section from ''Appeal Procedures'' to that above.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on December 14, 1999. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 18, 1999.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–30884 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–127–FOR]

Pennsylvania Regulatory Program

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

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

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Pennsylvania Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Pennsylvania has submitted this proposed amendment to reflect changes made to regulations in the Pennsylvania program dealing with the Small Operator Assistance Program (SOAP). This proposal modifies some requirements and adds other requirements dealing with SOAP.

DATES: Written comments must be received by 4 p.m., on December 29, 1999. If requested, a public hearing on the proposed amendment will be held on December 27, 1999. Requests to speak at the hearing must be received by 4 p.m., on December 14, 1999.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking (or administrative) record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking (or administrative) record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Rachel Carson State Office Building, Post Office Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments, can be found in the July 30, 1982, **Federal Register** (47 FR 33079). Subsequent actions concerning the Pennsylvania program amendments are identified at 30 CFR 938.15.

II. Discussion of the Proposed Amendment

By letter dated November 8, 1999 (Administrative Record No. PA–846.02), the Pennsylvania Department of Environmental Protection (PADEP) submitted a proposed amendment to its program regarding changes to SOAP made because of the Department's Regulatory Basics Initiative (RBI). Under the RBI, regulations are revised because they were considered unclear, unnecessary or were more stringent that the corresponding federal regulations.

The changes proposed by PADEP in this amendment apply to the following parts of the Pennsylvania program: 25 PA Code 86.80–86.87, 86.91, 86.92, 86.94, and 86.95. These changes are summarized below.

1. A new section, 25 PA Code 86.80 titled ''Definitions,'' is proposed to be added to the Pennsylvania program. A definition of the term ''qualified consultant and qualified laboratory'' is proposed to be added to this section. The term is defined as a designated public agency, private consulting firm, institution or analytical laboratory which can provide the required services under this program in accordance with § 86.92 (relating to basic qualifications).

2. Several changes are proposed for 25 PA Code 86.81. The first sentence in this section is proposed to be identified as subsection (a) and the phrase ''for qualified small operators who request assistance'' is proposed to be removed. A new subsection (a)(1) which states ''Review requests for assistance,'' is proposed and the former subsection (1) is proposed to be designated as (a)(2). A change to former subsection (1)(iii) [now designated as (a)(2)(iii)] proposes that under SOAP the Department will pay a qualified consultant to provide a description of existing resources within and adjacent to the proposed area in accordance with one of the following:

(A) Section 87.41–87.47, 87.50 and 87.54.

(B) Sections 88.21–88.27 and 88.31.

(C) Sections 89.33–89.36, 89.38 and 89.74.

These referenced sections were changed from the original language which required a description of the existing resources in accordance with either §§ 87.41–87.50, 87.52–87.54, 88.21–88.33 or §§ 89.33–89.38, 89.71–89.74, 89.102, 89.121, 89.122, 89.141, 89.142(a).

PADEP is proposing to change references to other regulations in former subsection (1)(iv) [now designated as (a)(2)(iv)]. This subsection requires detailed descriptions of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed in accordance with references with other regulations. The proposal now reads: ''Provide a detailed description, to

include maps, plans and cross sections, of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed in accordance with one of the following:

(A) Sections 87.69, 87.77 and 87.84 (relating to protection of hydrologic balance; protection of public parks and historic places; and, fish and wildlife protection and enhancement plan).

(B) Sections 88.49, 88.56 and 88.62 (relating to protection of hydrologic balance; protection of public parks and historic places; and fish and wildlife protection and enhancement plan).

(C) Sections 89.33–89.36, 89.38 and 89.74.

Former subsection (2) is proposed to be relabeled as (a)(3) and a new subsection (b) is proposed to be added. Subsection (b) states ''If funds allocated by the Department for the payment of services provided to the applicant are less than those required to pay for the services, the applicant is responsible for costs exceeding the amount of funds allocated for the services provided to the applicant.''

3. The changes proposed for 25 PA Code 86.82 include deleting subsection (a)(1) which states the Department will review requests for assistance and determine qualified operators. This change will cause subsequent subsections to be renumbered, *e.g.*, former subsection (a)(2) is now (a)(1), former subsection (a)(3) is now (a)(2), former subsection (a)(4) is now (a)(3) and former subsection (a)(5) is now (a)(4).

4. One subsection of 25 PA Code 86.83 was proposed to be changed. In subsection (a)(2) the phrase ''the applicant's operations during the 12-month period immediately following the date'' has been deleted. This subsection as proposed now reads ''Establishes that the probable total attributed annual production from all locations on which the applicant is issued the mining activities permit will not exceed 300,000 tons.''

Additionally, PADEP is proposing to add subsection (c) to 25 PA Code 86.83. This subsection states ''For the purpose of this subchapter, measurement of coal production will be based on the production reported to the office of surface mining reclamation and enforcement for the purpose of the reclamation fee payment.''

5. There are several changes proposed for 25 PA Code 86.84. Subsection (a) is proposed to be deleted and former subsection (b) is relabeled as subsection (a). The first phrase in the new subsection (a) is proposed to read ''An application for assistance shall contain the following information.'' Other changes include the proposed deletion of former subsection (a)(2)(iii) which required a SOAP application to contain the surface mining operator's license number, if applicable. A requirement to provide the mine operator's license number now appears as newly proposed subsection 86.84(a)(7). Finally, subsection (c) has been relabeled as subsection (b) and is proposed to be changed to read ''The application shall be attested by a notary public or district justice.''

6. PADEP is proposing to add subsection (a)(3) to 25 PA Code 86.85. Subsection (a)(3) reads ''Provide the applicant a copy of the contract or other appropriate work order for the qualified consultants' services and the consultants' report within 15 days of the Department's final approval.'' Subsection (b) of 25 PA Code 86.85 is proposed to be changed to read ''The granting of assistance under this program does not imply that the Department will approve a subsequent permit application.'' In addition, PADEP is proposing to add subsection (c) to 25 PA Code 86.85. This proposed subsection reads ''Within 45 days of receipt of a complete application for assistance, the Department will inform the applicant in writing if the application is denied and will state the reason for denial.''

7. PADEP is proposing to delete 25 PA Code 86.86. This section required the Department to provide the applicant a copy of the contract or other appropriate work order for the consultants' services and the final approval report. This section also required the Department to inform the applicant in writing if the application is denied and to state the reason for denial. PADEP is proposing to retitle this section as ''Reserved.''

8. PADEP is proposing to change the sentence structure of subsection (a) of 25 PA Code 86.87. The proposed language now reads ''The Department will determine the data collection requirements to meet the objectives of the program for each applicant or group of applicants. Development of information on environmental resources, operation plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities if specifically authorized by the Department in an approved work order.''

9. PADEP is proposing to delete 25 PA Code 86.91. This section was titled, ''Definitions and Responsibilities'' and contained in subsection (a) definitions for the terms ''qualified consultant'' and ''qualified laboratory.'' These terms are now defined under the proposed section 25 PA Code 86.80. Subsection (b) required persons who wanted to be included in a list of qualified consultants or laboratories to apply to the Department. This subsection, with some modifications, has been moved to 25 PA Code 86.92(c). Subsection (c) required the Department to designate and maintain a list of qualified consultants and laboratories who demonstrate that they meet the qualifications of § 86.92. PADEP is proposing to retitle this section as ''Reserved.''

10. In 25 PA Code 86.92, PADEP is proposing to add subsection (c). This subsection reads ''Persons who desire to be included in the list of qualified consultants or qualified laboratories established by the Department under § 86.82 (relating to responsibilities) shall apply to the Department and provide the information necessary to establish the qualifications required by this section.''

11. PADEP is proposing two changes to 25 PA Code 86.94. The first change in subsection (a)(3) replaces the word ''mine'' with the term ''commence mining.'' The proposed revision reads ''Fails to commence mining within 3 years after obtaining a permit.'' The second proposed revision is the deletion of subsection (c) and the subsequent relabeling of subsection (d) as subsection (c). The deleted language of former subsection (c) stated ''If funds allocated for the services are less than those required to pay for the services, the applicant is responsible for costs exceeding the amount of funds allocated for the services to the applicant.''

12. The final change proposed by PADEP is the deletion of 25 PA Code 86.95. This section was titled, ''Measurement'' and reads ''For the purpose of this program, measurement of coal production will be based on the production reported to the Office of Surface Mining Reclamation and Enforcement for the purpose of the reclamation fee payment.'' PADEP is proposing to retitle this section as ''Reserved.''

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Pennsylvania satisfies the applicable requirements for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administration Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on December 14, 1999. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

If a public hearing is held, it will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES.** A summary of meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 18, 1999.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–30883 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF57

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on the Proposed Rule To List the Scaleshell Mussel as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service, pursuant to the Endangered Species Act of 1973, as amended (Act), provide notice that we are holding a public hearing and reopening the comment period on the proposed rule to list the scaleshell mussel (*Leptodea leptodon*) as an endangered species. We invite all interested parties to submit comments on this proposal. The reopening of the comment period will further opportunity for all interested parties to submit comments on the proposal, which is available (see **ADDRESSES**).

DATES: The public hearing will be held from 7 PM to 10 PM on Wednesday, December 8, 1999, in Jefferson City, Missouri. The comment period is reopened on November 29, 1999, and will close on January 7, 2000. In the final decision on this proposal, we will consider any comments received by the closing date.

ADDRESSES: The public hearing will be held at the Runge Conservation Nature Center Auditorium located in Jefferson City, Missouri, approximately 0.5 miles north of Highway 50 on Highway 179. You may submit written comments and materials concerning the proposal at the hearing or send them directly to the Field Supervisor, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, Missouri 65201–7712.

Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above U.S. Fish and Wildlife Service address.

FOR FURTHER INFORMATION CONTACT: Andy Roberts (see **ADDRESSES** section), 573/876/1911, extension 110; facsimile 573/876/1914.

SUPPLEMENTARY INFORMATION:

Background

The scaleshell mussel (*Leptodea leptodon*) historically occurred in 13 states in the eastern United States. Currently, the species is known from a few scattered populations within the Mississippi River basin in Missouri, Oklahoma, and Arkansas. Scaleshell inhabits medium-sized to large rivers with stable channels and good water quality. The abundance and distribution of scaleshell has decreased from habitat loss and adverse effects associated with water quality degradation, reservoir construction, sedimentation, channelization, and dredging. These habitat changes have resulted in significant extirpations, restricted and fragmented distributions, and poor recruitment.

On August 13, 1999, we published a rule proposing endangered status for the scaleshell mussel in the **Federal Register** (64 FR 44171). Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that we hold a public hearing if it is requested within 45 days of the publication of the proposed rule. We received numerous requests for a hearing from the public within the allotted time. Public hearings are designed to gather relevant information that the public may have that we must consider in determining the status of and threats to this species. We invite the public to submit information and comments either at the hearing on December 8, 1999, or in writing on or before the close of business January 7, 2000.

The hearing will be at the Runge Conservation Nature Center, Jefferson City, Missouri on Wednesday, December 8, 1999, from 7:00 PM to 10:00 PM. An informal open forum will be held prior to the public hearing from 5:00 to 6:30 PM at the public hearing location. The purpose of the forum is to answer specific questions regarding the proposed rule. All interested parties are invited to attend. We encourage persons wishing to comment at the formal hearing to provide a written copy of their statement at the start of the hearing. Oral statements given at the formal hearing may be limited in length, if the number of parties who wish to comment necessitates such a limitation. There is no limit on the length of written comments. Persons may also send written comments to our office (see **ADDRESSES** section) at any time during the open comment period. Equal consideration is given to oral and written comments. We are publishing legal notices announcing the date, time, and location of the hearing in newspapers, concurrently with this **Federal Register** notice. The comment period on the proposal initially closed on October 13, 1999. To accommodate the hearing, we are reopening the public comment period upon publication of this notice. The public comment period will close on January 7, 2000.

Author: The primary author of this notice is Andy Roberts (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 8, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services.

[FR Doc. 99–29821 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 991116306–9306–01; I.D. 102099C]

RIN 0648–XA40

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List Columbia River Eulachon (*Thaleichthys pacificus*) as Endangered or Threatened

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

ACTION: Notification of petition finding.

SUMMARY: NMFS has received a petition to list Columbia River populations of eulachon (*Thaleichthys pacificus*) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act (ESA). NMFS determines that the petition does not present substantial evidence to warrant the listing of eulachon at this time.

ADDRESSES: Requests for copies of the petition and comments regarding Columbia River eulachon should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. The petition and supporting data are available for public inspection, by appointment, Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, 503/231-2005 or Marta Nammack, NMFS, Office of Protected Resources, 301/713-1401.

SUPPLEMENTARY INFORMATION:

Background and Analysis of Petition

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 July 16, 1999, the Secretary of Commerce (Secretary) received a petition from Mr. Sam Wright of Olympia, Washington, to list and designate critical habitat for Columbia River populations of eulachon (commonly called smelt or candlefish).

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.

In evaluating a petitioned action, the Secretary considers several factors, including whether the petition contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species (50 CFR 424.14(b)(2)(ii)). In addition, the Secretary considers whether the petition provides information regarding the status of the species over all or a significant portion of its range (50 CFR 424.14(b)(2)(iii).

Under the ESA, a listing determination can address a species,

subspecies, or distinct population segment (DPS) of a species (16 U.S.C. 1532(15)). The petitioner requested listing the ''population, stock, or evolutionarily significant unit that is found in the Columbia River system and its tributaries.'' He further identified these entities as ''an important, existing (but severely depressed) indigenous fish resource which is currently at risk (threatened or endangered) and has no reasonable expectation of being able to recover over time by itself and/or from the surplus production of an adjacent or nearby population of the same species.'' Such a definition is not used in the ESA and it is important to note that the term evolutionarily significant unit or ''ESU'' is currently defined only for DPSs of Pacific salmonids (see 56 FR 58612, November 20, 1991). For other species such as the eulachon, NMFS would instead rely on the DPS framework described in a NMFS/U.S. Fish and Wildlife Service policy regarding the identification of distinct vertebrate population segments (61 FR 4722, February 7, 1996). Since the petitioner focused on stocks within the Columbia River basin (rather than the entire species), NMFS considered the petition in the context of defining DPSs in this area that may warrant listing under the ESA.

NMFS evaluated whether the information provided or cited in the petition met the ESA's standard for ''substantial information.'' The agency also reviewed other information readily available to NMFS scientists (i.e., currently within agency files) and consulted with fisheries experts from Washington and Oregon about this species to determine if there was general agreement on issues related to the uniqueness, distribution, abundance, and threats to the petitioned species/populations. With respect to uniqueness, NMFS assessed whether the petitioner's and otherwise available information might support the identification of DPSs that may warrant listing under the ESA.

The petitioner accurately identified the major Columbia River tributaries known to have spawning runs of eulachon. However, the species' distribution ranges from northern California to Alaska and the petitioner did not describe why Columbia River eulachon are distinct from other coastal populations. In fact, the petitioner acknowledged that eulachon originating from the Columbia River appear to make spawning runs into other coastal streams, including the Chehalis, Quinault, Quillayute, and Queets Rivers. Washington state and tribal sources substantiate the species' occurrence in these rivers as well as Willapa Bay (J. DeVore, Washington Department of Fisheries, pers. comm.) and the Moclips River (S. Ellis, Northwest Indian Fisheries Commission, pers. comm.). Such behavior may not support the contention that the Columbia River basin is a DPS for this species. Additionally, NMFS reviewed recent genetic data from McLean *et al.* (in press) indicating that there is little genetic differentiation between eulachon stocks from Alaska, Oregon, Washington, and British Columbia. These authors contrast this lack of population structure to the more distinct subdivisions seen in other anadromous fish, notably Pacific salmon. McLean *et al.* (in press) also cite reports of significant recent declines in British Columbia eulachon populations, but assert that genetic data suggest that the long term adaptive potential of this species has likely remained unharmed. The petitioner similarly noted some of the genetic findings in McLean *et al.* (in press), but failed to refute them or provide evidence that the Columbia River populations may be an entity (DPS) suitable for listing under the ESA.

Environmental conditions also appear to play a major role in the choice of spawning areas, as reflected in the opportunistic selection of spawning sites and in the lack of genetic differences between areas. The petitioner cited information indicating a correlation between water temperature and migration timing, noting that ''eulachon strayed to a number of Washington coastal areas in 1993 due to the cold water temperature in the Columbia River system.'' Hence there is evidence indicating that eulachon originating from the Columbia River basin are not necessarily distinct from other coastal populations.

NMFS also assessed whether the petitioner accurately reflected any known trends in abundance or threats to the species, and moreover, whether these trends/threats would lead a reasonable person to believe that the species was threatened or endangered under the ESA. Section 3 of the ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

The petitioner provided data summarizing the commercial catch of eulachon in the Columbia River and five tributaries from 1938–1999. These data suggest that eulachon catches are currently at a historic low. However, a closer examination underscores that caution is needed before interpreting these data as a good estimator of actual population abundance. For example, the data clearly show that catches of zero fish are not necessarily indicative of a population that, as asserted by the petitioner, has ''no reasonable expectation of being able to recover over time by itself and/or from the surplus production of an adjacent or nearby population of the same species.'' All of the tributary catch records presented in the petition contain at least 2 consecutive years when eulachon landings were nonexistent (and as many as 16 consecutive years). Of significance is that several of these ''disappearances'' have occurred over a period longer than the species' reported life span. Also, zero catch years are not a recent phenomenon; the petition contains data indicating that zero landings were reported in at least one of the major tributaries as early as 1938 and possibly decades earlier.

Eulachon have been a commercially important species for more than 100 years. As noted by the petitioner, variable market demand for the species resulted in annual run sizes that ''were often much larger and varied much more from year to year than the catches indicated.'' Still, these data do allow for a qualitative approximation of run strength which has evidently been much weaker in recent years. Aside from market effects, there have been considerable changes in harvest management for this species during the past 40 years. These changes have generally resulted in more restrictive fisheries (e.g., prompted by suspected population declines), hence catch data in more recent years are not directly comparable to historic data and, moreover, may not accurately reflect recent run strength. While this species' population dynamics are not well understood, even the low harvests seen during 1993–1998 (1999 estimates are probably four times higher than those cited in the petition; J. DeVore, Washington Department of Fisheries, pers. comm.) equate to an average of well over one million eulachon returning to the Columbia River basin in recent years. This figure could be a considerable underestimate as it does not account for additional fish that are harvested by sport fishers as well as fish that escape the fisheries but are unsurveyed.

It is generally believed that this species has a highly variable or possibly cyclical run size. In fact, the petitioner cites a 1959 report by the Washington

Department of Fisheries noting ''the erratic behavior of these tiny fish and the difficulty of predicting whether or not a tributary run will appear.'' Such a contention is also supported by the petition's catch data. A case in point is the Cowlitz River which has produced the highest overall landings and, on average, produced over 56 percent of the commercial catch of eulachon since 1938. However, this fishery has undergone major swings in catch, ranging from zero to nearly 100 percent of the reported landings for the entire Columbia River basin. Of note is a period of historically low catches in 1949 (800 lbs.; 363.20 kg), 1950 (zero), and 1951 (zero). This 3-year low was followed by 3 years when landings totaled approximately 381,000 lbs. (172,974 kg), 795,000 lbs. (360,930 kg), and 793,000 lbs (360,022 kg). Other data provided by the petitioner clearly demonstrate the tremendous variability in this species' catch record. For example, the Sandy River experienced 16 consecutive years of zero catches, followed by a 5-year period which yielded the second (1977) and fourth (1979) highest landings on record. Similar evidence can be seen in the catch records for the Grays, Kalama, and Lewis Rivers where eulachon seemed to disappear from the catch data for 5 or more years (i.e., greater than the species' reported life span) only to return to these rivers, sometimes in near record abundance.

There were few data provided in the petition (or readily available to NMFS) on eulachon run sizes in coastal streams, aside from mention that some Washington coastal streams have had occasional spawning runs. Emmett *et al.* (1991) characterized adult eulachon as abundant in the Columbia and Klamath Rivers, common in Grays Harbor, Willapa Bay, and the Umpqua River, and rare in Puget Sound, the Siuslaw River, Coos Bay, Rogue River, and Humboldt Bay. While these characterizations may not reflect more recent eulachon abundances (which were of primary concern to the petitioner), they do indicate that there are potentially numerous streams - within and outside the Columbia basin - that are unsurveyed but still used by spawning eulachon.

Recent sampling for larval eulachon also demonstrates that the commercial catch record does not represent a complete picture of the species' distribution and abundance. For example, zero eulachon were reported in the 1998 landings for the Grays, Kalama, Lewis, and Sandy Rivers. However, information supplied in the petition indicated that 1998 surveys yielded larval eulachon in all of these tributaries. As noted previously, several large coastal streams in Washington have also had recent spawning runs of eulachon, and other Columbia River tributaries are also believed to attract spawning eulachon, but these populations are of unknown size and largely unsurveyed (P. Frazier, Oregon Department of Fish and Wildlife, pers. comm.). In summary, these catch data are not a reliable measure of population abundance or even eulachon presence/absence.

Finally, the petitioner noted several potential factors for decline, including harvest (recreational, commercial, and bycatch), pinniped and avian predation, competition/predation from American shad (*Alosa sapidissima*), adverse environmental conditions, habitat loss, and productivity concerns potentially attributable to skewed sex ratios in the eulachon population. While much of this is speculation or based on correlations with little or no solid research basis, the NMFS concurs with information presented in the petition indicating that ocean conditions are probably the most important factor controlling eulachon abundance, and even riverine conditions (e.g., water temperature) play a major role in determining the species' spawning distribution and abundance.

Petition Finding

After reviewing the petition, as well as information readily available to NMFS scientists, the NMFS determines that the petition does not present substantial scientific information indicating the petitioned action may be warranted. While the petition does indicate that eulachon catches have recently declined in the Columbia River basin, NMFS does not believe that the information is substantial enough to warrant a status review at this time. This finding is supported by observations that the species is likely more abundant than commercial landings indicate and, based on life history attributes (e.g., the species' high fecundity and short life span) and assumptions from catch data and anecdotal reports, has a demonstrated ability to rebound from periods of low abundance.

The data provided by the petitioner and available to NMFS are far from robust, hence the decision to not initiate a status review relies heavily on the professional judgement of agency scientists. However, there is some cause for concern over the species' apparent decline in the Columbia River basin and NMFS will admonish state and tribal co-managers to redouble efforts focusing on eulachon management and research. In particular, the agency will underscore the need to evaluate whether current harvest strategies are adequately protective of the species and to move apace with additional, more accurate eulachon abundance and life history surveys. The Washington Department of Fish and Wildlife has recently identified the eulachon as a candidate for state listing as threatened or endangered, and the resultant studies and status reports should yield information critical for determining the health of Washington eulachon stocks, including stocks outside the Columbia River basin but potentially related to the petitioned populations. If new information becomes available to suggest that the eulachon may in fact warrant listing under the ESA, NMFS will reconsider conducting a species status review.

References

Emmett, R.L., S.A. Hinton, S.L. Stone, and M.E .Monaco. 1991. Distribution and abundance of fishes and invertebrates in West Coast estuaries, Volume II: species life history summaries. Estuarine Living Marine Resources Program Report No. 8. NOAA/NOS Strategic Environmental Assessments Division, Rockville, MD. 329 p. (Available from Protected Resources Division, NMFS., 525 NE. Oregon Street, Portland, OR 97232.)

McLean, J.E., D.E. Hay, and E.B. Taylor. In Press. Marine population structure in an anadromous fish: life history influences patterns of mitochondrial DNA variation in the eulachon, *Thaleichthys pacificus*. Department of Zoology, University of British Columbia, Vancouver, B.C.

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: November 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–30915 Filed 11–26–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 228
Monday, November 29, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number LS–99–16]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, 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 Agricultural Marketing Service's (AMS) request for comments on an extension for and revision to a currently approved information collection related to the assessment of State and private organic certifying agencies by the Meat Grading and Certification (MGC) Branch. The assessment program was established to verify that State and private organic certifying agencies comply with the requirements prescribed under the International Organization for Standardization International Electrotechnical Commission Guide 65 ''General Requirements for Agencies Operating Product Certification Systems'' (ISO Guide 65). This enables organic certifying agencies to comply with European Union (EU) requirements in a consistent and reliable manner thereby, facilitating uninterrupted exports of U.S. organic agricultural commodities to the EU.

DATES: Comments on this notice must be received on or before January 28, 2000 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact Mark Bradley, Quality Systems Manager, Meat Grading and Certification Branch, Livestock and Seed Program, AMS, USDA, STOP 0248, Room 2628–S, 1400 Independence Avenue, SW., Washington, DC 20250–0248, Telephone (202) 720–1246, or Fax (202) 690–4119.

SUPPLEMENTARY INFORMATION: The voluntary assessment program at 7 CFR Part 37 was established under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) to verify that State and private organic certifying agencies comply with the requirements prescribed under ISO Guide 65. To be assessed under this program, an organic certifying agency must submit an application to AMS requesting an assessment. Also a manual documenting the organic certifying agency's quality system and associated quality certification procedures used to certify organic producers and handlers of organically produced agricultural commodities (including those involved with wild crop harvesting) in accordance with applicable industry standards must be submitted to AMS.

According to the most complete data available to AMS, there are 11 State and 33 private organic certifying agencies currently providing organic certification for agricultural commodities in the United States. These certifying agencies provide service to approximately 4,000 organic producers and 600 handlers of agricultural commodities in the United States. ISO Guide 65 assessment will ensure that State and private organic certifying agencies operating third-party certification systems are doing so in a consistent and reliable manner; thereby, facilitating their acceptance on an international basis. Assessing organic certifying agencies under ISO Guide 65 enables U.S. organic producers and handlers of U.S. organically produced agriculture commodities to continue to export to the EU.

Title: Program to Accredit Organic Certifying Agencies.

OMB Number: 0581–0183.

Expiration Date of Approval: 11/30/99 (extension sought).

Type of Request: Extension and revision of a currently approved collection.

Abstract: The information collection and recordkeeping requirements in this notice are essential to the voluntary assessment program which verifies State and private organic certifying agencies compliance with the requirements of the International Organization for Standardization (ISO) Guide 65.

Based on information available, the Agency has determined that there are currently 11 State and 33 private organic certifying agencies. These certifying agencies conduct their certification of organic farms and handling operations in a similar manner and have similar recordkeeping systems and business operation practices. The agency also determined that most of the information required to conduct the assessment process could be collected from certifying agencies' existing materials without creating new forms, and that the information currently used by certifying agencies to certify organic producers and handlers could be adapted to comply with this program. The Paperwork Reduction Act also requires the agency to measure the recordkeeping burden. These organic certifying agencies have documented review and auditing procedures and maintain appropriate records and documents for up to 5 years on each certified organic farm or handler of organic products. The recordkeeping burden is the amount of time needed to store and maintain records.

The information collection requirements include: (1) Submission of an application requesting to be assessed to ISO Guide 65, (2) the preparation and submission of a quality manual documenting the procedures that certifying agencies use to provide certification services, and (3) an on-site audit of certifying agencies certification operation programs to determine whether the certifying agencies have implemented the provisions of the quality manual and are in compliance with the requirements of ISO Guide 65. These information collection requirements have been designed to minimize disruption to the normal business practices of organic certifying agencies.

The application form requires the minimal amount of information necessary including: (1) Firm name, address, telephone number, and other information necessary to identify the certifying agency and its location, and (2) other pertinent information to determine that a firm is eligible to apply and receive services available through the program to assess organic certifying agencies. Such information can be supplied without data processing equipment or outside technical expertise.

The on-site audit consists of a review and evaluation of a certifying agency's

process for certifying organic farms and handlers. Verifying implementation of the provisions of a certifying agency's quality manual and compliance with the requirements of ISO Guide 65, includes a review and evaluation of existing records and documents described in the quality manual, interviews of certifiers' employees and customers, and observation of certification activities.

On June 9, 1999, an interim final rule with request for comments was published in the **Federal Register**. That rule established the assessment program under the Agricultural Marketing Act of 1946. Since the interim final rule contained recordkeeping and submission requirements that were subject to public comment and to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, AMS included in the rulemaking the description of the reporting and recordkeeping requirements and an estimate of the annual burden on organic certifying agencies. Further, because there was insufficient time for normal clearance procedures, AMS received temporary approval from OMB for use of the information collection and recordkeeping requirements in order to implement the assessment program for organic certifying agencies on an expedited basis. AMS is seeking an extension of the approval that expires on November 30, 1999. AMS is also publishing for comment this notice of a request for extension and revision of a currently approved information collection. One comment was received that addressed the information collection and recordkeeping requirements as a result of the June 9, 1999, rulemaking. This comment was made concerning a paragraph in the Regulatory Flexibility Act section of the rule stating that ''We estimate the cost of providing and obtaining the information required in this rule to assess State and private organic certifying agencies is $590 per certifying agency.'' The commentor stated that ''The above statement combined with the financial contained in the Paperwork Reduction Act section, shows that the AMS is seriously underestimating the time needed for certifying agents to prepare for and complete an ISO Guide 65 audit. Certifiers who have completed such audits were consulted prior to the publishing of the **Federal Register** notice. They estimated that approximately 10 times the figure $590 would be needed to prepare, conduct and come into compliance with an ISO 65 audit.'' However, the commentor did not specify separately the number of hours required to apply for service, complete a quality manual, and maintain records for on-site audits. Based on this comment AMS has reviewed the estimated burden contained in the interim final rule.

The estimated annual reporting and recordkeeping burden hours in the interim final rule were the agency's best estimates, based on information available at the time, of the costs associated with completing the request for application, preparing and submitting a quality manual, and maintaining records. The revised figures in this notice are based on costs obtained from organic certifying agencies who have been using the service for approximately the last 6 months, thereby giving AMS more information about the time to apply for service, completing and submitting a quality manual, and maintaining records for on-site audits. Three organic certifying agencies provided information. This information indicated that the time required to complete an application ranged from 5 minutes to 30 minutes; time required to complete and submit a quality manual ranged from 5 hours to 40 hours; and time required for maintenance of records ranged from 0 to 40 hours. Therefore, taking into account this information the agency has decided to revise the estimated annual reporting and recordkeeping burden based on the maximum hours provided by the organic certifying agencies. Accordingly, the annual reporting and recordkeeping burden hours have been increased from 1024 to 1760 for the quality manual and from 264 to 1760 for the maintenance of records. The total average cost increased from approximately $590 per certifying agency to approximately $1,605 per certifying agency.

1. Application for Service—Form LS–314.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: State and private organic certifying agencies.

Estimated Number of Respondents: 44.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11 hours.

Total Cost: $220.

2. Quality Manual.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 hours per response.

Respondents: State and private organic certifying agencies.

Estimated Number of Respondents: 44.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1760 hours.

Total Cost: $35,200.

3. Maintenance of records for an on-site audit.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 hours per response.

Recordkeepers: State and private organic certifying agencies.

Estimated Number of Recordkeepers: 44.

Estimated Total Recordkeeping Hours: 1760 hours.

Total Cost: $35,200.

The total average cost of the estimated annual reporting burden per certifying agency would be approximately $1,605.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Mark Bradley, Quality Systems Manager, Meat Grading and Certification Branch, Livestock and Seed Program, AMS, USDA, STOP 0248, Room 2628–S, 1400 Independence Avenue, SW., Washington, DC 20250–0248 or by E-mail to Mark.Bradley@usda.gov. Comments should reference docket number LS–99–16. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 22, 1999.

Barry Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–30948 Filed 11–26–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Installation and Improvement of Grain Cleaning Equipment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is soliciting public comment on the merits of whether the CCC should finance, in some manner, the installation or upgrading of grain cleaning systems at wheat export elevators in the United States. The goal of this initiative, if undertaken, would be to improve the quality and competitiveness of U.S. wheat exports by insuring that foreign buyers may readily purchase U.S. wheat with dockage specifications substantially lower than currently available from export elevators.

DATES: Written comments on this notice must be received on or before December 29, 1999 to be assured of consideration. A public meeting concerning the subject matter of this notice will be held. The place, date, and time of the meeting will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Please direct written correspondence to: Timothy J. Galvin, Administrator, Foreign Agricultural Service, Room 5071, 1400 Independence Ave. SW, Washington, DC 20250. Telephone, fax or e-mail correspondence may be directed to: Sam Dunlap, Assistant to the Administrator, Foreign Agricultural Service, Phone: (202) 720–1743, Fax: (202) 690–0493, e-mail: dunlaps@fas.usda.gov.

SUPPLEMENTARY INFORMATION: U.S. producers of wheat—particularly growers of Hard Red Winter Wheat—cite on-going complaints from foreign buyers about the cleanliness (and therefore perceived quality) of U.S. wheat, especially in comparison to the wheat available from certain foreign competitors. Although this complaint has been a long-standing theme among some public and private sector buyers, as well as some U.S. producers, the increasing trend toward privatization of grain imports throughout the world during the 1990's may be giving the issue greater importance. The growing ranks of private sector buyers are increasingly more discriminating in making their purchase decisions, compared to their publicly-owned predecessors.

While price competitiveness remains central to purchasing decisions, major wheat export competitors have apparently capitalized on buyers' concerns about U.S. wheat cleanliness in their marketing programs. For example, the wheat offered by key export competitors, notably Australia and Canada, contains average dockage levels of about 0.2%. By comparison, dockage levels for U.S. wheat inspected for export during 1998 averaged from 0.5% to 0.7% depending on class.

A 1992 study by the USDA Economic Research Service concluded that the mandatory cleaning of all U.S. wheat exports could increase wheat exports by 2%, and that voluntary cleaning for selected markets, while not likely to attain the export increase projected by mandatory cleaning, would nevertheless have positive economic results in the form of increased exports. The Economic Research Service concluded that an overall reduction in dockage and foreign material could benefit the U.S. wheat industry only if cleaner U.S. wheat induces sufficient trade benefits to overcome the net domestic cost.

Public and private importers of wheat, especially in Asia, continue to tighten specifications for their imported wheat purchases. For example, the changing purchase specifications of one major buyer in the Pacific Rim, Japan, has already brought about the installation of wheat cleaning systems in the U.S. Pacific Northwest. An apparently growing number of smaller buyers in Latin America and other regions are seeking cleaner wheat but claim not to be able to secure the wheat from U.S. sources. They can, and reportedly have, turned to competitors to fill their needs. Yet some in the U.S. private sector apparently conclude that the costs of installing and operating grain cleaning equipment in many U.S. ports are not justified by the potential returns to private firms.

The CCC is considering providing financial assistance to support the installation or upgrading of grain cleaning equipment at export elevators. Authority for this activity is section 5(b) and (f) of the CCC Charter Act, 15 U.S.C. 714c(b) and (f). These provisions, respectively, authorize CCC to ''[m]ake available materials and facilities required in connection with the production and marketing of agricultural commodities'' and to ''aid in the development of foreign markets'' for agricultural commodities.

The CCC must consider numerous issues before initiating any activity to support the installation or upgrading of wheat cleaning facilities, including the likely scope and cost of such an initiative (with a preliminary cost estimate of approximately $5 million per facility); the extent and form of CCC's financing role; and how to ensure that those existing elevators, primarily in the Pacific Northwest, who have already undertaken such investments are not competitively disadvantaged.

Comments are invited on all aspects of this proposed initiative. However, it would be particularly helpful if comments addressed the following:

(1) The size and scope of such an initiative. For example, should the program be available to essentially all elevators providing wheat for export, or should the program be established on a pilot basis at a small number of facilities?

(2) Impact on those elevators in the United States that have already undertaken the expense of installing grain cleaning equipment. Should financing be limited largely to those regions of the country in which elevators have not yet undertaken such expenditures?

(3) The CCC's financing role. What is the appropriate role of government financing when the private sector declines to invest in grain cleaning equipment on its own? What should be the extent of CCC subsidy, ranging from guaranteeing loans on commercial terms to cost-share grants? If cost-share, should the CCC's contribution be established at a fixed percentage? Alternatively, should an elevator's willingness to finance relatively more of the investment be a competitive factor in awarding CCC financing? What costs should be financed by the CCC?

FAS will announce the place, date, and time of the public meeting regarding this proposal.

Signed at Washington DC on November 23, 1999.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service; Vice President, Commodity Credit Corporation.

[FR Doc. 99–30909 Filed 11–26–99; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–048N]

Canada's Modernized Poultry Inspection Program (MPIP)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of a paper prepared by the Canadian Food Inspection Agency (CFIA) that describes its new

Modernized Poultry Inspection Program (MPIP) for chicken, turkey, and fowl slaughter inspection in Canadian establishments that process poultry, including those that export to the United States and to other countries.

DATES: Written comments must be received on or before January 28, 2000.

ADDRESSES: Copies of the MPIP document are available from the FSIS Docket Clerk, Room 102 Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. A copy may also be obtained from the CFIA homepage at *http://www.cfia-acia.agr.ca/english/animal/meat/mmop/*mpip/mpiptoc—e.html. Submit one original and two copies of written comments to the FSIS Docket Clerk, Docket #99–048N, at the address shown above. Facsimile comments may be sent to 202–205–0381. The public can review all received comments in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For further information about the MPIP document, contact Mr. Clark Danford, Acting Director, International Policy Division; Office of Policy, Program Development, and Evaluation; (202) 720–6400; or by electronic mail to *clark.danford@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

In August 1999, CFIA submitted its proposal for a new slaughter inspection system described as the ''Modernized Poultry Inspection Program.'' Copies are available as described in the **ADDRESSES** section above. MPIP would be used in Canadian establishments that slaughter chicken, turkey, and fowl. CFIA describes MPIP as follows: ''National and international poultry inspection systems are constantly evolving. Canada and its poultry inspection programs are no exceptions. MPIP represents the latest Canadian advance in poultry inspection methodology. The CFIA is now making MPIP methodology available to federally registered poultry slaughter establishments across Canada. MPIP is a HACCP and science-based inspection system. It enhances the safety and wholesomeness of Canadian poultry products, and as a result, contributes to the viability of the Canadian poultry industry. MPIP focuses on the slaughter process within the gate to plate food safety continuum.''

The CFIA has set specific objectives for its MPIP program. These objectives include the following:

''(a) Control of hazards associated with the contamination of live poultry with foodborne pathogens as received at registered establishments, and the subsequent spread of these pathogenic bacteria during the slaughter and processing of poultry;

(b) Promote the proactive control (prevent, eliminate or reduce) of hazards through the implementation of a CFIA-recognized HACCP system in poultry slaughtering establishments;

(c) Facilitate the change from prescriptive regulatory requirements to strictly enforced objective performance standards in poultry inspection;

(d) Facilitate the transition of CFIA staff from hands-on inspection to audit-based verification activities for poultry slaughter establishments operating under a HACCP system;

(e) Facilitate the assumption by industry of the detection and handling of all carcasses with defects (previously performed by CFIA inspectors) under continuous government oversight; and

(f) Respond to changing international trade requirements, e.g., Pathogen Reduction and HACCP Program Rule in the US.''

Determination of Equivalence

As a result of the World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary measures (commonly referred to as the ''SPS Agreement''), contracting parties, including the United States, are committed to harmonizing their human, animal, and plant health import requirements by basing their sanitary and phytosanitary (SPS) import requirements on ''equivalent'' sanitary measures or standards. Among other things, the SPS Agreement obliges the United States to respond to requests by other contracting parties to establish the equivalence of specified poultry and poultry processing measures with those of the United States. The Canadian Government has formally requested that the United States consider its MPIP proposal to pilot-test a revised slaughter inspection system. A determination of equivalence will be necessary before any Canadian MPIP establishment may export its poultry to the United States.

FSIS will evaluate the MPIP documentation using two criteria for equivalence:

(1) Does the MPIP meet all USDA requirements for the import of poultry products to the United States?

(2) Does the MPIP afford American consumers the *same* level of public health protection provided by USDA domestic poultry slaughter inspection?

However, before making any equivalence decisions or taking any action on the MPIP document, FSIS is requesting public comment on the Canadian proposal.

Additional Public Notification

FSIS has considered, under Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' dated September 1993, the potential civil rights impact of this notice on minorities, women, and persons with disabilities. FSIS anticipates that this notice will not have a negative or disproportionate impact on minorities, women, and persons with disabilities. Notices generally are designed to provide information and public awareness of important policy developments. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce the publication of this **Federal Register** notice in the *FSIS Constituent Update.*

FSIS provides a weekly *FSIS Constituent Update,* which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents. This constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would otherwise be possible. For more information or to be added to the constituent fax list, fax your request to the Agency's Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on November 19, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–30908 Filed 11–26–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lost Moose Ecosystem Management Project, Bitterroot National Forest, Ravalli County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of management activities proposed in the Lost Moose Ecosystem Management Project area on the Darby Ranger District on the Bitterroot National Forest. Proposed management activities include: harvesting timber, management ignited prescribed burning, restoring ponderosa pine and aspen; precommercial thinning; fire hazard reduction treatments; and implementing road-use restrictions and watershed and recreation improvements. The Lost Moose Project Area is located in Ravalli County, Montana, approximately five miles west of the city of Hamilton and includes Lost Horse, Canyon, and Roaring Lion Creeks.

A variety of management activities proposed in the project are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purposes of the project are to reduce the fuels hazard, restore site productivity, and return ecosystems to more sustainable conditions. This project level analysis will tier to the Bitterroot National Forest Land and Resource Management Plan (Forest Plan) and Final EIS (September, 1987), which provides overall guidance for all land management activities in the Bitterroot National Forest.

DATE: Written comments and suggestions should be received by January 3, 2000.

ADDRESSES: The Responsible Official is Craig Bobzien, District Ranger, Darby Ranger District, Bitterroot National Forest, PO Box 388, Darby, Montana 59829. Written comments and suggestions concerning the scope of this analysis or a request to be included on the project mailing list should be sent to him at that address.

FOR FURTHER INFORMATION CONTACT: Tami Brewer, Resource Team Leader, Stevensville Ranger District, 88 Main Street, Stevensville, Montana, 59870, phone (406) 777–5461.

SUPPLEMENTARY INFORMATION: The project area encompasses approximately 50,715 acres of land in southwestern Montana on the Bitterroot National Forest. The Lost Moose area contains lands drained by Lost Horse Creek and several other Bitterroot River tributaries including Canyon, Sawtooth, and Roaring Lion Creeks. A map and legal descriptions are available on request.

Proposals in this analysis fall into three categories: Maintaining or restoring terrestrial ecosystems; maintaining or restoring aquatic ecosystems; and managing recreation. Proposals to maintain or restore terrestrial ecosystems include: underburning on about 1, 395 acres; restoring ponderosa pine ecosystems by reducing ladder fuels and underburning on about 307 acres; reducing fire risk along the Forest/residential interface by thinning and/or underburning or burning with shelterwood harvesting, and precommercial thinning on a total of about 2,050 acres; restoring hardwood tree and shrub communities by felling conifers and/or underburning to stimulate aspen reproduction on 260 acres; and creating and maintaining wildlife trees where opportunities exist. These actions are designed to: reduce the fuels hazard—particularly along the wildland/urban interface—and restore fire as a key ecosystem process; maintain and restore vegetative structures and compositions that reflect sustainable, natural patterns and processes; maintain and restore ecosystem health and productivity; enhance wildlife habitat; and provide wood products. Additionally, specific road-use restrictions are proposed to reduce human disturbance of wildlife and comply with Forest Plan standards for elk habitat effectiveness.

Proposals to maintain or restore aquatic ecosystems include: gravelling and/or installing waterbars or drainage dips on specified road segments; road obliteration; constructing a short road segment (about 0.25 mile) to allow access through an existing loop route; and improving drainage on FS Trail #128. Fish habitat improvements include adding large woody debris to specified stream segments, planting conifers, replacing/modifying culverts, and constructing resting pools. These actions would improve stream habitat, contribute to the long-term health of aquatic ecosystems, and improve water quality.

Proposals to manage recreation include: installing interpretative signs; extending the Blodgett Overlook Trail into a loop trail; improving resource conditions on the Foss-McCrossin/Brown irrigation ditch; and improving the Lost Horse dispersed camping sites. These actions would provide a balance of recreation opportunities while managing and enhancing other resource values.

Maps and data describing these proposals in greater detail are available on request.

The Bitterroot Forest Plan provides guidance for management activities through its goals, objectives, standards, and management area direction. The areas of proposed timber harvest occur in Management Areas 2, 3a, 3c, and 5. Aspen restoration is proposed in Management Areas 3a, 3b, and 3c. Prescribed underburning is proposed on lands within Forest Plan Management Areas 3c, 5, and 5–9. The management direction for these areas is briefly described as follows. Management Area 2 emphasizes elk winter range habitat, allows for timber management, and providing roaded dispersed recreation opportunities. Management Area 3a emphasizes visual quality, allows for timber management, and providing roaded dispersed recreation opportunities. Management Area 3b emphasizes protecting riparian habitat and water quality and providing for water-related recreation. Management Area 3c emphasizes visual quality, allows for timber management, and providing dispersed recreation opportunities. Management Area 5 emphasizes semi-primitive recreation and elk security. Management Area 5–9 emphasizes semi-primitive recreation and elk security and also includes proposed research natural areas. Portions of the Selway-Bitterroot Inventoried Roadless Area lie within the analysis area where management activities are proposed. Additionally, areas of unsuitable lands lie within some harvest units.

The analysis process for the Lost Moose Ecosystem Management Project began in 1996. In April 1997 a summary of the existing conditions, purpose and need for action, and management opportunities for the assessment area was mailed. Following several public meetings, a Proposed Action was developed and mailed in March 1999. Primary issues that were identified at that time include the following: 1. How would the proposed timber harvest and prescribed burning affect the undeveloped character of this portion of the Selway-Bitterroot Inventoried Roadless Area? 2. How would the proposed activities affect fish and wildlife species that inhabit the area? 3. Can the vegetation diversity and ecological purposes of the project be met without any further timber extraction or road building in the area? 4. Are the proposed road closures necessary to improve elk habitat? 5. Would the proposed road closures cause more off-road traffic and subsequent resource damage? Other issues commonly associated with prescribed fire and timber harvest include: potential effects on water and air quality, soils, old growth, and scenery

values. This list may be verified, expanded, or modified based on public scoping for this proposal.

The Forest Service will consider a range of alternatives in the EIS. One of these will be the ''no action'' alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes as well as to respond to the issues and other resource values. The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Known past, present, and scheduled activities on both private and national forest lands will be considered.

In addition to the scoping that has already occurred for this project, the public is encouraged to visit with Forest Service officials at any time during the analysis prior to the decision. The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies and other organizations and individuals who may be interested in or affected by the proposed action. No further public meetings are scheduled at this time.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The Comment period on the draft EIS will be 45 days from the date that the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Lost Moose area participate at that time. To be most helpful, comments on the Draft EIS should be as specific as possible. The Final EIS is scheduled to be completed in January 2001.

The Forest Service believes it is important to give reviewers notice at this early stage 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 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 F2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334 (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 scoping 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 developing issues and alternatives.

To assist the Forest Service in identifying and considering issues related to the Proposed Action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official for this EIS is Craig Bobzien, District Ranger, Darby Ranger District, Bitterroot National Forest, P.O. Box 388. Darby, Montana 59829. The decision to be made is what, if anything, should be done in the Lost Moose Project Area to: (1) Reduce the fuels hazard; (2) restore site productivity and return ecosystems to a more sustainable condition; (3) restore watersheds; (4) promote aspen reproduction to restore hardwood tree and shrub communities; and (5) provide goods and services such as wood products and recreation opportunities. He will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: November 16, 1999.

Susan L. Heald,

Acting Forest Supervisor, Bitterroot National Forest.

[FR Doc. 99–30826 Filed 11–26–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lakeface-Lamb Fuel Reduction, Idaho Panhandle National Forests, Bonner County, Idaho

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 disclose the potential environmental effects of reducing the wildfire risk and treating stands with insect and disease problems in the Lakeface-Lamb project area on the Priest Lake Range District, Idaho Panhandle National Forests, Bonner County, Idaho.

The proposed action includes unit-specific fuel and silvicultural treatments as well as reforestation needs, harvest techniques, and other site-specific connected actions. The proposed action is divided into several themes based on treatment needs responding to the purpose and need.

These management activities will be administered by the Priest Lake Ranger District of the Idaho Panhandle National Forests in Bonner County, Idaho. This EIS will tier to the Idaho Panhandle National Forests Forest Plan (September 1987).

DATES: Comments should be postmarked on or before December 29, 1999. Please include your name and address and the name of the project you are commenting on.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or request to be placed on the project mailing list to Kent Dunstan, Priest Lake Ranger District, 32203 Highway 57, Priest River, Idaho 83856.

FOR FURTHER INFORMATION CONTACT: David Asleson, Project Team Leader, Priest Lake Ranger District, 32202 Highway 57, Priest River, ID 83856.

Comments received in response to this solicitation, 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 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 10 days.

SUPPLEMENTARY INFORMATION:

The public has raised concern about the threat of fires escaping from National Forest lands and endangering private land values. On a landscape level, the threat of severe lethal fires as defined in the Interior Columbia Basin Science Assessment has increased by nearly 20 percent, including the moist forest types found in the project area. The buildup of natural fuels is outside acceptable levels and the frequency and

intensity of fire is not within historic pattern for this area. The developed and natural resources on the National Forest lands and private property within the area are of considerable value both locally and regionally. For these reasons, this area has been identified as a top priority to reduce the wildfire potential.

The project includes approximately 7200 acres, encompassing 2030 acres of private lands and 5100 acres of National Forest lands. The area is situated totally within Bonner Country, Idaho, approximately 22 airmiles north of the community of Priest River, Idaho. The legal description for the project includes all or portions of the following sections:

Sections 5–8; Township 59 North; Range 4 West
Sections 1–3 and 10–12; Township 59 North; Range 5 West
Sections 5–7, 17, 19, 20 and 29–32; Township 60 North; Range 4 West
Sections 1–3, 10–15, 22–27, and 34–36; Township 60 North; Range 5 West.

As Deciding Officer, I will decide how much and what, if any, actions including fuel treatments, timber harvesting and related activities, and road construction/reconstruction will occur on National Forest lands. I also will decide specific project mitigation measures, as necessary, to achieve Forest Plan objectives and standards for affected resources.

Public participation plays an important role in the environmental analysis process. The initial scoping process (40 CFR 1501.7) for this analysis began October 1999. Earlier public participation occurred during the preparation of the Lakeface-Lamb Fuel Reduction environmental assessment beginning in 1995. This environmental assessment led us to the conclusion that we needed to further the assessment in the format of an EIS, hence the issuance of this NOI. The mailing list for public scoping will include those individuals who have previously expressed interest in this project as well as those responding to this NOI and to the Idaho Panhandle National Forests Quarterly Schedule of Proposed Actions, October 1999. In addition, the public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service will also be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process is used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those covered by a relevant previous environmental analysis
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives including cumulative effects.

Some public concerns have already been expressed through earlier scoping and the following significant issues have been identified: scenery; social; and white-tailed deer winter range.

This list will be verified, expanded, or modified based on public scoping and interdisciplinary review for this proposal.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January 2000. The final environmental impact statement is expected to be completed in March 2000. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements 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, 533 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F. 2d 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 45-day 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 final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concern 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 chapter of the draft statement. Comments may also address the adequacy of the draft environment impact statement or the merits of the alternatives formulated and discussed in statement. Reviews may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center ad (202) 720–2600 (voice and TDD).

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, call 1–800–245–6340 (voice) or 202–720–1127 (TDD). USDA is an equal employment opportunity employer.

Dated: November 22, 1999.

David J. Wright,

Forest Supervisor, Idaho Panhandle National Forests.

[FR Doc. 99–30865 Filed 11–26–99; 8:45 am]

BILLING CODE 3410–11–M

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 services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 29, 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 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 services to the Government.

2. The action will result in authorizing small entities to furnish the 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 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 services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center, Operation of Individual Equipment Element Store and HAZMART, Charleston Air Force Base, South Carolina, NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Grounds Maintenance/Vegetation Control, Concord Naval Weapons Station, Concord, California, NPA: Phoenix Programs, Incorporated, Concord, California

Janitorial/Custodial

The Library of Congress, Washington, DC for the following buildings:

James Madison Memorial, Thomas Jefferson, John Adams & Little Scholars Child Care Facility, NPA: Ability Unlimited, Inc., Washington, District of Columbia

Operation of Individual Equipment Element Store and HAZMART, Travis Air Force Base, California, NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–30920 Filed 11–26–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 29, 1999.

ADDRESS: 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 September 3 and 24, and October 8 and 15, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 48345, 51736, 54862 and 55897) of proposed additions to the Procurement List.

The Following Comments Pertain to Bookcase, Steel, Contemporary

Comments were received from the current contractor in response to a request for sales data. The contractor suggested that the previous addition to the Procurement List of a portion of the Government requirements for the bookcase hastened the demise of a corporate predecessor to the contractor. The contractor indicated that current Federal sales of the bookcase represent only a very small portion of the contractor's total sales, but are important because they use some of the company's underutilized productive capacity. The contractor also noted its status as a Hubzone Empowerment Contracting Company located in an extremely high unemployment area. According to the Committee's figures, the previous Procurement List addition the contractor mentioned affected a fairly small portion of the sales of the contractor's corporate predecessor. As the contractor admitted, the current Procurement List addition affects an even smaller part of the contractor's current total sales. Persons with severe disabilities have an unemployment rate over twice that cited by the contractor for its area. The Committee therefore believes that addition of this supply requirement for the bookcase will not have a severe adverse impact on the contractor, even taking the past Procurement List addition impact into consideration, and the jobs to be created for persons with severe disabilities outweigh a possible job loss for workers who could more easily find replacement jobs.

The Following Comments Pertain to Cup, Paper, Disposable, Hot

Comments were received from one of the current contractors for this cup. The contractor noted that while sales of the cup are a small part of the company's total sales, they are a ''rather significant piece of business'' for the company's cup sales. The contractor also asked to be allowed to be a supplier if the cup were added to the Procurement List.

The contractor is a very large business, and its sales of this cup are well below one percent of its total sales, so the Committee's action should have no severe adverse impact on the company or its cup production operation, which the company can easily support if needed. Addition of the cup to the Procurement List will not bar the contractor from serving as a supplier of paper cup stock to the nonprofit agency which will produce the cup for the Government.

The Following Material Pertains to all of the Items Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and 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 commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and 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 commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Bookcase, Steel, Contemporary

7110–00–601–9821
7110–00–601–9822
7110–01–135–1997
7110–01–135–1998
(Requirements for GSA Zones 2 and 3 only)

Cup, Paper, Disposable, Hot

7350–00–162–3006

Services

Food Service Attendant
Air National Guard Base
New Castle County Airport
New Castle, Delaware

Laundry/Dry Cleaning
Camp Pendleton Marine Corps Base
Camp Pendleton, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–30921 Filed 11–26–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101399G]

Marine Mammals; Scientific Research Permit (PHF# 540–1502–00)

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that John Calambokidis, Cascadia Research Collective, Waterstreet Building, 218 ½ West Fourth Avenue, Olympia, WA 89501, has been issued a permit to take several species of cetaceans and pinnipeds for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits 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); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4027).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 3, 1999, notice was published in the Federal Register (64 FR 23608) that a request for a scientific research permit to take several species of cetaceans during the course of photo-identification, aerial survey, biopsy sampling, and/or tagging activities, and several species of pinnipeds during aerial surveys, had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 through 226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 19, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–30913 Filed 11–26–99; 8:45 am]

BILLING CODE 3510–22–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

November 19, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 29, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 351/651 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63032, published on November 10, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 29, 1999, you are directed to increase the current limit for Categories 351/651 to 356,999 dozen [1], as

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

provided for under the Uruguay Round Agreement on Textiles and Clothing:

The guaranteed access level for Categories 351/651 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–30818 Filed 11–26–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 3, 1999.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jen A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–31017 Filed 11–24–99; 12:13 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 10, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–31018 Filed 11–24–99; 12:13 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 17, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–31019 Filed 11–24–99; 12:13 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Thursday, December 23, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–31020 Filed 11–24–99; 12:13 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Thursday, December 30, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–31021 Filed 11–24–99; 12:13 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Meeting.

TIME AND DATE: 10 a.m.–1 p.m., December 2, 1999.

STATUS: Open.

SUMMARY: This is to give notice that the Commission will hold a public roundtable meeting to discuss regulation of exchange-traded derivatives.

PLACE: 1155 21st St., NW, Washington, DC, Lobby Level Hearing Room.

FOR FURTHER INFORMATION CONTACT: De'Ana H. Dow, Legal Counsel to Chairman Rainer, at 202–418–5030. Written comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Issued in Washington, D.C. on November 24, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–31067 Filed 11–24–99; 11:42 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0001]

Black & Decker (U.S.), Inc., corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with Black & Decker (U.S.), Inc., a corporation, containing a civil penalty of $575,000.

DATES: Any interested person may ask the Commission not to accept this

agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 14, 1999.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1382.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: November 23, 1999.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Black and Decker (U.S.), Inc., (''Black & Decker''), a corporation, enters into this Settlement Agreement and Order with the staff (''the staff'') of the U.S. Consumer Product Safety Commission (''the Commission'') in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquires under the Consumer Product Safety Act (''CPSA'').

I. The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. Black & Decker is a corporation organized and existing under the laws of the State of Maryland. Its principal offices are located at 701 East Joppa Road, Baltimore, Maryland.

II. Staff Allegations

The Staff Alleges the Following

4. Between February 1994 and January 1995, Black & Decker manufactured, distributed and sold in the United States a toaster, designed to be affixed to the underside of a cabinet, known as the Spacemaker Optima Model T1000 Type 1, (''Spacemaker Toaster Type 1,'' or ''the Toaster''). Black & Decker is, therefore, a manufacturer, distributor and retailer of a consumer product in U.S. commerce pursuant to 15 U.S.C. 2052(a)(1), (4), (5) and (6).

5. The Spacemaker Toaster Type 1 has a glass door on its front side. Bread and other food products are inserted into the toaster horizontally onto a rack.

6. When the toasting cycle is complete, the glass door on the front of the Spacemaker Type 1 toaster opens automatically and the Toaster rack containing the food product moves forward about one and one-half (1½) inches.

7. Food fires have begun in the Spacemaker Toaster Type 1, sometimes when a food item is re-toasted. When food fires were underway, the door automatically opened, the food rack moved forward, and the newly available oxygen promoted continued burning. Flames from the fire can and did escape the Toaster and contacted the cabinet(s) above, exposing the contents and other nearby materials to fire.

8. Soon after Black & Decker began distributing the Spacemaker toaster Type 1 in 1994, it received consumer complaints of fires in its product. By January 1995, Black & Decker had evaluated the Spacemaker toaster Type 1 and redesigned it so the front door would no longer open automatically. Black & Decker also stopped making the Spacemaker Toaster Type 1 and prepared to manufacture the newly designed Spacemaker Toaster Type 2.

9. In April 1995, Black & Decker purported to file a ''full report'' with the Commission staff pursuant to 16 CFR part 1115. The company reported that it was aware of seventy-three (73) incidents of fire in the toaster. The staff requested copies of these complaints and accompanying documentation. Black & Decker furnished other information of the type required under the reporting regulations in 16 CFR part 1115, but, unbeknownst to the staff, Black & Decker omitted important information and documents. By failing to provide the information, Black & Decker misled the staff and impeded its investigation and analysis of the risk. Black & Decker claimed consumer complaints of fires had been destroyed, when, in fact, they had not. Black & Decker also failed to reveal the existence of its engineering documents that identified design defects with the Spacemaker Toaster Type 1, identified the fire risk it posed, and supported redesigning the Type 1 Toaster with the Spacemaker Toaster Type 2. In doing so, Black & Decker failed to adequately inform the staff under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

10. The information withheld or otherwise not submitted by Black & Decker contradicted the merits of Black & Decker's negotiation position and needlessly disputed that the Spacemaker Toaster Type 1 contained defects, presented a substantial product hazard, and should be the subject of a consumer recall.

1. Black & Decker's failure to provide requested information forced the staff to prepare to litigate; and to engage unnecessarily in expensive and time-consuming testing.

12. On October 29, 1997, the staff filed an administrative Complaint alleging that the Spacemaker Toaster Type 1 contained defects which created a substantial product hazard to the public. The case was settled on April 22, 1998 when the Commission accepted a corrective action plan for consumers crafted by the parties.

13. Black & Decker obtained information which reasonably supported the conclusion that the Spacemaker Toaster Type 1 contained defects which could create a substantial product hazard but failed to report to the Commission in a timely manner as required by § 15(b) of the CPSA, 15 U.S.C. 2064(b). Nor did Black & Decker adequately inform the Commission as required by section 15(b) of the CPSA and 16 CFR part 1115.

III. Response of Black & Decker

14. Black & Decker denies the allegations of the staff, set forth in paragraphs 4 through 13 above, that the Spacemaker Toaster Type 1 contains any defect which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b) or 16 CFR part 115. This payment is made in settlement of the staff allegations. Neither the payment nor the fact of entering into this Settlement Agreement constitute evidence of or an admission of, any fault, liability or statutory or regulatory violation by Black & Decker, or of the truth of nay allegations made by the staff.

IV. Agreement of The Parties

15. The Commission has jurisdiction over this matter under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*

16. This Settlement Agreement and Order is a compromise resolution of the matter described above, and the parties enter this Agreement solely for the purposes of settlement. Compliance by Black & Decker with this Settlement Agreement and Order resolves the allegations of violations of section 15(b) of the CPSC regarding the Spacemaker Toaster Type 1.

17. Black & Decker knowingly, voluntarily and completely waives any rights it may have (1) to the issuance of a Complaint in this matter, (2) to administrative or judicial hearing with

respect to the staff allegations cited herein, (3) to judicial review or other challenge or contest of the validity of the Commission's Order, (4) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (5) to a statement of findings of fact and conclusions of law with regard to the staff allegations.

18. The Commission has not, and does not, by virtue of this Settlement Agreement and Order, make any determination that the Spacemaker Toaster Type 1 contains a defect which creates or could create a substantial product hazard or creates an unreasonable risk of serious injury or death; or that Black & Decker knowingly violated the reporting provisions of section 15(b) of the CPSA, 15 U.S.C. 2064(b) or 16 CFR part 1115.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with 16 CFR 1118.20.

20. The Settlement Agreement and Order becomes effective upon final acceptance by the Commission and its service upon Black & Decker. Black & Decker shall pay a civil penalty in the amount of five hundred seventy-five thousand and no/dollars ($575,000.00) within 10 calendar days of receiving service of such final Settlement Agreement and order.

21. for purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), upon final acceptance by the commission, this matter shall be treated as if a Complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

22. Black & Decker agrees to entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

23. This Settlement Agreement is binding upon Black & Decker and the assigns or successors of Black & Decker.

24. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: October 27, 1999.

Black & Decker (U.S.), Inc.

James R. O'Brien,

Product Liability Counsel.

Dated: November 19, 1999.

Consumer Product Safety Commission.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

William J. Moore, Jr.,

Attorney, Legal Division, Office of Compliance.

Deborah J. Lewis,

Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Black & Decker (U.S.), Inc., a corporation, and the staff of the consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Black & Decker (U.S.), Inc., and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that, upon final acceptance of the Settlement Agreement and Order, Black & Decker (U.S.), Inc. shall pay the commission a civil penalty in the amount of FIVE HUNDRED SEVENTY FIVE THOUSAND AND no/100 dollars, ($575,000.00) within ten (10) calendar days after service of this Final Order upon the Black & Decker (U.S.), Inc.

Provisionally accepted and Provisional Order issued on the 23rd day of November 1999.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–30938 Filed 11–26–99; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 29, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 22, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.

Title: Guaranty Agency Quarterly/Annual Report.

Frequency: Monthly.

Affected Public: Not-for-profit institutions; State; local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 36.

Burden Hours: 9,000.

Abstract: The Guaranty Agency Quarterly/Annual Report is submitted by 36 agencies operating a student loan insurance program under agreement with the Department of Education. These reports are used to evaluate agency operations, make payments to agencies as authorized by law, and to make reports to Congress. Form 1130 has been significantly altered due to the results of Congressional Reauthorization.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at 202–708–5359 or by e-mail at jackie__montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs

Type of Review: New.

Title: Guaranty Agency Financial Report.

Frequency: Monthly.

Affected Public: Businesses or other for-profit; State; local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:
Responses: 36.
Burden Hours: 33,660.

Abstract: The Guaranty Agency Financial Report will be used to request payments from and make payments to the Department of Education under the Federal Family Education Loan (FFEL) program authorized by Title IV, Part B of the Higher Education Act (HEA) of 1965, as amended. The report will also be used to monitor the agency's financial activities, including activities concerning its federal fund; operating fund and the agency's restricted account. Recent negotiated rulemaking sessions had a major impact on the development of this form because of significant changes to guaranty agency reporting requirements, and reporting on two new funds, the Federal Fund and Operating Fund. Guaranty agency representatives spent three full days in Washington, DC working with ED on the development of this form 2000.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at 202–708–5359 or by e-mail at jackie__montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–30859 Filed 11–26–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a Public Meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council, and invites people to participate. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act (IDEA) and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities. The FICC will attend to ongoing work including reports from committees and task forces. A delegation of Canadian policy makers will attend the meetings and participate in a policy exchange. A Policy Forum on Service Coordination, sponsored by the Substance Abuse and Mental Health Services Administration (SAMHSA), will be held on Thursday morning from 9:00 a.m.–12:00 noon. An agenda is included in the packet and the meeting is open to the public. The Department of Defense/Education Task Force will meet Tuesday afternoon, November 30 from 1:00 p.m.–4:00 p.m. The monitoring task force will meet on Wednesday morning, December 1, 1999 from 9 a.m.–12 noon. Committee meetings will be held from 12 noon–2 p.m. and a Health Care Financing Administration (HCFA) Listening Session will be held from 2 p.m.–5 p.m. on Wednesday, December 1.

DATE AND TIME: Thursday, December 2, 1999 from 1 p.m. to 4 p.m.

ADDRESSES: U.S. Dept. of Education, Barnard Auditorium, 400 Maryland Avenue, SW, Washington, DC 20202, near the Federal Center Southwest and L'Enfant metro stops.

FOR FURTHER INFORMATION CONTACT: Libby Doggett or Kim Lawrence, U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685(c) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention in services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

The meeting of the FICC is open to the public and will be physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Kim Lawrence at (202) 205–5507 (voice) or (202) 205–9754 (TDD) ten days in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–30881 Filed 11–26–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee Renewal

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with section 101–6.1015(a), title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee has been renewed for a two-year period beginning in November 1999. The Committee will provide advice to the Director, Office of Science, on the Biological and Environmental Research Program managed by the Office of Biological and Environmental Research.

The renewal of the Biological and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law No. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee can be obtained from Mrs. Rachel M. Samuel at (202) 586–3279.

Issued in Washington, DC on November 22, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–30878 Filed 11–26–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Floodplain and Wetlands Involvement for the Weldon Spring Site

AGENCY: Office of Environmental Management, DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to construct a groundwater interceptor trench near the Weldon Spring Site, located in St. Charles County, Missouri. The groundwater interceptor trench would collect contaminated groundwater for treatment at the Weldon Spring Quarry water treatment plant. The proposed trench is adjacent to two wetland areas and is located within the Missouri River 100-year floodplain. In accordance with 10 CFR part 1022, DOE is preparing a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments are due to the address below no later than December 14, 1999.

ADDRESSES: Comments should be addressed to Mr. Steve McCracken, U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304. Comments may be faxed to (636) 447–0739.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Mr. Steve McCracken, U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304, (636) 441–8978.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The DOE is conducting response actions at its Weldon Spring Site under the direction of the DOE Office of Environmental Management. The Weldon Spring Site is located in St. Charles County, Missouri, approximately 48 km (30 miles) west of St. Louis. Cleanup activities at the site include the remediation of the Weldon Spring Quarry. The quarry, approximately 3.9 km (2.5 miles) southwest of the site, was used for the disposal of chemically and radioactively contaminated materials between the 1940s and 1960s. Removal of bulk waste from the quarry was completed in October, 1995, however, elevated levels of uranium occur in groundwater in the vicinity of the quarry. The St. Charles County wellfield, a source of domestic water for the county, is located in the Missouri River floodplain southeast of the quarry. To limit potential exposure to the public, the Record of Decision for Remedial Action for the Quarry Residuals Operable Unit of the Weldon Spring Site outlined field studies for evaluating the effectiveness of technologies to remediate uranium-impacted groundwater in the vicinity of the Weldon Spring Quarry. This action is intended to evaluate the effectiveness of remediation through the extraction of contaminated groundwater from a groundwater interceptor trench.

The DOE is proposing to construct a 550-foot trench approximately 90 m (300 feet) south of the quarry. The trench would be located between the Katy Trail and Femme Osage Slough, within the State of Missouri Weldon Spring Conservation Area, and approximately 1.4 km (0.88 mile) from the Missouri River. The groundwater interceptor trench would provide continuous groundwater access for an extraction system. Contaminated groundwater would be removed from the trench and directed to a treatment plant. The trench would be operated up to two years.

The proposed trench would be located adjacent to Femme Osage Slough, a palustrine, permanently flooded wetland. The area between the proposed trench and the slough contains a small palustrine, seasonally flooded wetland area. The trench would lie entirely within the 100-year floodplain of the Missouri River. Erosion controls would be installed down gradient from the construction site to prevent the transport of silt downstream by stormwater flows.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), the DOE is preparing a floodplain and wetlands assessment for this proposed action. After DOE issues the assessment, a floodplain statement of findings will be published in the **Federal Register**.

Issued in Oak Ridge, Tennessee on November 15, 1999.

James L. Elmore,

Alternate Oak Ridge Operations, National Environmental Policy Act Compliance Officer.

[FR Doc. 99–30879 Filed 11–26–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–2758–008; ER96–1516–009; and ER96–2585–003]

Advantage Energy, Inc.; Southern Energy Marketing Corporation, Inc.; Niagara Mohawk Power Corporation; Notice of Filings

November 17, 1999.

Take notice that on November 10, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These

filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–30872 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–70–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 22, 1999.

Take notice that on November 16, 1999, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to be effective December 17, 1999:

Seventh Revised Sheet No. 600
Fourth Revised Sheet No. 604
Second Revised Sheet No. 617
Second Revised Sheet No. 635
First Revised Sheet No. 645
Original Sheet No. 717
Sheet Nos. 718–798

Algonquin states that the purpose of this filing is to set forth in its tariff a negotiated rates provision pursuant to the Alternative Rates Policy Statement [74 FERC ¶61,076 (1996)].

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30846 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–4024–010 and ER97–4281–010]

British Columbia Power Exchange Corporation; NRG Power Marketing, Inc.; Notice of Filings

November 17, 1999.

Take notice that on November 8, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–30873 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER94–1475–018; ER96–795–009; ER97–399–012; ER95–968–010; ER96–146–010; ER96–2580–013; ER95–1314–018; ER98–3048–003; and ER97–2018–002]

Illinova Energy Partners, Inc.; Gateway Energy Marketing; The Montana Power Trading & Marketing Company; Progas Power, Inc.; Yankee Energy Marketing Company; NUI Energy Brokers, Inc.; Hinson Power Company; Northeast Electricity Inc.; SCANA Corporation; Notice of Filings

November 17, 1999.

Take notice that on November 5, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–30870 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–152–023]

Kansas Pipeline Company; Notice of Revised Tariff Filing

November 22, 1999.

Take notice that on November 16, 1999, Kansas Pipeline Company (Applicant) tendered for filing, revisions and corrections to its FERC Gas Tariff, Original Volume No. 1. Applicant further requests waiver of the Commission's 30 day filing requirement so that the tariff sheets will be effective December 1, 1999. These tariff sheets are listed in Appendix A to Applicant's filing.

Applicant states that the modified tariff reflect changes directed by the Commission's October 4, 1999, order in the above-captioned docket. Applicant further states that a copy of this filing is available for public inspection during regular business hours at applicant's offices located at 8325 Lenexa Drive, Lenexa, Kansas 66214. Applicant indicates that copies of this filing are being served on all parties to the proceeding in Docket No. CP96–152. It is further indicated that the contact person for this filing is Mr. James Armstrong at (913) 888–7139.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, on or before December 1, 1999, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This application may be viewed on the Commission's website at http://

ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix A Tariff Sheets Submitted With November 16, 1999, Compliance Filing

Effective December 1, 1999

Second Revised Sheet No. 211
Second Revised Sheet No. 221
Original Sheet No. 222
Second Revised Sheet No. 223
Second Revised Sheet No. 224
Second Revised Sheet No. 261
Second Revised Sheet No. 262
Second Revised Sheet No. 289
Original Sheet No. 290
Original Sheet No. 291
Original Sheet No. 292
Original Sheet No. 293

[FR Doc. 99–30845 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–18–000]

MidAmerican Energy Company; Notice of Filing

November 17, 1999.

Take notice that on November 8, 1999, MidAmerican Energy Company tendered for filing pursuant to Section 203 of the Federal Power Act, an Application for Authorization of Indirect Disposition of Facilities. This application requests the approval of taking private the ownership of MidAmerican Energy's ultimate parent company, MidAmerican Energy Holdings Company, by a small number of private investors, none of whom are public utilities or public utility holding companies.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 8, 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).

David P. Boergers,

Secretary.

[FR Doc. 99–30867 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–150–000 and CP98–151–000]

Millennium Pipline Company, L.P and Columbia Gas Transmission Corporation; Notice of Meeting Attendance

November 22, 1999.

On Tuesday, November 30, 1999, the Federal Energy Regulatory Commission staff will attend a meeting (and possible site visit) with representatives from the U.S. Army Corps of Engineers (COE), the National Marine Fisheries Service (NMFS), New York State Department of State's Division of Coastal Resources, Millennium Pipeline Corporation, L.P. (Millennium), and possibly other Federal and New York State agencies in Suffern, New York. The purpose of this meeting is to discuss fisheries concerns of NMFS, Millennium's newly proposed construction method for the Hudson River crossing, and other issues related to the effects of the project on the coastal zone and threatened and endangered species within the coastal zone of the Hudson River.

The meeting will be held at the: Holiday Inn, Meeting Room: Empire 1B, 3 Executive Boulevard, Suffern, New York 10901, Telephone number: (914) 357–8314.

The meeting will begin at 10 A.M. Please contact Mr. Richard Hall of the Millennium staff at (607) 773–9101, Mr. Paul McKee of the Commission's Office of External Affair at (202) 208–1088 for additional information.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30851 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–25–000]

Mississippi River Transmission Corporation; Notice of Technical Conference

November 22, 1999.

In the Commission's order issued on October 28, 1999, the Commission directed that a technical conference be held to address various issues related to Mississippi River Transmission Corporation's filing to adjust its Fuel and Loss Percentages.

Take notice that the technical conference will be held on Wednesday, December 8, 1999, at 9:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30650 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 309—Pennsylvania]

Pennsylvania Electric Co./GPU Genco; Notice of Meeting

November 22, 1999.

The applicant has scheduled a meeting to present and discuss issues relevant to the Water Quality Work Group as part of the Alternative Licensing Process. The meeting will be held at the Piney Station beginning at 10 AM on December 8, 1999.

If you want to attend the meeting, require directions, or have other quesetions, please contact Glenn Neiport at (814) 226–8630.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30848 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER95–1614–021; ER97–2681–007; ER99–581–003; ER96–1–016; ER97–181–006; and ER96–1145–013]

PG&E Energy Services Corporation; New Millennium Energy Corporation; Business Discount Plan, Inc.; PowerTec International, LLC; Oceanside Energy, Inc.; Alternate Power Source, Inc.; Notice of Filings

November 17, 1999.

Take notice that on November 9, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Daivd P. Boergers,

Secretary.

[FR Doc. 99–30871 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–512–000]

Public Service Company of Colorado; Notice of Filing

November 17, 1999.

Take notice that on November 5, 1999, Public Service Company of Colorado filed their quarterly report for the quarter ending September 30, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 26, 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).

David P. Boergers,

Secretary.

[FR Doc. 99–30874 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–25–000]

State Street Bank and Trust Company; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

November 17, 1999.

Take notice that on November 9, 1999, State Street Bank and Trust Company (Applicant), a Massachusetts Trust Company, with its principal place of business at c/o State Street Bank and Trust Company of Connecticut, NA, Corporate Trust, Goodwin Square, 225 Asylum Street, 23rd Floor, Hartford, CT 06103 filed with the Federal Energy Regulatory Commission an application for determination, on an expedited basis, of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Pursuant to a sale/leaseback transaction, the Applicant holds legal title to a 165 MW natural gas-fired cogeneration facility located in Pittsfield, Massachusetts (the ''Facility'') as the owner trustee under a trust agreement with TIFD III–F, Inc. In its capacity as trustee, the Applicant leases the Facility to Pittsfield Generating Company, L.P. All capacity and energy from the facility is sold exclusively at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before December 8, 1999, and must be served on the applicant. 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 or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–30868 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–26–000]

TIFD III–F, Inc., Notice of Application for Commission Determination of Exempt Wholesale Generator Status

November 17, 1999.

Take notice that on November 9, 1999, TIFD III–F, Inc (Applicant), a Delaware corporation with its principal place of business at 120 Long Ridge Road, Stamford, Connecticut 06927 filed with the Federal Energy Regulatory Commission an application for determination, on an expedited basis, of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Pursuant to a sale/leaseback transaction, the Applicant has beneficial ownership of a 165 MW natural gas-fired cogeneration facility located in Pittsfield, Massachusetts (the Facility) under a trust agreement with State Street Bank and Trust Company. In its capacity as trustee, State Street Bank and Trust Company holds legal title to the Facility and leases the Facility to Pittsfield Generating Company, L.P. for the benefit of the Applicant. All capacity and energy from the facility is sold exclusively at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before December 8, 1999, and must be served on the applicant. 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 or on the Internet at http://www.ferc.fed.us/

online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–30869 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–101–000, et al.]

Allegheny Energy Unit 1 and Unit 2, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 17, 1999.

Take notice that the following filings have been made with the Commission:

1. Allegheny Energy Unit 1 and Unit 2, L.L.C.

[Docket No. ER00–101–000]

Take notice that on November 10, 1999, Allegheny Energy Unit 1 and Unit 2, L.L.C. (Allegheny), tendered for filing an amendment to its application for a market rate tariff of general applicability under which it proposes to sell capacity and energy to non-affiliates at market-based rates, and to make such sales to affiliates at rates capped by a publicly available regional index price.

Allegheny requests an effective date no later that December 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Company

[Docket No. ER00–536–000]

Take notice that on November 9, 1999, New Century Services, Inc. (NCS), on behalf of Southwestern Public Service Company (SPS), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, revisions to the New Century Operating Companies Open Access Transmission Tariff (OATT) and changes to the rates charged by SPS under the OATT.

NCS proposes that the filing become effective January 1, 2000.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER00–541–000]

Take notice that on November 9, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy Edison Mission Marketing & Trading, Inc., (Edison).

Cinergy and Edison are requesting an effective date of October 9, 1999.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER00–542–000]

Take notice that on November 9, 1999, Cinergy Services, Inc. (Cinergy) and Aquila Energy Marketing Corporation (AEMC), tendered for filing a Notice of Assignment that AEMC will replace Aquila Power Corporation of Cinergy's Market-Based Power Sales Tariff Original Volume No. 7–MB, Service Agreement No. 95, dated October 22, 1997.

Cinergy and AEMC are requesting an effective date of one day after this filing.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER00–543–000]

Take notice that on November 9, 1999, Cinergy Services, Inc. (Cinergy) and TXU Energy Trading Company (TXU), tendered for filing a Notice of Assignment that TXU will replace Enserch Energy Service, Inc., of Cinergy's Cost-Based Power Sales Tariff Original Volume No. 6–CB, Service Agreement No. 217, dated May 1, 1999.

Cinergy and TXU are requesting an effective date of one day after this filing.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER00–544–000]

Take notice that on November 9, 1999, Cinergy Services, Inc. (Cinergy) and Aquila Energy Marketing Corporation (AEMC), tendered for filing a Notice of Assignment that AEMC will replace Aquila Power Corporation of Cinergy's Cost-Based Power Sales Tariff Original Volume No. 6–CB, Service Agreement No. 95, dated October 25, 1997.

Cinergy and AEMC are requesting an effective date of one day after this filing.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Kansas Gas and Electric Company

[Docket No. ER00–545–000]

Take notice that on November 9, 1999, Western Resources, Inc. (WRI), on behalf of its wholly owned subsidiary, Kansas Gas and Electric Company (KGE), tendered for filing a Tenth Revised Exhibit B to the Electric Power, Transmission and Service Contract between KGE and the Kansas Electric Power Cooperative, Inc. (KEPCo). KGE states that the filing is to update Exhibit B to reflect the installation of the Wolf Creek delivery point.

This filing is proposed to become effective October 13, 1999.

Copies of the filing were served upon KEPCo and the Kansas Corporation Commission.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consumers Energy Company

[Docket No. ER00–546–000]

Take notice that on November 9, 1999, Consumers Energy Company (Consumers) tendered for filing executed service agreements for Non-Firm Point-to-Point Transmission Service with Florida Power & Light.

The agreement is pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and Detroit Edison Company (Detroit Edison) and has an effective date of October 26, 1999.

Copies of the filing were served upon the Michigan Public Service Commission, Detroit Edison and the customer listed above.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company; FirstEnergy Operating Companies

[Docket No. ER00–547–000]

Take notice that on November 9, 1999, Duquesne Light Company (Duquesne) and FirstEnergy Operating Companies (The Cleveland Electric Illuminating Company, Ohio Edison Company Pennsylvania Power Company, The Toledo Edison Company and when applicable, American Transmission Systems, Inc.) (FirstEnergy) on November 9, 1999, tendered for filing under Federal Power Act Section 205 proposed Must-Run and Connection and Site Agreements. The Agreements apply to the electric generating plants transferred from FirstEnergy to Duquesne as part of the generation exchange approved by the Commission.

Copies of the filing were served upon the Pennsylvania Public Utility

Commission and the Public Utilities Commission of Ohio.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER00–548–000]

Take notice that on November 9, 1999, Cinergy Services, Inc. (Cinergy) and TXU Energy Trading Company (TXU), on November 8, 1999, are requesting via a Notice of Assignment that TXU will replace Enserch Energy Service, Inc., of Cinergy's Market-Based Power Sales Tariff Original Volume No. 7–MB, Service Agreement No. 220, dated May 1, 1999.

Cinergy and TXU are requesting an effective date of one day after this filing.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Pacific Gas and Electric Company

[Docket No. ER00–549–000]

Take notice that on November 10, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing the Large Facilities Authorization Letter No. 2 and the Small Facilities Authorization Letter No. 3, submitted pursuant to the Procedures for Implementation (Procedures) of Section 3.3 of the 1987 Agreement between PG&E and the City and County of San Francisco (City). This is PG&E's second quarterly filing submitted pursuant to Section 4 of the Procedures, which provides for the quarterly filing of Facilities Authorization Letters. The Facilities Authorization Letters streamline the procedures for filing numerous Facilities, and facilitates payment of PG&E's costs of designing, constructing, procuring, testing, placing in operation, owning, operating and maintaining the customer-specific Facilities required for firm transmission and distribution service requested by City under these Facilities Authorization Letters. PG&E has requested permission to use automatic rate adjustments whenever the California Public Utilities Commission (CPUC) authorizes a new Electric Rule 2 Cost of Ownership Rate but cap the monthly transmission-level rates, respectively, at 0.58% and 1.19% for customer-financed and PG&E-financed Facilities, and cap the monthly distribution-level rates, respectively, at 0.77% and 1.34% for customer-financed and PG&E-financed facilities.

PG&E has requested certain waivers.

Copies of this filing have been served upon City and the CPUC.

Comment date: November 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. New York Independent System Operator, Inc.; Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Lighting Company; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; Power Authority of the State of New York

[Docket No. ER00–550–000]

Take notice that on November 10, 1999, the Member Systems of the New York Power Pool (Member Systems) and the New York Independent System Operator, Inc. (NYISO) tendered for filing certain revised tariff sheets to the ISO Open Access Transmission and ISO Services Tariffs, as well as revisions to various ISO-related Agreements previously approved by the Commission. With one exception, the Member Systems request that the above-referenced tariff sheets become effective on the date that the NYISO commences operation.

A copy of this filing was served upon all persons on the Commission's official service list(s) in Docket Nos. ER97–1523, *et al.*, and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: November 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER00–552–000]

Take notice that on November 10, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Illinova Power Marketing, Inc. 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 service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of November 10, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon Illinova Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. California Power Exchange Corporation

[Docket No. ER00–553–000]

Take notice that on November 10, 1999, the California Power Exchange Corporation (CalPX), tendered for filing a tariff change that would permit its current Day-of Market Experiment to become permanent. CalPX requests waiver of the notice period to permit the filing to become effective at the same time that corresponding changes in its Operating Manual take effect. In the interim, CalPX requests that the Commission permit it to continue the experimental Day-of Market timeline without change.

Comment date: November 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power

[Docket No. ER99–4021–000]

Take notice that on November 10, 1999, Allegheny Power (Allegheny), tendered for filing an amendment to Supplement No. 30 to its market rate tariff of general applicability under which the Allegheny Power franchised operating companies propose to sell capacity and energy to one another at a publicly available regional index price.

Allegheny requests an effective date of October 6, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be

viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30840 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–19–000, et al.]

Citizens Power LLC, et al.; Electric Rate and Corporate Regulation Filings

November 19, 1999.

Take notice that the following filings have been made with the Commission:

1. Citizens Power LLC, Citizens Power Sales and Hartford Power Sales, L.L.C.

[Docket No. EC00–19–000]

Take notice that on November 12, 1999, Citizens Power LLC, Citizens Power Sales, and Hartford Power Sales, L.L.C. filed an application, as supplemented on November 16, 1999, for an order authorizing the proposed sale of CL Hartford, L.L.C.'s 50% equity interest and Citizens Power Sales' 50% equity interest in Hartford Power Sales, L.L.C. to Citizens Power Holdings One, LLC.

Comment date: December 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Power LLC, Citizens Power Sales, CL Power Sales Six, L.L.C., CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., and CL Power Sales Nine, L.L.C.

[Docket No. EC00–20–000]

Take notice that on November 12, 1999, Citizens Power LLC, Citizens Power Sales, CL Power Sales Six, L.L.C., CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., and CL Power Sales Nine, L.L.C. filed an application, as supplemented on November 16, 1999, for an order authorizing the proposed sale of Citizens Power Sales' 99% equity interest and Citizens Power LLC's 1% equity interest in CL Power Sales Six, L.L.C., CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., and CL Power Sales Nine, L.L.C. to Citizens Power Holdings One, LLC.

Comment date: December 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Citizens Power LLC, Citizens Power Sales and CL Power Sales Two, L.L.C.

[Docket No. EC00–22–000]

Take notice that on November 12, 1999, Citizens Power LLC, Citizens Power Sales, and CL Power Sales Two, L.L.C. filed an application, as supplemented on November 16, 1999, for an order authorizing the proposed sale of Citizens Power Sales' 51% equity interest and Citizen Power LLC's 49% equity interest in CL Power Sales Two, L.L.C. to Citizens Power Holdings One, LLC.

Comment date: December 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Citizens Power LLC and CL Power Sales One, L.L.C.

[Docket No. EC00–23–000]

Take notice that on November 12, 1999, Citizens Power LLC and CL Power Sales One, L.L.C. filed an application, as supplemented on November 16, 1999, for an order authorizing the proposed sale of Citizens Power's 99% equity interest and CL Funding, L.L.C.'s 1% interest in CL Power Sales One, L.L.C. to Citizens Power Holdings One, LLC.

Comment date: December 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. EC00–24–000]

Take notice that on November 15, 1999, PacifiCorp, tendered for filing in accordance with Section 203 of the Federal Power Act and 18 CFR part 33 of the Commission's Rules and Regulations, an application seeking an order authorizing PacifiCorp to sell to Nor-Cal Electric Authority specified transmission facilities associated with PacifiCorp's sale of all of its retail service territory in northern California.

Comment date: December 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. The Power Company of America, L.P.

[Docket Nos. ER95–111–016 and ER00–573–000]

Take notice that on November 15, 1999, The Power Company of America, L.P. filed quarterly reports for the third and fourth quarters of 1998 and the first, second and third quarters of 1999.

Comment date: December 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. American Energy

[Docket Nos. ER97–360–011 and ER97–360–012]

Take notice that on November 17, 1999, American Energy filed their quarterly report for the quarters ending June 30, 1999 and September 30, 1999, for information only.

8. WKE Station Two Inc.

[Docket No. ER98–1278–006]

Take notice that on November 16, 1999, WKE Station Two Inc. filed their quarterly report for the quarter ending September 30, 1999, for information only.

9. Duquesne Light Company

[Docket No. ER00–534–000]

Take notice that November 8, 1999, Duquesne Light Company (DLC), tendered for filing filed a Service Agreement dated November 5, 1999 with TXU Energy Trading Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds TXU Energy Trading Company as a customer under the Tariff.

DLC requests an effective date of November 5, 1999, for the Service Agreement.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER00–555–000]

Take notice that on November 10, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment (Amendment No. 23) to the ISO Tariff. Amendment No. 23 would revise the ISO Tariff to provide an alternative payment option for ISO Dispatch orders. Resources that have not bid into the relevant ISO markets would be given the choice to continue to receive the current pricing for ISO Dispatch orders (the Hourly Ex Post Price) or a new payment option that includes, if applicable, a payment for market capacity, market energy, and verifiable start-up fuel costs and gas imbalance charges.

The ISO asks for waiver of Section 35.3 of the Commission's regulations to permit Amendment No. 23 to become effective on January 1, 2000.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: November 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool, and New York Independent System Operator

[Docket No. ER00–556–000]

Take notice that on November 12, 1999, the Member Systems of the New York Power Pool and the New York Independent System Operator, Inc., tendered for filing, pursuant to Section 205 of the FPA and Part 35 of the Commission's regulations, proposed revised tariff sheets that contain revisions to the ISO OATT and ISO Services Tariff.

The Member Systems and the NYISO submit that the proposed changes are essential for the commencement of NYISO operations and request an effective date of November 18, 1999, with one exception as noted.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER00–564–000]

Take notice that on November 12, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Commonwealth Edison Company. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of November 3, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER00–566–000]

Take notice that on November 12, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and NewEnergy, Inc. (NewEnergy) for acceptance by the Commission.

The ISO states that this filing has been served on NewEnergy and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective November 9, 1999.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER00–567–000]

Take notice that on November 12, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and NewEnergy, Inc. (NewEnergy) for acceptance by the Commission.

The ISO states that this filing has been served on NewEnergy 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 November 9, 1999.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Tampa Electric Company

[Docket No. ER00–568–000]

Take notice that on November 12, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with Reliant Energy Services, Inc., (Reliant) under Tampa Electric's market-based sales tariff.

Tampa Electric requests that the service agreement be made effective on November 4, 1999.

Copies of the filing have been served on Reliant and the Florida Public Service Commission.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER00–569–000]

Take notice that on November 12, 1999, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies), tendered for filing revised pages to the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of the filing was served on all customers taking service under Part IV of the CSW Operating Companies' currently effective open access tariff, the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Delmarva Power & Light Company

[Docket No. ER00–570–000]

Take notice that on November 12, 1999, Delmarva Power & Light (Delmarva) tendered for filing an executed Interconnection Agreement (IA) between itself and Motiva Enterprises LLC (Motiva). The IA provides for the interconnection of Motiva's generating facilities located in Delaware City, Delaware to Delmarva's transmission system and for the delivery of power to Motiva's facilities.

The IA provides for the interconnection of Motiva to Delmarva's transmission system and for the delivery of power to Motiva's facilities.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Jones Black River Services, Inc.

[Docket No. ER00–571–000]

Take notice that on November 12, 1999, Jones Black River Services, Inc., tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an application for authorization to make sales of electrical capacity, energy, and certain ancillary services at market-based rates and for related waivers and blanket authorizations.

Applicant requests the Commission to act upon the Application, within the next 45 days and to grant a waiver to the extent necessary of the Commission's normal notice requirements so that the Applicant's Rate Schedule can become effective as of January 1, 2000.

JBRSI requests such expedited treatment and waiver in order to permit it to engage in transactions under the Rate Schedule when the Ft. Drum Project's qualifying facility status terminates on December 31, 1999.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Western Kentucky Energy Corp.

[Docket No. ER00–574–000]

Take notice that on November 16, 1999, Western Kentucky Energy Corp. filed their quarterly report for the quarter ending September 30, 1999.

Comment date: December 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Citizens Power Sales and CL Power Sales Ten, L.L.C.

[Docket No. EC00–21–000]

Take notice that on November 12, 1999, Citizens Power Sales and CL Power Sales Ten, L.L.C. filed an application for an order, as supplemented on November 16, 1999, authorizing the proposed sale of Citizens Power Sales' 75% equity interest in CL Power Sales Ten, L.L.C. to Citizens Power Holdings One, LLC.

Comment date: December 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–30842 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–14–000, *et al.*]

McDonough Power Cooperative, *et al.*; Electric Rate and Corporate Regulation Filings

November 18, 1999.

Take notice that the following filings have been made with the Commission:

1. McDonough Power Cooperative

[Docket No. EL00–14–000]

Take notice that on November 9, 1999, McDonough Power Cooperative (McDonough) filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's (Commission) Regulations. McDonough's filing is available for public inspection at its offices in Macomb, Illinois.

Comment date: December 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Pittsfield Generating Company, L.P.

[Docket No. EL00–15–000]

Take notice that on November 9, 1999, Pittsfield Generating Company, L.P. (Pittsfield) filed with the Federal Energy Regulatory Commission a petition for a declaratory order disclaiming jurisdiction and request for expedited consideration.

Pittsfield is the lessee of a 165 MW natural gas-fired qualifying cogeneration facility in Pittsfield, Massachusetts (the Facility). Pittsfield is seeking a disclaimer of jurisdiction over the owner trustee and the owner participant in a sale/leaseback transaction involving the Facility should the Facility ever become jurisdictional.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. The Legacy Energy Group, LLC and American Energy Trading, Inc.

[Docket Nos. ER99–3571–001 and ER97–360–012]

Take notice that on November 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

4. Strategic Energy Management Corp.

[Docket No. ER00–167–000]

Take notice that on November 3, 1999, Strategic Energy Management Corporation tendered for filing an amendment to the Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority filed with the Commission on October 20, 1999, in the above-referenced docket.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. C.C. Pace Resources, Inc.

[Docket No. ER00–558–000]

Take notice that on November 12, 1999, C.C. Pace Resources, Inc. (Pace), tendered for filing a notice of cancellation of Pace's Rate Schedule FERC No. 1 to be effective immediately.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER00–559–000]

Take notice that on November 12, 1999, Florida Power & Light Company (FPL), tendered for filing a Service Agreement with TXU Energy Trading Company for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreement be made effective on October 15, 1999.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Illinova Power Marketing, Inc.

[Docket No. ER00–560–000]

Take notice that on November 12, 1999, Illinova Power Marketing, Inc., tendered for filing an Electric Power Transaction Service Agreement under which UtiliCorp. United will take service pursuant to IPMI's power sales tariff, Rate Schedule FERC No. 1.

IPMI has requested an effective date of October 12, 1999.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Ameren Services Company

[Docket No. ER00–561–000]

Take notice that on November 12, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and AmerenCIPS. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to AmerenCIPS pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

ASC requests that as directed in the Commission's Order No. 888, the Service Agreement be allowed to become effective November 3, 1999, the date of said agreement.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER00–562–000]

Take notice that on November 12, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and AmerenCIPS. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to AmerenCIPS pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

ASC requests that as directed in the Commission's Order No. 888, the Service Agreement be allowed to become effective November 3, 1999, the date of said agreement.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company

[Docket No. ER00–563–000]

Take notice that on November 12, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Delmarva Power & Light Company. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of October 29, 1999, for this Agreement with Delmarva.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Pacific Gas and Electric Company

[Docket No. ER00–565–000]

Take notice that on November 12, 1999, Pacific Gas and Electric Company (PG&E) tendered for filing a Scheduling Coordinator Services Tariff (SCS Tariff). PG&E requests a retroactive effective date as of the commencement of the California System Operator Corporation (CAISO) operations (March 31, 1998). This filing seeks to recover the cost PG&E incurs from the CAISO as Scheduling Coordinator for certain existing transmission service customers.

Copies of this filing have been served upon the California Public Utilities Commission, all parties designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in FERC Docket ER97–2358–002 and the California Independent System Operator Corporation.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PP&L, Inc.

[Docket No. ES00–7–000]

Take notice that on November 5, 1999, PP&L, Inc. submitted an application under Section 204 of the Federal Power Act seeking authority to issue up to $1.5 billion of promissory notes and other evidences of secured and unsecured indebtedness maturing in less than one year from the date of issuance.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. McDonough Power Cooperative

[Docket No. ES00–8–000]

Take notice that on November 9, 1999, McDonough Power Cooperative (McDonough) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue from time to time long-term promissory notes for an amount no more than $20.9 million. McDonough requests a waiver from the Commission's competitive bidding and negotiated placement requirements. In addition to or in lieu of authorization to borrow money, McDonough requests blanket approval to issue securities or assume additional debt provided that such issue or assumption is for some lawful object within the corporate purposes, compatible with the public interests and reasonably necessary or appropriate for such purposes.

Comment date: December 9, 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30841 Filed 11–26–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–20–000, et al.]

Milford Power Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

November 16, 1999.

Take notice that the following filings have been made with the Commission:

1. Milford Power Limited Partnership

[Docket No. EG00–20–000]

Take notice that on November 5, 1999, Milford Power Limited Partnership, 100 Clinton Square, Suite 403, Syracuse, New York 13202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Milford Power Limited Partnership owns and operates a cogeneration facility in Milford, New Jersey, with a name plate capacity of approximately 30.5 MW (Facility). Milford Power Limited Partnership sells electric energy and capacity from the Facility at wholesale to CL Power Sales Nine, L.L.C., a power marketer.

Comment date: December 7, 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. Liberty Electric Power, LLC

[Docket No. EG00–21–000]

Take notice that on November 5, 1999, Liberty Electric Power, LLC (Liberty Electric), with its principal offices c/o Columbia Electric Corporation, 13880 Dulles Corner Lane, Herndon, VA 20171, 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, as amended, and Part 365 of the Commission's regulations.

Liberty Electric is a Delaware limited liability company which will be engaged exclusively in the business of owning and operating a nominal 500 MW natural gas-fired generating facility in Eddystone, Pennsylvania and selling electricity at wholesale.

Comment date: December 7, 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. Sithe New Jersey Holdings LLC

[Docket No. EG00–23–000]

Take notice that on November 5, 1999, Sithe New Jersey Holdings LLC (SNJH) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

SNJH is an indirect subsidiary of Sithe Energies, Inc., and will own and operate five (5) generation facilities in New Jersey (the ''SNJH Facilities'') after the acquisition of those facilities from Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company. SNJH will be engaged directly and exclusively in the business of owning and/or operating the SNJH Facilities and selling the SNJH Facilities' electric energy at wholesale.

Comment date: December 7, 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. Sithe Pennsylvania Holdings LLC

[Docket No. EG00–24–000]

Take notice that on November 5, 1999, Sithe Pennsylvania Holdings LLC (SPH) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

SPH is an indirect subsidiary of Sithe Energies, Inc., and will own and operate sixteen generation facilities in Pennsylvania (the SPH facilities) after the acquisition of those facilities from Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company. SPH will be engaged directly and exclusively in the business of owning and/or operating the SPH Facilities and selling the SPH Facilities' electric energy at wholesale.

Comment date: December 7, 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. Pacific Gas and Electric Company

[Docket No. EL98–48–001]

Take notice that on November 1, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing a ''First Amendment to the Settlement Agreement Between Turlock Irrigation District and Pacific Gas and Electric Company'' in order to comply with the Federal Energy Regulatory Commission's (Commission) September 30, 1999 Letter. Copies of this filing have been served upon the Turlock Irrigation District and the California Public Utilities Commission.

Comment date: December 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Tenaska Power Services Co.; and TransAlta Energy Marketing (U.S.) Inc.

[Docket Nos. ER94–389–021 and ER98–3184–006]

Take notice that on October 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

7. Sithe Power Marketing, Inc.

[Docket No. ER98–107–009]

Take notice that on November 2, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

8. INFINERGY Services, LLC; Pacific Energy & Development Corporation; Entergy Power Marketing Corp.; and Quantum Energy Resources, Inc.

[Docket Nos. ER98–3478–004; ER98–1824–007; ER95–1615–020; ER96–947–012; ER96–947–013; and ER96–947–014]

Take notice that on November 4, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

9. CL Power Sales Seven, L.L.C.; CL Power Sales Eight, L.L.C.; CL Power Sales Ten, L.L.C.; CL Power Sales Nine, L.L.C.; CP Power Sales Fifteen, L.L.C.; CP Power Sales Fourteen, L.L.C.; CP Power Sales Thirteen, L.L.C.; CP Power Sales Twelve, L.L.C.; CP Power Sales Nineteen, L.L.C.; CP Power Sales Seventeen, L.L.C.; CP Power Sales Eighteen, L.L.C.; CP Power Sales Twenty, L.L.C.; and H.Q. Energy Services (U.S.) Inc.

[Docket Nos. ER96–2652–038; ER96–2652–039; ER96–652–040; ER96–2652–041; ER99–890–004; ER99–891–004; ER99–892–004; ER99–893–004; ER99–4228–001; ER99–4229–001; ER99–4230–001; ER99–4231–001; and ER97–851–010]

Take notice that on November 1, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

10. Reliant Energy Etiwanda, LLC

[Docket No. ER99–4398–000]

Take notice that on November 4, 1999, Reliant Energy Etiwanda, LLC (Reliant Etiwanda) tendered for filing an amendment to its filing in the above-captioned docket.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Enron Power Marketing, Inc.

[Docket No. ER00–497–000]

Take notice that on November 1, 1999, Enron Power Marketing, Inc. (EPMI), tendered for filing with the Commission an amendment to Electric Rate Schedule No. 1, to allow EPMI to sell specified ancillary services at market-based rates to the New England Power Pool. Consistent with the Commission's current requirements, EPMI also amends its rate schedule to specifically state that it sells the ancillary services of spinning reserve, non-spinning reserve, and regulation to the California ISO at market-based rates.

EPMI requests that the tariff amendment be made effective on January 1, 2000.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Rochester Gas and Electric Corporation

[Docket No. ER00–528–000]

Take notice that on November 8, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between RG&E and Columbia Energy Power Marketing (Transmission Customer) for service under RG&E's open access transmission tariff. Specifically dealing with the Retail Access Program under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1999, for the Columbia Energy Power Marketing Service Agreement.

A copy of this Service Agreement has been served on the Transmission Customer and the New York Public Service Commission.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Company

[Docket No. ER99–4560–000]

Take notice that on September 28, 1999, Idaho Power Company filed a service agreement for firm point-to-point transmission service to Arizona Public Service Company under Idaho Power Company's transmission tariff.

The service agreement is proposed to become effective October 1, 1999.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Illinova Power Marketing, Inc.

[Docket No. ER00–431–000]

Take notice that on November 8, 1999, Illinova Power Marketing, Inc. (IPMI), tendered for filing an errata to the Electric Transaction Service Agreement filed in this docket on November 1, 1999, under which certain customers will take service pursuant to IPMI's power sales tariff, Rate Schedule FERC No. 1.

IPMI has requested an effective date of October 1, 1999, for each service agreement.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Portland General Electric Company

[Docket No. ER00–516–000]

Take notice that on November 8, 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 PG&E Energy Trading-Power, LP.

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 October 22, 1999.

A copy of this filing was caused to be served upon PG&E Energy Trading-Power, LP, as noted in the filing letter.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. St. Joseph Light & Power Company

[Docket No. ER00–517–000]

Take notice that on November 8, 1999, St. Joseph Light & Power Co., (SJLP), tendered for filing eight executed agreements for transmission service under its Open Access Transmission Tariff. The eight agreements consist of two agreements for each of four customers, one for firm point-to-point service and one for non-firm point-to-point service. The four customers are The Energy Authority, Inc.; Energy Transfer Group, L.L.C.; NewEnergy, Inc.; and TransAlta Energy Marketing (U.S.) Inc. Also included in this filing is the Third Revised Sheet No. 72, to Tariff No.1 which is the Index of SJLP's point-to-point transmission service customers.

Copies of the filing were served on each of these four companies.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Ameren Services Company

[Docket No. ER00–518–000]

Take notice that on November 8, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and Omaha Public Power District (Omaha). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Omaha pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER00–519–000]

Take notice that on November 8, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and Omaha Public Power District (Omaha). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Omaha pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. FirstEnergy Corp., and Pennsylvania Power Company

[Docket No. ER00–520–000]

Take notice that on November 8, 1999, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service and an Operating Agreement for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with Utility.com, Inc. pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is November 1, 1999.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, (Allegheny Power)

[Docket No. ER00–521–000]

Take notice that on November 8, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement Nos. 64, 65 and 66 to add West Penn Power d/b/a Allegheny Energy to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission.

The proposed effective date under each Service Agreement is December 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–523–000]

Take notice that on November 8, 1999, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Delmarva Power & Light Company as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of October 22, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER00–524–000]

Take notice that on November 8, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective upon the start date of the New York Independent System Operator (NYISO), the portion of Rate Schedule FERC No. 33, effective date December 12, 1983, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk that pertain to 397 MW of capacity from Moses 17–18 and the Niagara Plant to Niagara Mohawk's Edic substation is to be canceled. The balance of Rate Schedule FERC No. 33 is unaffected by this cancellation.

Notice of the proposed cancellation has been served upon Power Authority of the State of New York.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Rochester Gas and Electric Corporation

[Docket No. ER00–525–000]

Take notice that on November 8, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between RG&E and TXU Energy Services (Transmission Customer) for service under RG&E's open access transmission tariff. Specifically dealing with the Retail Access Program under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1999, for the TXU Energy Services Service Agreement.

A copy of this Service Agreement has been served on the Transmission Customer and the New York Public Service Commission.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Rochester Gas and Electric Corporation

[Docket No. ER00–526–000]

Take notice that on November 8, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between RG&E and North American Energy, Inc., (Transmission Customer) for service under RG&E's open access transmission tariff. Specifically dealing with the Retail Access Program under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1999, for the North American Energy, Inc., Service Agreement

A copy of this Service Agreement has been served on the Transmission Customer and the New York Public Service Commission.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Rochester Gas and Electric Corporation

[Docket No. ER00–527–000]

Take notice that on November 8, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between RG&E and Monroe County (Transmission Customer) for service under RG&E's open access transmission tariff. Specifically dealing with the Retail Access Program under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1999, for the Monroe County Service Agreement

A copy of this Service Agreement has been served on the Transmission Customer and the New York Public Service Commission.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Rochester Gas and Electric Corporation

[Docket No. ER00–529–000]

Take notice that on November 8, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between RG&E and Energetix, Inc., (Transmission Customer) for service under RG&E's open access transmission tariff. Specifically dealing with the Retail Access Program under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1999, for the Energetix, Inc., Service Agreement

A copy of this Service Agreement has been served on the Transmission Customer and the New York Public Service Commission.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. New England Power Pool

[Docket No. ER00–530–000]

Take notice that on November 8, 1999, the New England Power Pool (NEPOOL), Participants Committee tendered for filing the Forty-Seventh Agreement Amending the New England Power Pool Agreement (the Forty-Seventh Agreement) which modifies prospectively how capital expenditures and capitalized project costs of the ISO New England Inc., incurred on or after January 1, 2000 are to be allocated among and paid by the Participants.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the NEPOOL Participants.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Duquesne Light Company

[Docket No. ER00–532–000]

Take notice that November 8, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated November 5, 1999 with FirstEnergy Trading Services, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds FirstEnergy Trading Services, Inc., as a customer under the Tariff.

DLC requests an effective date of November 5, 1999, for the Service Agreement.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Duquesne Light Company

[Docket No. ER00–533–000]

Take notice that on November 8, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement for Transmission Service dated November 1, 1999 with Allegheny Power Service under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Allegheny Power Service as a customer under the Tariff.

DLC requests an effective date of November 1, 1999, for the Service Agreement.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Duquesne Light Company

[Docket No. ER00–535–000]

Take notice that on November 8, 1999, Duquesne Light Company (DLC), tendered for filing a Non-Firm Point-to-Point Service Agreement dated November 5, 1999 with TXU Energy Trading Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds TXU Energy Trading Company as a customer under the Tariff.

DLC requests an effective date of November 5, 1999, for the Service Agreement.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. McDonough Power Cooperative

[Docket No. ER00–537–000]

Take notice that on November 9, 1999, McDonough Power Cooperative (McDonough), tendered for filing its Agreement between McDonough Power Cooperative and Central Illinois Public Service Company (CIPS Agreement) pursuant to § 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and § 35.12 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.12.

McDonough requests that the Commission accept the agreements with an effective date of November 18, 1999.

McDonough's filing is available for public inspection at its offices in Macomb, Illinois.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–538–000]

Take notice that on November 9, 1999, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Conectiv Energy Supply, Inc., as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of October 22, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Minnesota Power, Inc.

[Docket No. ER00–539–000]

Take notice that on November 9, 1999, Minnesota Power, Inc., tendered for filing a signed Service Agreement with UtiliCorp United Inc., and with OGE Energy Resources, Inc., under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Niagara Mohawk Power Corporation

[Docket No. ER00–501–000]

Take notice that on November 5, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Sithe Power Marketing, Inc. This Transmission Service Agreement specifies that Sithe Power Marketing, Inc., has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Sithe Power Marketing, Inc., to enter into separately scheduled transactions under which Niagara Mohawk will provide non-firm transmission service for Sithe Power Marketing, Inc., as the parties may mutually agree.

Niagara Mohawk requests an effective date of November 2, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Sithe Power Marketing, Inc.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Cinergy Services, Inc.

[Docket No. ER00–540–000]

Take notice that on November 9, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Edison Mission Marketing & Trading, Inc., (Western).

Cinergy and Western are requesting an effective date of October 9, 1999.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Baltimore Gas and Electric Company; Constellation Power Source, Inc.

[Docket Nos. ER99–2948–001 and ER97–2261–013]

Take notice that on November 12, 1999, Baltimore Gas and Electric Company and its affiliate, Constellation Power Source, Inc., tendered for filing notification of a change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority.

Comment date: December 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Pittsfield Generating Company, L.P.

[Docket No. ER00–496–000]

Take notice that on November 4, 1999, Pittsfield Generating Company, L.P. filed their quarterly report for the quarter ending September 30, 1999.

Comment date: November 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30839 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3065–009; New York]

Electro Ecology, Inc.; Notice of Availability of Environmental Assessment

November 22, 1999.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the Wappingers Falls Hydroelectric Project. The application is to install a low-flow turbine that will operate on a flow of approximately 7 to 46 cubic feet per second (cfs). The low-flow turbine would allow the project to operate when flows are too low for use of the existing, larger turbines, and to more precisely control reservoir water levels. Approximately 100 feet of new steel pipe would be used to connect the existing penstock with the new low-flow turbine. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Wappingers Falls Hydroelectric Project is located on Wappinger Creek in Dutchess County, New York.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, 888 First Street, NE, Washington, DC 20426 or on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). Copies can also be obtained by calling the project manager, Pete Yarrington, at (202) 219–2939.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30849 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 8924–030 and 11055–021]

Northeast Hydrodevelopment Corp.; Wilton Hydro Electric Co.; Notice of Availability of Final Environmental Assessment

November 22, 1999.

A final environmental assessment (FEA) is available for public review. The FEA is for two applications to surrender the licenses for the McLane Dam Hydroelectric Project and the Wilton Hydroelectric Project. The Projects are located on the Souhegan River in Hillsboro County, New Hampshire.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. This document may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30844 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of an Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

November 19, 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 License.

b. *Project No:* 2611–038.

c. *Dated Filed:* November 8, 1999.

d. *Applicants:* Kimberly-Clark Tissue Company (Kimberly-Clark), UAH-Hydro Kennebec Limited Partnership (UAH), and Madison Paper Industries (Madison Paper).

e. *Name of Project:* Hydro-Kennebec Project.

f. *Location:* On the Kennebec River, Kennebec and Somerset Counties, Maine.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicants Contact:* Nancy J. Skancke, Grammar Kissel Robbins Skancke & Edwards, 1225 Eye St., NW., Suite 1225, Washington, DC 20005, (202) 408–5400; Fax: (202) 408–5406. Philip K. Dutton, United American Energy Corp., 50 Tice Boulevard, Woodcliff Lake, New Jersey 07675, (201) 307–1818; Fax: (201) 307–1020. And, Michael J. Kurman, Arent Fox Kintner Plotkin & Khan, PLLC, 1050 Connecticut Ave., NW, Washington, DC 20036–5339, (202) 857–6345; Fax: (202)857–6395.

i. *FERC Contact:* Any questions on this notice should be addressed to Mohamad Fayyad at mohamad.fayyad@ferc.fed.us or 202–219–2665.

j. *Deadline for filing comments and/or motions:* December 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.

Please include the project number (2611–038) on any comments or motions filed.

k. *Description of Filing:* The applicants propose to delete from the license an inoperable old powerhouse and related facilities, and to reduce the installed capacity of the project. The old powerhouse has an authorized capacity of 3,730 kW. The facilities proposed for deletion from the project boundary include a wooden gateway structure, a canal, and an old powerhouse containing 11 non-operating generating units. Also, the licensee is proposing to seal the headgate structure with concrete plugs and reinforce it by adding concrete walls. The total installed capacity of the project would decrease from 19,163 kW to 15,433 kW.

1. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://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.

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 Procedures, 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 to 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 representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30843 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Extending Deadline for Filing Comments, Final Terms and Conditions, Recommendations and Prescriptions, and Requesting Reply Comments

November 22, 1999.

a. *Type of Application:* New Major License.

b. *Project No.:* 2077–016.

c. *Date Filed:* July 29, 1999.

d. *Applicant:* USGen New England, Inc.

e. *Name of Project:* Fifteen Mile Falls Hydroelectric Project.

f. *Location:* The project is located on the Connecticut River, in Grafton and Coos Counties, New Hampshire, and Caledonia and Essex Counties, Vermont.

g. *Applicant Contact:* Mr. Cleve Kapala, USGen New England, Inc.,, 46 Centerra Parkway, Lebanon, NH 03766.

h. *FERC Contact:* Any questions on this notice should be addressed to William Guey-Lee E-mail address william.gueylee@ferc.fed.us, or telephone (202) 219–2808.

i. *Deadline for filing comments, final terms and conditions, recommendations, and prescriptions:* At the request of the U.S. Fish and Wildlife Service of the collaborative team, the deadline for filing comments, final terms and conditions, recommendations, and prescriptions, is extended to January 31, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. 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, the intervenor must also serve a copy of the document on that resource agency.

j. All filing must: (1) Bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' ''PRESCRIPTIONS,'' or ''REPLY COMMENTS;'' (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30847 Filed 11–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: November 19, 1999, 64 FR 63310.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 23, 1999, 10 a.m.

CHANGE IN THE MEETING: The following Docket No. has been added to Item CAE–1 on the Agenda scheduled for the November 23, 1999 meeting:

Item No., Docket No. and Company

CAE–1—EL00–7–000, Illinois Power Company

David P. Boergers,

Secretary.

[FR Doc. 99–30982 Filed 11–23–99; 5:00 pm]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6480–8]

Acid Rain Program: Draft Acid Rain compliance Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft nitrogen oxides compliance plans.

SUMMARY: The Environmental Protection Agency is issuing draft nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the draft NO_X compliance plans are also being issued as a direct final action in the notice of final NO_X compliance plans published elsewhere in today's **Federal Register**.

DATES: Comments on the draft NO_X compliance plans proposed by this action must be received on or before December 29, 1999.

ADDRESSES: Administrative Records. The administrative record for the NO_X compliance plans, except information protected as confidential, may be viewed during normal operating hours at U.S. EPA Region 4, 100 Alabama Street SW, Atlanta, GA 30303.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning NO_X compliance plans to Winston A. Smith, Director, Air, Pesticides, and Toxics Management Division (address above).

Submit all comments in duplicate, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the draft NO_X compliance plans. All timely comments

will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the draft NO_X compliance plans.

Hearings. To request a public hearing on the draft NO_X compliance plans, submit a written request stating the issues proposed to be raised in the hearing and explaining how a hearing will contribute to the decision-making process. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft NO_X compliance plans.

FOR FURTHER INFORMATION CONTACT: Jenny Jachim, U.S. EPA Region 4, (404) 562–9126.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to the draft NO_X compliance plans and the NO_X compliance plans issued as a direct final action in the notice of final NO_X compliance plans published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on a draft NO_X compliance plan, the relevant NO_X compliance plan in the notice of final NO_X compliance plans will be withdrawn. Because the Agency will not institute a second comment period on this notice of draft NO_X compliance plans, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the NO_X compliance plans, see the information provided in the notice of final NO_X compliance plans elsewhere in today's **Federal Register**.

Dated: November 18, 1999.

Larry F. Kertcher,

Acting Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 99–30778 Filed 11–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6480–9]

Acid Rain Program: Acid Rain Compliance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final nitrogen oxides compliance plans.

SUMMARY: The Environmental Protection Agency is issuing, as a direct final action, nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the compliance plans are being issued as a direct final action.

DATES: The NO_X compliance plans issued in this direct final action will be final on January 10, 2000 unless significant, adverse comments are received by December 29, 1999. If significant, adverse comments are timely received on a NO_X compliance plan in this direct final action, the relevant NO_X compliance plan will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: *Administrative Records.* The administrative record for the NO_X compliance plans, except information protected as confidential, may be viewed during normal operating hours at U.S. EPA Region 4, 100 Alabama Street SW, Atlanta, GA 30303.

Comments. Send comments to Winston A. Smith, Director, Air, Pesticides, and Toxic Management Division at the address above.

FOR FURTHER INFORMATION CONTACT: Jenny Jachim, U.S. EPA Region 4, (404) 562–9126.

SUPPLEMENTARY INFORMATION: Significant, adverse public comments received on a NO_X compliance plan in this direct final action that are timely received will be addressed in a subsequent approval or denial of a NO_X compliance plan. Such approval or denial will be based on the draft NO_X compliance plan in the notice of draft NO_X compliance plan that is published elsewhere in today's **Federal Register** and that is identical to this direct final action.

U.S. EPA is issuing, under 40 CFR 76.11, a NO_X averaging plan with which the following units shall comply for compliance year 1999: units 1–4 at Arkwright in Georgia, in which the actual annual average rate for NO_X for each unit shall not exceed the alternative contemporaneous annual emission limitation (ACEL) of 1.00 lb/mmBtu, and the actual heat input for units 1–4 shall not be greater than 652,199 mmBtu each; units 1–4 at Bowen in Georgia, in which the actual annual average rate for NO_X for each unit shall not exceed the ACEL of 0.44 lb/mmBtu, and the actual heat input for units 1–4 shall not be less than 42,974,115, mmBtu, 39,890,926 mmBtu, 59,808,558 mmBtu, and 56,547,329 mmBtu respectively; unit 2 at Branch in Georgia, in which the actual annual average rate for NO_X shall not exceed the ACEL of 0.80 lb/mmBtu, and the actual heat input shall not be greater than 13,635,168 mmBtu; units 4–7 at Crist in Florida, in which the actual annual average rate for NO_X for each unit shall not exceed the ACEL of 0.59 lb/mmBtu, and the actual heat input for units 4–7 shall not be greater than 4,330,920 mmBtu, 3,518,988 mmBtu, 13,451,097 mmBtu, and 20,422,854 mmBtu respectively; units 1 and 2 at Daniel in Mississippi, in which the actual annual average rate for NO_X for each unit shall not exceed the ACEL of 0.30 lb/mmBtu, and the actual heat input for units 1 and 2 shall not be less than 21,244,417 mmBtu and 29,987,051 mmBtu respectively; units 1 and 2 at Gadsden in Alabama, in which the actual annual average rate for NO_X for each unit shall not exceed the ACEL of 0.67 lb/mmBtu, and the actual heat input for units 1 and 2 shall not be greater than 3,412,000 mmBtu and 2,160,000 mmBtu respectively; units 1–5 at Gaston in Alabama, in which the actual annual average rate for NO_X for units 1–4 shall not exceed the ACEL of 0.45 lb/mmBtu, and for unit 5, 0.48 lb/mmBtu, and the actual heat input for units 1–4 shall not be less than 13,871,000 mmBtu, 15,349,000 mmBtu, 13,799,000 mmBtu, 13,796,000 mmBtu respectively, and for unit 5, not greater than 46,496,000 mmBtu; units 1–4 at Hammond in Georgia, in which the actual annual average rate for NO_X for units 1–3 shall not exceed the ACEL of 0.80 lb/mmBtu, and for unit 4, 0.50 lb/mmBtu, and the actual heat input for units 1–3 shall not be greater than 3,252,464 mmBtu each; units 1–3 at Kraft in Georgia, in which the actual annual average rate for NO_X for each unit shall not exceed the ACEL of 0.60 lb/mmBtu, and the actual heat input for units 1–3 shall not be greater than 1,434,816 mmBtu each; units 1 and 2 at McDonough in Georgia, in which the actual annual average rate for NO_X for each unit shall not exceed the ACEL of 0.45 lb/mmBtu; unit 1 at McIntosh in Georgia, in which the actual annual average rate for NO_X shall not exceed the ACEL of 0.84 lb/mmBtu, and the actual heat input shall not be greater than 5,272,714 mmBtu; unit 3 at Mitchell in Georgia, in which the actual annual average rate for NO_X shall not exceed the ACEL of 0.65 lb/mmBtu, and the actual heat input shall not be greater than 3,087,400 mmBtu; unit 3 at Scherer in Georgia, in which the actual annual average rate for NO_X shall not exceed the ACEL of 0.32 lb/mmBtu, and the actual heat input shall not be less than 51,627,214 mmBtu; units 1 and 2 at Scholz in Florida, in which the actual

annual average rate for NO_X for each unit shall not exceed the ACEL of 0.70 lb/mmBtu, and the actual heat input for units 1 and 2 shall not be greater than 723,608 mmBtu and 731,528 mmBtu respectively; units 1 and 2 at Wansley in Georgia, in which the actual annual average rate for NO_X for each unit shall not exceed the ACEL of 0.43 lb/mmBtu, and the actual heat input for units 1 and 2 shall not be less than 43,995,205 mmBtu and 46,349,195 mmBtu respectively; units 4 and 5 at Watson in Mississippi, in which the actual annual average rate for NO_X for each unit shall not exceed the ACEL of 0.60 lb/mmBtu, and the actual heat input for units 4 and 5 shall not be greater than 12,086,872 mmBtu and 20,127,887 mmBtu respectively; and units 1–7 at Yates in Georgia, in which the actual annual average rate for NO_X for units 1–7 shall not exceed the ACEL of 0.59 lb/mmBtu for units 1–3, 0.44 lb/mmBtu for units 4 and 5, and 0.36 lb/mmBtu for units 6 and 7, and the actual heat input for units 1–3 shall not be greater than 2,185,838 mmBtu for unit 1, and 2,694,591 mmBtu each for units 2 and 3, and not less than 4,188,728 mmBtu each for units 4 and 5, and 10,404,101 mmBtu and 11,655,498 mmBtu each for units 6 and 7, respectively. The Designated Representative is Charles D. McCrary.

U.S. EPA is also issuing, under 40 CFR 76.11, an additional NO_X averaging plan with which the following units shall comply for compliance year 1999: units 1–4 at Gallatin in Tennessee, in which the actual annual average rate for NO_X for each unit shall not exceed the ACEL of 0.42 lb/mmBtu, and the actual heat input for units 1–4 shall not be less than 12,874,000 mmBtu, 14,938,000 mmBtu, 18,188,000 mmBtu, and 18,527,000 mmBtu respectively; units 1–5 at Colbert in Alabama, in which the actual annual average rate for NO_X for each unit 1–4 shall not exceed the ACEL of 0.47 lb/mmBtu, and for unit 5, 0.49 lb/mmBtu, and the actual heat input for units 1–5 shall not be less than 12,412,000 mmBtu, 12,410,000 mmBtu, 12,189,000 mmBtu, 10,372,000 mmBtu, and 26,441,000 mmBtu respectively; and units 1–10 at Johnsonville in Tennessee, in which the actual annual average rate for NO_X for each unit 1–10 shall not exceed the ACEL of 0.51 lb/mmBtu, and the actual heat input for units 1–10 shall not be greater than 7,469,000 mmBtu, 7,440,000 mmBtu, 7,390,000 mmBtu, 6,348,000 mmBtu, 5,590,000 mmBtu, 6,205,000 mmBtu, 8,880,000 mmBtu, 8,805,000 mmBtu, 8,534,000 mmBtu, and 8,451,000 mmBtu respectively. The Designated Representative is Joseph R. Bynum.

Under each plan, the actual Btu-weighted annual average NO_X emission rate for the units in the plans shall be less than or equal to the Btu-weighted annual average NO_X emission rate for the units had they each been operated, during the same period of time, in compliance with the applicable emission limitations under 40 CFR 76.5, 76.6, or 76.7.

Dated: November 18, 1999.

Larry F. Kertcher,

Acting Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 99–30779 Filed 11–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AZ–018–NOA; FRL–6481–5]

Adequacy Status of the Maricopa County Submitted CO Attainment Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that submitted Maricopa County Carbon Monoxide (CO) Attainment Plan is adequate for conformity purposes. As a result of our finding, the Maricopa Association of Governments and the Federal Highway Administration are required to use the CO motor vehicle emissions budget from the submitted CO Attainment Plan for future conformity determinations. This determination is effective December 14, 1999.

DATES: This budget is effective December 14, 1999.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments are available at EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity''). You may also contact Karina O'Connor, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1247 or *oconnor.karina@epa.gov*.

SUPPLEMENTARY INFORMATION:

Today's document is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to the Arizona Department of Environmental Quality on November 5, 1999 stating that the submitted Maricopa County CO Attainment Plan is adequate for conformity purposes. This finding has also been announced on our conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review which is required by section 110(k)(1) of the Clean Air Act, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 8, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–30899 Filed 11–26–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6481–6]

42 U.S.C. 122(h), Proposed Administrative Agreement for Collection of CERCLA Past Costs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is proposing to execute an Administrative Agreement (Agreement) under section 122 of CERCLA for collection of a percentage of past response costs at the Gary

Lagoons Superfund Site. Respondent has agreed, under an ability to pay analysis, to pay $16,000 out of total response costs of approximately $4,047,000, and will also relinquish title to the subject Site property to the Indiana Department of Natural Resources (IDNR), in return for a covenant not to sue and contribution protection from U.S. EPA, and a covenant not to sue for federal and state Natural Resource Damages claims from the the U.S. Department of the Interior (DOI) and the State of Indiana Departments of Environmental Management and Natural Resources. U.S. EPA today is proposing to execute this Agreement because it achieves protection of a portion of a very unique Dune and Swale ecological area.

DATES: Comments on this proposed settlement must be received on or before December 29, 1999.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Mr. Derrick Kimbrough at (312) 886–9789 before visiting the Region V Office). Mr. Derrick Kimbrough, OPA (P19–J) Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 886–9749.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Mr. Derrick Kimbrough, Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 886–9749.

FOR FURTHER INFORMATION CONTACT: Mr. Derrick Kimbrough, Office of Public Affairs, at (312) 886–9749.

SUPPLEMENTARY INFORMATION: The Site is a 7-acre vacant property located at 5622 and 5624–34 Industrial Highway in Gary, Indiana (Lake County). The Site consisted of two unlined and uncovered lagoons situated in a sandy environment and surrounded by marshes and wetlands. Pursuant to the terms of the administrative agreement the Settling Party has agreed to pay $16,000 towards past costs associated with investigation and enforcement of CERCLA at the Site. The Site is not on the National Priorities List. The Agreement has been executed by the Settling Party, the U.S. Department of the Interior (DOI) and the Indiana Department of Natural Resources (IDNR) and Indiana Department of Environmental Management (IDEM) (as federal and co-state Natural Resources Trustees), waiving all Natural Resources Damages claims against the Settling Party. The Settling Party will also receive CERCLA contribution protection and a covenant not to sue for the past costs associated with the Site.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed Administrative Agreement.

Comments should be sent to Mr. Derrick Kimbrough of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–30898 Filed 11–26–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6481–4]

Clean Water Act Section 303(d): Availability of List Submission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document announces the availability of a Court Ordered Clean Water Act section 303(d) list and administrative record for the State of Louisiana, and requests public comment. On October 1, 1999, the Court issued a judgment in the following action (*Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La. Oct. 1, 1999)). The judgment incorporates the Court's Orders (Dec. 3, 1998, and Oct. 1, 1999) finding the Agency's approval of Louisiana's 1998 section 303(d) list arbitrary and capricious under the APA. The Court ordered EPA to disapprove the State list, establish a new section 303(d) list within 30 days, and establish TMDLs for these listed waters.

On October 28, 1999, EPA disapproved Louisiana's 1998 section 303(d) list, and on November 1, 1999, submitted to the Court a Court Ordered section 303(d) list and administrative record. The Court Ordered list includes 349 waters and 1,711 pollutants of concern.

DATES: Comments must be submitted to EPA on or before December 29, 1999.

ADDRESSES: Comments on the Court Ordered list should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, Contact Ellen Caldwell at (214) 665–7513. Copies of the Court Ordered list and the Decision Document concerning the Court Ordered section 303(d) list for Louisiana which explain the rationale for the list can be viewed at www.epa.gov/region6/water/tmdl.htm, or obtained by writing or calling Ms. Caldwell at the above address. Underlying documentation comprising the administrative record for this decision is available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and the Louisiana Environmental Action Network (Plaintiffs), filed suit in Federal court against the U.S. Environmental Protection Agency (EPA) for violations of the Administrative Procedure Act (APA) and section 303(d) of the Clean Water Act (CWA). The Plaintiffs alleged that EPA improperly approved Louisiana's section 303(d) lists, and failed to identify and list all Louisiana waters that did not satisfy water quality standards.

On October 1, 1999, the Court issued a judgment in this action (*Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La. Oct. 1, 1999)). The judgment incorporates the Court's Orders (Dec. 3, 1998, and Oct. 1, 1999) finding the Agency's approval of Louisiana's 1998 section 303(d) list arbitrary and capricious under the APA. The Court ordered EPA to:

(a) To disapprove the 1998 list submitted by Louisiana; and

(b) To file with the Court, within 30 days, a new list consistent with this order.

(i) If defendants decide to delete any waters that were included in Louisiana's 1996 list, the new list decision must offer a reasoned explanation for the deletion. In addition, the decision must explain whether the agency is relying on Louisiana's section 305(b) report, the state's 1998 unified watershed assessment, and the state's metals data. If the defendants choose not to rely on any of these documents, the new list decision must include a reasoned explanation for that choice. If the defendants rely on any of these documents, the agency shall include them in the administrative record.

(ii) In preparing the new list, the defendants shall, at a minimum, evaluate ''all existing and readily available'' data and information on the following waters:

(A) Those identified as not meeting water quality standards in Louisiana's

1996 identification under section 303(d).

(B) Those included on Louisiana's section 319 list of waters that do not meet water quality standards because of nonpoint source pollution.

(C) Those contained in Louisiana's section 304(l) list of waters that do not meet water quality standards because of toxic pollution.

(D) Those interstate waters in Louisiana that other states have previously identified as failing to meet water quality standards.

(iii) In preparing the new list, the defendants shall include all waterbodies on Louisiana's section 319 and section 304(l) lists, unless it is demonstrated on the record that (1) a waterbody on the section 319 or 304(l) list is meeting all applicable water quality standards, including numeric and narrative criteria and designated uses; or (2) if, upon re-examination, the original basis for listing is determined to be inaccurate.

As mentioned earlier, this document announces the availability of a Court Ordered Clean Water Act section 303(d) list and administrative record for the State of Louisiana, and requests public comment. EPA's regulations provide for public participation where the Agency disapproves a State section 303(d) list and establishes a list itself. Pursuant to 40 CFR 130.7(d)(2) EPA is seeking comment on this Court Ordered section 303(d) list. Pursuant to the Court's Order, EPA added numerous waters because the Agency lacked data supporting a decision not to list. In addition, a few waterbody/pollutant combinations were not included on the Court Ordered list. This list was compiled on a very short time frame. EPA requests that the public bring to the Agency's attention any data or information warranting revision of this list. If such data or information is submitted during the public comment period, EPA may revise the Court Ordered section 303(d) list accordingly. After considering public comment and making any appropriate revisions, EPA will transmit the section 303(d) list to the Court, and to the Louisiana Department of Environmental Quality (LDEQ).

Dated: November 19, 1999.

William B. Hathaway,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 99–30900 Filed 11–26–99; 8:45 am]

BILLING CODE 6560–50–U

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 December 10, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Richard S. Blossman, Jr., Covington, Louisiana; to acquire additional voting shares of Central Progressive Bancshares, Inc., Hammond, Louisiana, and thereby indirectly acquire additional voting shares of Central Progressive Bank of Amite, Amite, Louisiana.

Board of Governors of the Federal Reserve System, November 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30853 Filed 11–26–99; 8:45 am]

BILLING CODE 6210–01–F

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 December 13, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Scotty Dan Allen, Stephenville, Texas; to acquire additional voting shares of Town and Country Bancshares, Inc., Stephenville, Texas, and thereby indirectly acquire additional voting shares of Town and Country Bank, Stephenville, Texas.

Board of Governors of the Federal Reserve System, November 23, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30926 Filed 11–26–99; 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 December 20, 1999.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Penn Laurel Financial Corporation, Curwensville, Pennsylvania; to acquire 100 percent of the voting shares of Clearfield Bank and Trust Company, Clearfield, Pennsylvania.

Board of Governors of the Federal Reserve System, November 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30854 Filed 11–26–99; 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 December 23, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Wachovia Corporation, Winston Salem, North Carolina; to merge with B C Bankshares, Inc., Canton, Georgia, and thereby indirectly acquire Bank of Canton, Canton, Georgia.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Ellis Bankshares, Inc., Eagle River, Wisconsin; to become a bank holding company by acquiring 81.59 percent of the voting shares of First National Bank of Eagle River, Eagle River, Wisconsin.

Board of Governors of the Federal Reserve System, November 23, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30927 Filed 11–26–99; 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. 99-30399) published on pages 63814 and 63815 of the issue for Monday, November 22, 1999.

Under the Federal Reserve Bank of Kansas City heading, the entry for Hometown Banc Corp., Grand Island, Nebraska, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hometown Banc Corp., Grand Island, Nebraska; to retain voting shares of Security State Bank, Sumner, Nebraska, and thereby engage in the operation of a thrift, pursuant to § 225.28(b)(4)(ii) of Regulation Y upon the conversion of Security State Bank to a thrift charter. Security State Bank will be renamed Security Bank, Sumner, Nebraska.

Comments on this application must be received by December 17, 1999.

Board of Governors of the Federal Reserve System, November 23, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30925 Filed 11–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, December 1, 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: November 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31008 Filed 11–24–99; 10:58 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Trade Commission.

TIME AND DATE: 10:00 a.m., Tuesday, December 14, 1999.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in VISX Incorporated, Docket 9206.

Portions Closed to the Public:

(2) Executive Session to follow Oral Argument in VISX Incorporated, Docket 9286.

CONTACT PERSON FOR MORE INFORMATION: Victoria Streitfeld, Office of Public Affairs: (202) 326–2180, Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 99–31022 Filed 11–24–99; 12:14 pm]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Proposed Collection: Submission for OMB Review; Comment Request Entitled Questionnaire: CD–ROM of the Catalog of Federal Domestic Assistance and Federal Assistance Award Data System

AGENCY: Office of Acquisition Policy, GSA

ACTION: Notice of request for approval of a new information collection entitled Questionnaire: CD–ROM of the Catalog of Federal Domestic Assistance and Federal Assistance Award Data System.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), GSA has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Questionnaire: CD–ROM of the Catalog of Federal Domestic Assistance and Federal Assistance Award Data System.

The Federal Domestic Assistance Catalog Staff, General Services Administration is requesting that users of the CD–ROM version of the Catalog of Federal Domestic Assistance and Federal Assistance Award Data System reply, on a voluntary basis to a survey designed to determine user satisfaction and solicit comments that will help them understand users' needs. The Federal Domestic Assistance Catalog Staff will use information solicited from users to improve its usefulness to customers. Without this information, CD–ROM users' needs may go unrecognized. This is a voluntary survey that will take approximately 5 minutes to complete

DATES: Submit comments on or before January 28, 2000.

ADDRESSES: Comments concerning this notice should be submitted to: Jacqueline Garrett, Governmentwide Information Systems Division, Room 101–Reporters Building, 300 7th Street, SW., Washington, DC 20407, or e-mail to Jackie.Garrett@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Jacqueline Garrett, Governmentwide Information Systems Division, Room 101–Reporters Building, 300 7th Street, SW., Washington, DC 20407, or e-mail to Jackie.Garrett@gas.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this Notice is to solicit comments from users of the CD–ROM version of the Catalog of Federal Domestic Assistance (CFDA) and Federal Assistance Award Data System (FAADS) to improve its usefulness to customers.

B. Annual Reporting Burden

Respondents: 1,000; annual responses: 1,000; average hours per response: .10; burden hours: 100.

Copy of Proposal: A copy of this proposal may be obtained by contacting Jacqueline Garrett at the above address.

Dated: November 22, 1999.

J. Les Davison,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–30863 Filed 11–26–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4808]

Guidance for Industry on Drug Master Files for Bulk Antibiotic Drug Substances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Drug Master Files for Bulk Antibiotic Drug Substances.'' This guidance is intended to assist those in industry whose approved applications for bulk antibiotic drug substances were converted to Type II drug master files (DMF's) as a result of the repeal of the statutory provision in the Federal Food, Drug, and Cosmetic Act (the act) under which the agency certified antibiotic drugs.

DATES: Written comments may be submitted at any time.

ADDRESSES: Copies of this guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of this guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Susan M. Rosencrance, Center for Drug Evaluation and Research (HFD–643), Food and Drug Administration, Office of Generic Drugs, 7500 Standish Pl., Rockville, MD 20855, 301–827–5779.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled ''Drug Master Files for Bulk Antibiotic Drug Substances.'' The purpose of this guidance is to provide recommendations to those in industry whose approved applications for bulk antibiotic drug substances were administratively converted, by FDA, to Type II DMF's as a result of the repeal of section 507 of the act (see section 125(b) of the Food and Drug Administration Modernization Act of 1997). This guidance describes the purpose of DMF's, discusses the type of information expected in a Type II DMF, explains the administrative procedures governing review of DMF's, and clarifies the responsibilities of a DMF holder. FDA is issuing this guidance because of a possible misunderstanding by some DMF holders about the need to inform FDA of manufacturing changes to bulk antibiotic drug substances that are covered under a DMF. The information included in the guidance is a compilation of previously published information.

This Level 2 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). FDA is issuing a notice of availability for this Level 2 guidance to ensure that industry is aware of the importance of updating DMF's when changes are made.

The guidance represents the agency's current thinking on DMF's for bulk antibiotic drug substances. 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, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). 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 guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–30819 Filed 11–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Friday, December 10, 1999; 1–4 p.m.

Address: Hotel Bethlehem, 437 Main Street, Bethlehem, PA 18018.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: November 22, 1999.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 99–30862 Filed 11–26–99; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: African Lion Safari & Game Farm Ltd, Ontario, Canada. PRT–817217, 817258, 018894, 018895, 018896, 018897.

The applicant requests a permit to import and re-export captive born and wild Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in interstate commerce in the United States by the applicant to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Wildlife Conservation Society, Bronx, NY. PRT–018012.

The applicant requests a permit to import one captive born male black and white ruffed lemur (*Lemur v. variegatus*) from the Mulhouse Zoologique Botanique Parc, Mulhouse, France, for the purpose of captive propagation and acclimatization for possible release to the wild for the enhancement of the survival of the species.

Applicant: Glady's Porter Zoo, Brownsville, TX. PRT–018992.

The applicant requests a permit to import one male and two female Philippine crocodile (*Crocodylus mindorensis*) from the Crocodile Farming Institute, Puerto Princesa, Philippines, for the purpose of a cooperative global effort to maintain genetic diversity in the captive population.

Applicant: Cincinnati Zoo and Botanical Garden, Cincinnati, OH. PRT–018120.

The applicant requests a permit to import ten captive born Chinese giant salamanders (*Andrias davidianus*) from Mr. Thomas Schoettler, Germany, for the purpose of enhancing the captive breeding program and producing a sustainable captive born population in North America.

Applicant: Zool. Society of Pittsburgh/Pittsburgh Zoo, Pittsburgh, PA. PRT–019215.

The applicant requests a permit to import one female captive born Siberian tiger (*Panthera tigris altaica*) from the Sankt Peterburg Zoo, Sankt Peterburg, Russia for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: Center for Endangered Cats, Sandstone, MN. PRT–019526.

The applicant requests a permit to export and re-import captive born and wild snow leopards (*Uncia uncia*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Lisa Bailey Comeaux, University of Tennessee, Knoxville, TN. PRT–018592.

The applicant requests a permit to import blood, tissue, and wing biopsy samples from captive-held/captive born Rodrigues Fruit bats (*Pteropus rodricensis*), both live and dead specimens from various zoos and museums in the United Kingdom, for scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: November 22, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–30821 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

November 19, 1999.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–830213

Applicant: EcoPlan Associates, Inc., Mesa, Arizona

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the following endangered and threatened species in Arizona.

Black-footed ferret (*Mustela nigripes*)
Hualapai Mexican vole (*Microtus mexicanus haualapaiensis)*
Jaguar (*Panthera onca)*

Lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*)
Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamenis*)
Sonoran pronghorn (*Antilocapra americana sonoriensis*)
Yuma clapper rail (*Rallus longirostris yumanensis*)
Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*)
Gila topminnow (*Poeciliopsis occidentalis occidentalis*)
Apache trout (*Oncorhynchus apache*)
Bonytail chub (*Gila elegans*)
Colorado pikeminnow (*Ptychocheilus lucius*)
Desert pupfish (*Cyprinodon macularius*)
Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*)
Arizona agave (*Agave arizonica*)
Arizona cliff rose (*Purshia subintegra*)
Arizona hedgehog cactus (*Echinocereus triglochidiatus arizonicus*)
Brady pincushion cactus (*Pediocactus bradyi*)
Peebles Navajo cactus (*Pediocactus peeblesianus peeblesianus*)
Pima pineapple cactus (*Coryphantha scheeri robustispina*)
Nichol's Turk's Head cactus (*Echinocactus horizonthalonius nicholii*)
Canelo Hills ladies'-tresses (*Spiranthes delitescens*)
Huachuca water umbel (*Lilaeopsis schaffneriana recurva*)
Sentry milk-vetch (*Astragalus cremnophlax cremnophyla*)

DATES: Written comments on these permit applications must be received on or before December 29, 1999.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Bryan Arroyo,

Programmatic Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–30861 Filed 11–26–99; 8:45 am]

BILLING CODE 4510–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1820–XQ]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council Ukiah, California.

ACTION: Notice of Meeting Location Change.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the US Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, December 9 and 10, 1999, for a business meeting and field tour. The meeting and tour are open to the public, but anyone attending must provide their own transportation and lunch. The location of the business meeting has been changed from the Marriott Hotel in Napa to the Embassy Suites, 1075 California Blvd., Napa, California.

SUPPLEMENTARY INFORMATION: The original meeting notice was published in the **Federal Register** on November l8, 1999 (volume 64, number 215, page 60829). Details of the meeting are unchanged from that publication.

FOR ADDITIONAL INFORMATION CONTACT: Rich Burns, BLM Ukiah Field Manager, at (707) 468–4000.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 99–30860 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–EU; COC–58579]

Opening of Lands, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: Pursuant to the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716), this Order terminates the segregative effect of land exchange proposal COC–58579 and opens 1,829.57 acres of public lands in Routt County, Colorado, to the operation of the public land laws and mineral laws. The proponent has decided not to continue with the land exchange proposal at this time.

EFFECTIVE DATE: November 29, 1999.

FOR FURTHER INFORMATION CONTACT: Craig Haynes, Realty Specialist, Little Snake Field Office, 455 Emerson Street, Craig, Colorado 81625; telephone (970) 826–5077.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716), it is ordered that at 9 a.m. on the date of publication of this notice, all public lands segregated by land exchange proposal COC–58579 within T. 11 N., R. 87 W., 6th P.M., shall be open to the operation of the public land laws generally, the general mining laws, and the mineral leasing laws, subject to valid existing rights. A complete description of the lands affected by this opening order is available at the Little Snake Field Office or at the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Dated: November 10, 1999.

John E. Husband,

Field Manager.

[FR Doc. 99–30825 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR
National Park Service

General Management Plan, Draft Environmental Impact Statement, Fort Bowie National Historic Site, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Draft Environmental Impact Statement and General Management Plan for Fort Bowie National Historic Site.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Fort Bowie National Historic Site, Arizona.

DATES: The DEIS/GMP will remain available for public review through January 30, 2000. If any public meetings are held concerning the DEIS/GMP, they will be announced at a later date.

COMMENTS: If you wish to comment, you may mail your comments to the Superintendent, Fort Bowie National Historic Site, Dos Cabezas Route, Box 6500, Willcox, Arizona 85643–9737. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Copies of the DEIS/GMP are available from the Superintendent at the following address. Public reading copies of the DEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Fort Bowie National Historic Site, Dos Cabezas Route, Box 6500, Willcox, Arizona 85643–9737, Telephone: (520) 824–3560.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851 [or (303) 969–2377].

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, D.C. 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes two alternatives to identify and assess the various management alternatives and related environmental impacts relative to park operations, visitor use and access, natural and cultural management, and general development at the monument. The general management plan would guide the management of the Fort Bowie National Historic Site for the next 12 to 15 years. The National Park Service proposal continues the concept established—the principle of a very low level of development, intended to allow the visitor a ''discovery'' experience in a place of ''historic abandonment.'' The No-Action Alternative would maintain visitor services and resource protection at current limited levels throughout the life of the plan.

The DEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on visitor experience, cultural resources, long-term health of natural ecosystems, economic contribution to gateway communities, adjacent landowners, and operational efficiency.

FOR FURTHER INFORMATION: Contact Superintendent, Fort Bowie National Historic Site, at the above address and telephone number.

Dated: November 17, 1999.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. 99–30858 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Tallgrass Prairie National Preserve

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Draft General Management Plan/Draft Environmental Impact Statement for the Tallgrass Prairie National Preserve, Kansas.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the Draft General Management Plan/Draft Environmental Impact Statement (DGMP/DEIS) for the Tallgrass Prairie National Preserve. This notice also announces public open houses for the purpose of receiving public comments on the DGMP/DEIS.

DATES: There will be a 60-day public review period for comments on this document. Comments on the DGMP/DEIS must be received no later than January 19, 2000. Public open houses for information about, or to make comment on the DGMP/DEIS will be held at the following times and locations: Tuesday, November 30, 1999, 5:00 p.m. to 7:30 p.m. at the Chase County Community Building (Swope Park), Walnut and County Road, Cottonwood Falls, Kansas; Wednesday, December 1, 1999, 6:00 p.m. to 8:30 p.m. at the Great Plains Nature Center, 6232 E. 29th Street North, Wichita, Kansas; and Thursday, December 2, 1999, 6:00 p.m. to 8:30 p.m. at the Holiday Inn, 200 McDonald Drive, Lawrence, Kansas.

ADDRESSES: Copies of the DCMP/DEIS are available by request by writing the Tallgrass Prairie National Preserve, P.O. Box 585, Cottonwood Falls, Kansas 66845, by phone 316–273–6034, or by e-mail from TAPR__Superintendent @nps.gov. The document can be picked-up in person at the Tallgrass National Preserve administrative headquarters, 226 Broadway, Cottonwood Falls, Kansas. The document also can be downloaded via the Internet at http://www.nps.gov/tapr/.

If you wish to comment, you may submit your comment by any one of several methods. You may attend one of the open houses noted above. You may mail comments to Superintendent, Tallgrass Prairie National Preserve, P.O. Box 585, Cottonwood Falls, Kansas 66845. You also may comment via e-mail to TAPR__Superintendent @nps.gov. If you attach a file to your e-mail, please ensure the file is in ASCII format avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact the Superintendent directly at 316–273–6034. Comments also may be submitted electronically through a form on the Preserve's website (http://www.nps.gov/tapr/). Finally, you may hand-deliver comments to the Tallgrass Prairie National Preserve administrative headquarters at 226 Broadway, Cottonwood Falls, Kansas. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Superintendent, Tallgrass Prairie National Preserve, at P.O. Box 585, Cottonwood Falls, Kansas 66845 or at telephone number 316–273–6034.

SUPPLEMENTARY INFORMATION: The purpose of the General Management Plan is to set forth the basic

management philosophy for the Preserve and to provide the strategies for addressing issues and achieving identified management objectives. The DGMP/DEIS describes and analyzes the environmental impacts of a proposed action and four action alternatives for the future management direction of the Preserve. A no action alternative is also evaluated.

Alternative A is the no-action alternative. It provides a baseline for comparison of the other alternatives. Each of the action alternatives would strive to achieve all desired futures for the preserve, including those related to prairie enhancement, natural and cultural resources protection, and visitor experiences. The primary difference between alternatives is their central focus. The Preferred Alternative (Proposed Action) would focus on the integrated management of the natural and cultural resources of the Preserve. The alternative is based on the ideas that the Preserve was established to preserve, protect, and interpret a remnant of the tallgrass prairie ecosystem and that the remnant prairie exists today because of a complex history of interaction between people and the land. Alternative B would focus primarily on the preservation, protection, and interpretation of the Preserve's cultural resources, although the prairie ecosystem would be enhanced and natural resources protected. Alternative C would emphasize visitor experience goals. This alternative would provide the broadest range of visitor experiences over the largest area of the Preserve. Alternative D would center on the story of ranching in the Flint Hills region, along the story of human interaction with the tallgrass prairie ecosystem. Finally, Alternative E would more fully focus on management of the natural landscape, including unplowed prairie and associated creeks, springs, and seeps.

The responsible official is Mr. William Schenk, Midwest Regional Director, National Park Service.

Dated: November 15, 1999.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 99–30857 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF INTERIOR

National Park Service

Anacapa Island Restoration Project, Channel Islands National Park,Ventura County, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: Pursuant to § 102 (2)(C) of the National Environmental Policy Act of 1969 (Public Law 91–190) and Council on Environmental Quality regulations (40 CFR 1508.22), the National Park Service intends to prepare an Environmental Impact Statement that addresses eradicating the non-native Black Rat (*Rattus rattus*) from Anacapa Island. In addition, park managers desire to implement preventative actions to keep rats and other non-native rodents from establishing on other islands in the park. These proposed activities would take place within Channel Islands National Park, Ventura County, California.

Background: Anacapa Island, located 17 miles southwest of the Ventura Coast, is comprised of three islets totaling about 700 acres. Known for both its beauty and its biological diversity, Anacapa Island serves as both a destination for visitors as well as habitat for marine and terrestrial species. Anacapa Island as a whole is the largest California Brown Pelican colony in the Southern California Bight. To protect the California Brown Pelican (listed as Endangered under the Endangered Species Act) and its habitat, the west islet has been set aside as a Research Natural Area. The non-native Black Rat impacts the seabird population through predation, and threatens the ecological integrity of intertidal and terrestrial ecosystems. The Black Rat also damages park infrastructure, threatens health and safety, and decreases visitor enjoyment. After careful examination of known impacts of rats on islands generally (and known and potential effects on Anacapa Island in particular), park resource managers and other resource experts conclude that island-wide Black Rat eradication is a prudent management action. This proposed action is consistent with exotic species management direction provided in the Channel Islands National Park General Management Plan (1985) and subsequent Resource Management Plan (1994). Additionally, no other islands in the park are known to have rats. There is a threat of introduction of rats, or other non-native rodents, from shipwrecks or transport of people and materials. Park managers need to have the capability to respond rapidly to eradicate new introductions of non-native rodents.

Scoping: The NPS is requesting comments regarding this proposed initiative from interested individuals, organizations, and agencies. Respondents should address potential environmental issues, applicable research or mitigations, and reasonable alternatives which they feel should be considered in the EIS. Written comments must be postmarked by January 1, 2000, and should be sent to the Superintendent, Channel Islands National Park, 1901 Spinnaker Dr., Ventura, CA 93001. A public scoping meeting is scheduled to be held in Ventura at 7:00pm, December 8, 1999. Additional information, including specific times and locations for public meetings, will be given via local and regional press releases, public notices, the park's website, and direct mailings.

SUPPLEMENTARY INFORMATION: Updated information regarding the conservation planning and environmental impact analysis process for this initiative and proposed actions identified to date will be distributed and periodically updated via direct mailings, regional and local news media, and the park's website (http://www.nps.gov/chis/naturalresources/airp.html). To request being added to the mailing list, interested parties may contact Steve Ortega, Restoration Biologist, at (805) 658–5784 (or HYPERLINK mailto:CHIS__AnacapaRats@nps.gov chis__restoration@nps.gov).

Review and Decision Process

The Draft EIS is expected to be available for public review and comment during winter-spring, 1999–2000. Availability of the Draft EIS for review and written comment will be formally announced by Notice in the **Federal Register**, through local and regional news media, the internet, and direct mailing. At this time it is anticipated that the Final EIS will be completed by July, 2000. Subsequently, notification of an approved Record of Decision would be published in the **Federal Register** not sooner than thirty (30) days after the Final EIS is distributed. This is expected to occur by September, 2000. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Channel Islands National Park.

Dated: November 17, 1999.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 99–30856 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Public Meeting To Be Held on Clean Up and Planning for Use of Kenilworth Park, Washington, DC

ACTION: Announcement of a public meeting regarding clean up of Kenilworth Park and commencement of a new recreational plan for the park's use.

SUMMARY: The National Park Service will hold a public meeting, to apprise the community of the ongoing park directed clean-up and stabilization activities in Kenilworth Park. The meeting will also allow the community to offer their interests and ideas to be considered in a plan that will explore alternatives for future recreational uses of Kenilworth Park. An Environmental Assessment will be prepared for the development plan at Kenilworth Park. The public will be offered varied methods to provide comments to the National Park Service. The comment period will remain open for ten days after the meeting to allow for additional written comments.

DATES: The meeting will take place on Tuesday, November 30, 1999 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at Kenilworth Elementary School located at 1300 44th Street, NE (at Nash Street), Washington, DC.

For more information, contact the National Capital Parks—East public information officer at (202) 690–5185.

Dated: November 22, 1999.

John Hale,

Superintendent, National Capital Parks—East.

[FR Doc. 99–30855 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (P.L. 92–463) that the Boston Harbor Islands Advisory Council will meet on Thursday, September 16, 1999. The meeting will convene at 4 p.m. at the University Club, University of Massachusetts, 100 Morrissey Boulevard, Healey Library, 11th Floor, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operation of the Boston Harbor Islands National Recreation Area.

The Agenda for this meeting is as follows:

1. Introductions and remarks from Robert Durand, Chair, Boston Harbor Islands Partnership.
2. Discussion of the status of the general management plan.
3. Briefing on the economic development plan for the park.

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made to: Superintendent, Boston Harbor Islands National Recreation Area, 408 Atlantic Avenue, Suite 228, Boston, Massachusetts, 02110, telephone (617) 223–8667.

Dated: September 9, 1999.

Bruce Jacobson,

Assistant Superintendent, Boston Harbor Islands NRA.

[FR Doc. 99–30890 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Draft Environmental Impact Statement for Elephant Butte/Caballo New Mexico Reservoirs Resource Management Plan

AGENCY: Bureau of Reclamation, Interior.

ACTION: Extension of comment period.

SUMMARY: The Bureau of Reclamation, Upper Colorado Region, is announcing today the extension of the comment period for the Draft Environmental Impact Statement (DEIS) for the Elephant Butte/Caballo Resource Management Plan (RMP).

DATES: The comment period is being extended an additional 30 days from November 23, 1999, to December 23, 1999. All comments are due on or before close of business on December 23, 1999.

ADDRESSES: Written comments may be sent to the 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.* See the Supplementary Information Section for locations where the DEIS may be inspected and reviewed.

FOR FURTHER INFORMATION CONTACT: Clay McDermeit, telephone (505) 248–5391.

SUPPLEMENTARY INFORMATION: A Notice of Availability (NOA) and a summary of the proposed action was published in the **Federal Register** (64 FR 24964) on September 24, 1999. The Draft Environmental Impact Statement, prepared by the Bureau of Reclamation, Albuquerque Area Office, and presently available for public review, analyzes the environmental consequences of proposed future management activities on Elephant Butte and Caballo Reservoirs.

The DEIS may be inspected and reviewed 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, TX 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.

Dated: October 29, 1999.

Charles A. Calhoun,

Regional Director.

[FR Doc. 99–30916 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–302 and 731–TA–454 (Review)]

Fresh and Chilled Atlantic Salmon From Norway

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year reviews.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On October 1, 1999, the Commission established a schedule for the conduct of these expedited five-year reviews (64 FR 55957, October 15, 1999) and identified the parties to the reviews that have provided individually adequate responses to the notice of institution. Subsequently, the Department of Commerce extended the date for its final results in the expedited reviews from October 29, 1999 to January 27, 2000. In order to have the benefit of the Department of Commerce's findings, the Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the five-year reviews is as follows: the staff report will be placed in the nonpublic record on January 26, 2000; the deadline for interested party comments (which may not contain new factual information) is January 31, 2000; and the deadline for brief written statements (which shall not contain new factual information) pertinent to the reviews by any person that is neither a party to the five-year reviews nor an interested party is January 31, 2000.

For further information concerning these five-year reviews, see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; the Commission is using its authority under 19 U.S.C. 1675(c)(5)(B) to extend the deadline for these reviews. Further, this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 22, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–30935 Filed 11–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 1205–5]

Proposed Modifications to the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: November 18, 1999.

SUMMARY: On November 18, 1999, the Commission instituted investigation No. 1205–5, Proposed Modifications to the Harmonized Tariff Schedule of the United States, pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988. Section 1205 directs the Commission to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and to recommend modifications to the HTS (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System), and the Protocol thereto, are recommended by the World Customs Organization (WCO) (formerly known as the Customs Cooperation Council) for adoption, and (2) as other circumstances warrant. The Commission's report will set forth the proposed changes and indicate the necessary changes in the HTS that would be needed to conform the HTS to the international nomenclature structure; the report will also include other appropriate explanatory information on the proposed changes.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director (202–205–2592), Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Washington, DC, 20436. Hearing impaired individuals are advised that information on this investigation can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The majority of the proposed changes included in this investigation are the result of the work of the WCO and its Harmonized System Committee (HSC) to update and clarify the Harmonized System nomenclature, as part of the WCO's long-term program to review the nomenclature structure on a formal basis. The WCO has recommended the adoption of certain modifications to the nomenclature of the international Harmonized System, in accordance with Article 16 of the Harmonized System Convention, to become effective in January, 2002. The changes proposed to conform the HTS with the WCO's recommendations, and to reflect in the HTS certain other decisions taken by the HSC, will be made available in the Office of the Secretary, Room 112, United States International Trade Commission, 500 E Street SW, Washington, DC 20436 (telephone 202–205–2000), and will also be posted on the Commission's web site at the address indicated below. These changes encompass all decisions taken by the HSC since the implementation of the last set of WCO modifications to the Harmonized System on January 1, 1996, as well as proposed actions subject to further consideration by the HSC during its sessions in 2000. Future notices will be issued in this investigation indicating the final resolution of all matters and decisions taken by the HSC during the course of Commission consideration.

Other proposed changes included in this investigation are requested by the U.S. Customs Service, in order to clarify the proper tariff classification and duty treatment of particular goods (due to decisions of the Court of International Trade, the HSC, or the Customs Service). These changes will be treated separately by the Commission both during the investigation and in the Commission's report.

The Commission will prepare a non-authoritative cross-reference table to provide guidance to potentially affected parties and to show the likely existing and future tariff classifications of the goods concerned. The Customs Service has domestic legal authority for tariff classification and may provide information, both during the course of the investigation and after the Commission's report is submitted, that

indicates different or additional tariff classifications of some goods. Moreover, the WCO will eventually issue a cross-reference table under Article 16 of the Harmonized System Convention indicating the agreed international classifications (existing and future) of the goods affected by the proposed changes. The latter table may be released later in the Commission's investigation, and differences between the international and domestic classification of a few goods may be suggested (in some cases due to reservations filed by member countries or to theoretical or asserted classifications for some goods). Thus, the classifications shown in the Commission's cross-reference table are subject to change during the study.

Written Submissions

Interested parties are invited to submit written statements concerning the matters being addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on December 17, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or by electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

Tariffs/HTS, Harmonized System, WCO, and imports.

Issued: November 22, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–30934 Filed 11–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–465, 466, and 468 (Review)]

Sodium Thiosulfate From China, Germany, and United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year reviews.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On October 1, 1999, the Commission established a schedule for the conduct of these expedited five-year reviews (64 FR 55959, October 15, 1999) and identified the parties to the reviews that have provided individually adequate responses to the notice of institution. Subsequently, the Department of Commerce extended the date for its final results in the expedited reviews from October 29, 1999 to January 27, 2000. In order to have the benefit of the Department of Commerce's findings, the Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the five-year reviews is as follows: the staff report will be placed in the nonpublic record on January 20, 2000; the deadline for interested party comments (which may not contain new factual information) on the staff report is January 25, 2000; the deadline for interested party comments (which may not contain new factual information) on Commerce's final results is January 31, 2000; and the deadline for brief written statements (which shall not contain new factual information) pertinent to the reviews by any person that is neither a party to the five-year reviews nor an interested party is January 31, 2000.

For further information concerning these five-year reviews, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; the Commission is using its authority under 19 U.S.C. 1675(c)(5)(B) to extend the deadline for these reviews. Further, this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: November 22, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–30936 Filed 11–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–376, 563, and 564 (Review)]

Stainless Steel Butt-Weld Pipe Fittings From Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year reviews.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On October 1, 1999, the Commission established a schedule for the conduct of these expedited five-year reviews (64 FR 55960, October 15, 1999) and identified the parties to the reviews that have provided individually adequate responses to the notice of institution. Subsequently, the Department of Commerce extended the date for its final results in the expedited reviews from

October 29, 1999 to January 27, 2000. In order to have the benefit of the Department of Commerce's findings, the Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the five-year reviews is as follows: The staff report will be placed in the nonpublic record on January 21, 2000; the deadline for interested party comments (which may not contain new factual information) on the staff report is January 26, 2000; the deadline for interested party comments (which may not contain new factual information) on Commerce's final results is January 31, 2000; and the deadline for brief written statements (which shall not contain new factual information) pertinent to the reviews by any person that is neither a party to the five-year reviews nor an interested party is January 31, 2000.

For further information concerning these five-year reviews, see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; the Commission is using its authority under 19 U.S.C. 1675(c)(5)(B) to extend the deadline for these reviews. Further, this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: November 22, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–30937 Filed 11–26–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Justice Management Division

Meeting of the Global Justice Information Network Advisory Commission

AGENCY: Justice Management Division, Wireless Management Office, Justice.

ACTION: Notice of meeting of the Global Justice Information Network Advisory Commission.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Global Justice Information Network Advisory Committee will be held on December 8–9, 1999. The Committee will meet from 8:30 am–5 pm at the Loew's L'Enfant Plaza Hotel, located at 480 L'Enfant Plaza, SW, Washington, DC, 20024. The Committee will meet to address the Global Initiative, as described in Initiative A07 ''Access America: Reengineering Through Information Technology.''

This meeting will be open to the public, and registrations will then be accepted on a space available basis. For information on how to register, contact Susan Ruyle, 901 E Street NW, Suite 510, Washington, DC 20530, or call (202) 353–8594. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the Designated Federal Employee (DFE).

If you need special accommodations due to a disability, please contact Julie Nacke at (202) 646–4419 at least seven (7) days prior to the meeting. Further information with reference to this meeting can be obtained from Kathy Albert, the DFE, 901 E Street NW, Suite 510, Washington, DC 20530, or call (202) 514–3337.

Dated: November 12, 1999.

Kathy Albert,

Global Network Coordinator, Wireless Management Office, Justice Management Division, Department of Justice.

[FR Doc. 99–30830 Filed 11–26–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification to Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that, on November 3, 1999, a modification to the July 14, 1998 Consent Decree in *United States* v. *Block Island Power Company, Inc.*, Civil Action No. 98–045 ML, was lodged in the United States District Court for the District of Rhode Island.

The proposed modification to the Consent Decree extends, by six months, the date by which Block Island Power Company, Inc. (''BIPCO'') must achieve final compliance with the Clean Air Act, 42 U.S.C. 7401 *et seq.* Under paragraph 22 of the July 14, 1998 Consent Decree, BIPCO agreed to install and operate lowest achievable emission rate (''LAER'') pollution controls on its generators by eighteen months from the date that it abandoned the underwater cable project. BIPCO abandoned the cable project on March 1, 1999 and therefore under the July 14, 1998 Consent Decree, BIPCO needed to install and operate LAER by September 1, 2000. The proposed modification to the Consent Decree would extend this September 1, 2000 date by six months, until March 1, 2001. The proposed modification does not affect any other provisions of the July 14, 1998 Consent Decree.

The Department of Justice will accept written comments solely relating to the proposed modification to the July 14, 1998 Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *Block Island Power Company, Inc.*, Civil Action No. 98–045 ML (D.R.I.), DJ # 90–5–2–1–2021.

Copies of the proposed modification to the Consent Decree may be examined at the Office of the United States Attorney for the District of Rhode Island, Assistant United States Attorney, Fleet Center, 8th floor, 50 Kennedy Plaza, Providence, Rhode Island 02903; at the U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed modification to the Consent Decree may also be obtained in person or by mail at the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy of the proposed modification to the Consent Decree by mail, please enclose a check in the amount of $.75 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 99–30829 Filed 11–26–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Oil Pollution Act and the Park System Resource Protection Act

Notice is hereby given that on November 10, 1999, the United States lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas, Civ. A. No. H–99–3917, in *United States and State of Texas* v. *Bulk Transport LTD, of Bermuda and SPT Marine, Inc. et al.*, pursuant to Section 1002 of the Oil Pollution Act, 33 U.S.C. 2702, and

Section 19jj of the Park System Resource Protection Act, 16 U.S.C. 19jj. The proposed Consent Decree resolves natural resource damage claims and park system resource damage claims of the United States and Texas against the defendants arising out of the discharge of fuel oil in the Gulf of Mexico in February 1995. Under the proposed Consent Decree, defendants will conduct specific projects at public beaches to restore some of the natural resources that were lost or injured as a result of the oil spill, pay approximately $1.6 million into a court registry account to help fund projects to restore, replace or acquire the equivalent of resources or services injured by the oil spill, and pay all assessment costs.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, PO Box 7611, Ben Franklin Station, Washington, DC 20044–7761, and should refer to *United States and the State of Texas* v. *Bulk Transport LTD, of Bermuda and SPT Marine, Inc. et al.* The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, Houston, Texas, and the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $5.00 for the Decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–30827 Filed 11–26–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Degree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *H.W. Wageley, Inc., et al.*, C.A. No. 3:99–CV–90, was lodged on October 28, 1999 with the United States District Court for the Northern District of West Virginia. The consent decree resolves the United States' claims for response costs, pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, against defendants H.W. Wageley, Inc., Mary P. Perry, Roger Perry, and William C. Perry. These costs were incurred in connection with the cleanup of the Charles Town Coal Tar Site, located in Charles Town, West Virginia. Under the consent decree, the defendants, within thirty days after entry of the decree by the Court, will reimburse the Superfund $80,000 for response costs incurred in connection with the cleanup of the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *H.W. Wageley, et al.*, DOJ Reference No. 90–11–3–06366.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 200, 1100 Main Street, Wheeling, West Virginia 26003; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please refer to the rerferenced case and enclose a check in the amount of $22.50 (.25 center per page production costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–30828 Filed 11–26–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America and the State of Texas v. Aetna Inc. and The Prudential Insurance Company of America; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(c)–(h), the United States publishes below the comments received on the proposed final judgment in *United States of America and the State of Texas* v. *Aetna Inc. and The Prudential Insurance Company of America*, Civil Action No. 3–99CV1398–H, filed in the United States District Court for the Northern District of Texas (Dallas Division), together with the United States' response to those comments.

Copies of the comments and the response are available for inspection and copying at the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Suite 400, Washington, DC 20530 (telephone: (202) 616–5933), and at the Office of the Clerk of the United States District Court for the Northern District of Texas (Dallas Division). Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

Response of the United States to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (the ''APPA''), 15 U.S.C. 16(b)–(h), the United States hereby responds to public comments received regarding the proposed Revised Final Judgment in this matter.

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, on June 21, 1999, alleging that the proposed acquisition by Aetna Inc. (''Aetna'') of The Prudential Insurance Company of America's (''Prudential'') health insurance business would violate Section 7 of the Clayton Act (''Section 7''), 15 U.S.C. 18. The State of Texas, by and through its Attorney General, joined the United States as co-plaintiff in this action. On August 4, 1999, the United States and the State of Texas filed a proposed Revised Final Judgment, a Revised Hold Separate Stipulation and Order, and a Revised Competitive Impact Statement (''CIS'').

The proposed Revised Final Judgment and CIS were published in the **Federal Register** on Wednesday, August 18, 1999 at 64 FR 44946 (1999). A summary of the terms of the proposed Revised Final Judgment and the CIS and directions for the submission of written comments were published in the *Washington Post* and the *Dallas Morning News* for seven consecutive days, from July 27 through August 2, 1999. The 60-period for comments expired on October 18, 1999.

The United States received six comments on the proposed Revised Final Judgment. Two of the comments were submitted by individuals; one was submitted on behalf of a medical group and physician contracting organization; three were submitted on behalf of

professional medical associations. All six comments are addressed below.

After careful consideration of the comments, copies of which are attached to this Response, the United States has concluded that the additional relief suggested by the comments is either not relevant to the violations investigated by the Department and alleged in the Complaint or unnecessary to remedy the harm caused by the proposed transaction. For that reason, once the comments and the Response have been published in the **Federal Register** pursuant to 15 U.S.C. 16(d), the United States will move this court for entry of the proposed Revised Final Judgment.

I. Background

At the time the Complaint was filed, Aetna was (and remains) the largest health insurance company in the United States, providing health care benefits to approximately 15.8 million people in 50 states and the District of Columbia; Prudential was the ninth largest, providing health care benefits to approximately 4.9 million people in 28 states and the District of Columbia. Aetna and Prudential each offered a wide range of managed health insurance plans, including health maintenance organization (''HMO'') plans and point of service (''POS'') plans.

As the Complaint alleges, Aetna and Prudential competed head-to-head in the sale of HMO and HMO-based POS (''HMO–POS'') plans in Houston and Dallas, Texas; such competition benefited consumers by keeping prices low and quality high; and the proposed acquisition would end such competition and give Aetna sufficient market power to increase prices or reduce quality in the sale of HMO and HMO–POS plans in those geographic areas. The Complaint also alleges that the acquisition would enable Aetna to unduly depress physicians' reimbursement rates in Houston and Dallas, resulting in a reduction of quantity or a degradation in quality of physicians' services in those areas.

With the Complaint, the parties also filed a proposed settlement that would permit Aetna to complete its acquisition of Prudential but would require the divestitures of certain assets sufficient to preserve competition in the sale of HMO and HMO–POS plans and the purchase of physicians' services in Houston and Dallas. This settlement was set forth in a proposed Final Judgment and Hold Separate Stipulation and Order. To further clarify certain aspects of the settlement, on August 4, 1999, the parties jointly moved for entry of a proposed Revised Final Judgment and a Revised Hold Separate Stipulation Order.

The proposed Revised Final Judgment requires Aetna to divest its interests in two previously acquired health plans serving the Houston and Dallas areas: the Houston-area commercial HMO and HMO–POS businesses of NYLCare Health Plans of the Gulf Coast, Inc. (''NYLCare-Gulf Coast''), and the Dallas-area commercial HMO and HMO–POS businesses of NYLCare Health Plans of the Southwest, Inc. (''NYLCare—Southwest''). The NYLCare entities were acquired by Aetna in 1998.

On September 14, 1999, Aetna executed a definitive Stock Purchase Agreement with Health Care Service Corporation (''HCSC''), the parent of Blue Cross/Blue Shield of Illinois and Blue Cross/Blue Shield of Texas. HCSC proposed to buy all of NYLCare—Gulf Coast and NYLCare—Southwest, excepting only the two entities' Medicare business, for a total purchase price of approximately $500 million. The United States and the State of Texas reviewed the proposed transaction to determine whether it satisfied the requirements of Section IV of the proposed Revised Final Judgment regarding the required divestitures. On October 27, 1999, the United States notified Aetna and HCSC that, subject to the terms of the proposed Revised Final Judgment, it did not object to the sale.

The Revised Hold Separate Stipulation and Order, entered by this Court on August 9, 1999, mandates that NYLCare-Gulf Coast and NYLCare-Southwest function as independent, economically viable, ongoing business concerns and that competition be maintained prior to the divestitures. It requires Aetna to take steps immediately to preserve, maintain, and operate NYLCare-Gulf Coast and NYLCare-Southwest as independent competitors until the completion of the divestitures ordered by the proposed Revised Final Judgment, including holding NYLCare's management, sales, service, underwriting, administration, and operations entirely separate, distinct, and apart from those of Aetna. In addition, Aetna is obligated to cause NYLCare-Gulf Coast and NYLCare-Southwest to maintain contracts or agreements for coverage of approximately 260,000 commercially insured HMO and HMO–POS plan enrollees in the Houston area and approximately 167,000 in the Dallas area through the date of signing a definitive purchase and sale agreement for the divestiture of the two NYLCare entities. Until the plaintiffs, in their sole discretion, determined that NYLCare-Gulf Coast and NYLCare-Southwest could function as effective competitors, Aetna was prohibited from taking any action to consummate the proposed acquisition of Prudential. On July 27, 1999, the United States informed Aetna that its efforts to establish and hold separate NYLCare-Gulf Coast and NYLCare-Southwest as effective competitors were sufficient to satisfy Section III of the Revised Hold Separate Stipulation and Order, and that it could close on the purchase of Prudential.

The United States, the State of Texas, and the defendants have stipulated that the proposed Revised Final Judgment may be entered after compliance with the APPA. Entry of the proposed Revised Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Revised Final Judgment and to punish violations thereof.

II. Response to Public Comments

A. Overview

The United States received six comments in response to the proposed Revised Final Judgment. The comments consist of a general concern with the transaction and any further consolidation in the HMO industry in the U.S. (*see* Subsec. B); a concern about the failure of the proposed Revised Final Judgment to address consolidation in the Georgia HMO industry (*see* Subsec. C); a request that the proposed Revised Final Judgment be amended to enjoin Aetna's use of certain contractual provisions as anticompetitive (*see* Subsec. D); and questions regarding the adequacy of the remedial provisions in the proposed Revised Final Judgment, in particular the propriety of requiring Aetna to divest its NYLCare assets rather than its Prudential assets in Dallas and Houston (*see* Subsecs. E and F). For the reasons stated in Subsection B–F, below, the United States believes that the comments provide no basis for determining that the proposed Revised Final Judgment is not in the public interest.

B. The Judgment Adequately Protects Competition Affected by the Proposed Merger and Should Not Address Prior Mergers

Charlene L. Towers of Highland Beach, Florida, quoting a newspaper columnist, contends that the United States's approval of the transaction should be reconsidered because it furthers the on-going consolidation of the HMO industry. Ms. Towers assets that while as recently as a few years ago there were eighteen large HMO plans in

the U.S., only seven remain. Ms. Towers also suggests that the HMOs are now colluding on price and benefits and that consumer choice is suffering.

Ms. Towers argues that because Aetna's acquisition of Prudential—in conjunction with the other mergers and acquisitions in the past—will result in fewer competitors, competition will be harmed. The number of competitors by itself, especially the number of competitors nationally, is a poor indicator of competitiveness. Indeed, Ms. Towers points to no specific market where she believes that the Aetna-Prudential transaction will substantially lessen competition. Our investigation, which examined markets throughout the country, concluded—and the Complaint alleged—that Aetna's acquisition of Prudential would have substantial anticompetitive effects in the Houston and Dallas areas. The Complaint did not allege—nor did the investigation disclose—any evidence of collusion on price or product design. *See United States v. Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995) (declining to reach beyond the Complaint to evaluate claims that the government did not make or to inquire as to why they were not made). Moreover, the proposed Revised Final Judgment, requiring Aetna to divest itself of the two NYLCare entities in Houston and Dallas, will ensure the maintenance of competition in those areas, and is fully adequate to address the anticompetitive effects alleged in the Complaint. Indeed, since Prudential had only approximately 172,000 HMO–POS enrollees in Houston and 171,000 in Dallas, while NYLCare covered 260,000 HMO–POS enrollees in Houston and 167,000 in Dallas, the divestiture will not only effectively restore the Houston and Dallas markets to the *status quo ante*, but will result in the creation overall of a larger and stronger competitor than if Prudential had remained independent.[1]

C. The Judgment Adequately Protects Competition Affected by the Proposed Merger and Should Not Address Potential Future Mergers

The Medical Association of Georgia (''MAG'') objects to the proposed merger for two reasons. First, it believes that the acquisition of Prudential exacerbates Aetna's bargaining power and will give it the ability to impose ''onerous contract terms'' on physicians.[2] Second, it alleges that the proposed future acquisition of Blue Cross/Blue Shield of Georgia (''Georgia Blue'') by WellPoint Health Networks, Inc. (''WellPoint'') will further reduce the number of significant competitors of HMO and HMO–POS plans in Georgia and, in conjunction with Aetna's acquisition of Prudential, produce substantial—but undefined—anticompetitive effects.

The United States investigated the likely effect of the proposed merger of Aetna and Prudential in those areas of the U.S. where Aetna and Prudential compete, including Georgia. The information obtained in the investigation led the United States to conclude that the merger was unlikely to have substantial anticompetitive effects in either the sale of HMO–POS products or the purchase of physician services in Georgia.[3]

The proposed acquisition of Georgia Blue by WellPoint, MAG's second concern, was not announced until after the parties reached agreement on the proposed Revised Final Judgment, and our review of the proposed transaction was on the basis of the market structures existing at the time. However, as MAG acknowledges, Wellpoint currently has only a minimal presence in Georgia (less than 2% of the HMO–POS market). Its acquisition of Georgia Blue is therefore unlikely to have a substantial anticompetitive effect or alter our analysis of the effects of the Aetna-Prudential transaction.[4]

In arguing that the proposed Revised Final Judgment is inadequate because it does not address the harm in Georgia from Aetna's acquisition of Prudential (or Wellpoint's acquisition of Georgia Blue), MAG is, in fact, requesting that the Court assess not the propriety of the relief in light of the allegations of the Complaint, but the propriety of the Complaint itself. This it may not do:

> In part because of the constitutional questions that would be raised if courts were to subject the government's exercise of its prosecutorial discretion to non-deferential review, we have construed the public interest inquiry narrowly. The district court must examine the decree in light of the violations charged in the complaint and should withhold approval only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes ''a mockery of judicial power.''

Massachusettts School of Law at Andover, Inc. v. *United States*, 118 F.3d 776, 783 9D.C. Cir. 1997) *citing Microsoft*, 56 F.3d at 1457–59, 1462).

D. Additional Relief Regarding Certain Clauses in Physician Contracts Is Not Necessary

The American Medical Association, joined by the Texas Medical Association and the Dallas and Harris County Medical Societies, submitted a comment generally supportive of the proposed revised Final Judgment but requesting that the relief be expanded to enjoin Aetna from enforcing for five years certain provisions in its contracts with participating physicians in Dallas and Houston, in particular its ''All Products'' and ''Practice Closure'' clauses.[5] The Genesis Physician Group, Inc. and Genesis Physicians Practice Association (collectively ''Genesis'') also submitted a comment requesting that Aetna's use of its ''All Products'' clause be prohibited for five years, and further expressing concern with Aetna's practice of reserving, in its contracts with physicians, ''the power unilaterally to amend * * * material terms of the contract without any requirement that Aetna notify physicians.'' The American Podiatric Medical Association, Inc. (''APMA'') also submitted a comment requesting that the proposed revised Final Judgment be modified to prevent Aetna's continued use of its ''All Products'' and ''Practice Closure'' clauses.[6]

[1] In addition to the divestitures required by the proposed Revised Final Judgment, Aetna has decided to sell all the commercial HMO–POS enrollees of NYLCare-Gulf Coast and NYLCare-Southwest outside the Houston and Dallas areas, as well as approximately 12,000 enrollees in Preferred Provider Organization (''PPO'') plans. In total, Aetna will be divesting approximately 526,000 enrollees.

[2] Specifically, MAG cites to Aetna's ''All Products'' clause (discussed in Subsec. D, below), along with contractual provisions that permit Aetna to determine ''medical necessity,'' to ''unilaterally amend'' the contract, ''to compel'' physicians to participate in plans of other insurers, to impose ''unfair penalties'' on physicians, and to ''hold Aetna harmless.''

[3] While Aetna would control roughly 26% of the HMO–POS market in the Atlanta area after acquiring Prudential, the United States concluded that Aetna would continue to face significant competition from Kaiser, which also has approximately 26% of the market, United HealthCare, with approximately 19%, and Georgia Blue, with approximately 18%. In Macon, Georgia, the only other area of the state where Aetna will have a significant share of the HMO–POS market, Aetna's share will increase only minimally (by approximately 4%) from the acquisition of Prudential, and will continue to be dwarfed by Georgia Blue, with 62% of the market.

[4] MAG's concerns with Wellpoint's ''unparalleled focus on its managed care products'' and ''pattern of abusive [but unspecified] managed care practices,'' as well as with the fact that Georgia Blue ''would no longer be a Georgia-based company, would no longer be owned primarily by Georgians and would have little if any allegiance to Georgians,'' are not related to this action and need not be addressed here.

[5] The AMA and its co-signatories also expressed concern that the divestiture of the NYLCare assets be carefully monitored to ensure that the result is a viable competitor in the HMO market. This issue is addressed in Subsec. F, below.

[6] The APMA also expressed concern that the increasing concentration of managed care companies generally will diminish the availability

Continued

Aetna's ''All Products'' clause requires physicians to participate in *all* of Aetna's current and future health plans as a precondition to participating in *any* current Aetna health plan. Thus, a physician who serves on the provider panels of two different Aetna health plans (*e.g.*, an Aetna PPO and an Aetna HMO) cannot terminate his or her participation in only one of those plans without giving up the revenue he or she earns from both. The ''All Products'' clause, as a result, enhances Aetna's bargaining power in its negotiations with physicians by ''significantly increas[ing] the volume of business that a physician would lose if he or she rejected [an Aetna contract demand].'' (Complaint, ¶31.) Aetna's ''Practice Closure'' clause, on the other hand, hinders a physician who wishes to limit his or her dependence on Aetna by requiring that a physician accept Aetna's HMO patients if he or she is accepting HMO patients from other payers, *i.e.*, a physician may not selectively close his or her practice to Aetna's HMO patients.

As alleged in the Complaint, Aetna's proposed acquisition of Prudential would have further enhanced Aetna's bargaining leverage in its contract negotiations with Houston and Dallas physicians. The acquisition would have added to the substantial proportion of a physician's total patient revenue already at stake in a physician's negotiations with Aetna (*i.e.*, all of that physician's Aetna and NYLCare business) a significant additional share of that physician's total patient revenue—his or her Prudential patients. In addition, the acquisition of Prudential would make it even more difficult for a Houston or Dallas physician to replace the lost revenue if he or she were to reject Aetna's contract demands. Post-transaction, Aetna (including NYLCare and Prudential) would account for a significantly larger share of all local health plan enrollees, thereby diminishing the pool of potential replacement patients.

The United States believes that the proposed Revised Final Judgment fully addresses the concerns raised to the extent they are a product of the proposed transaction. It requires Aetna to divest its NYLCare businesses in Houston and Dallas as a pre-condition for acquiring Prudential and, as a result, physicians in those areas will have essentially the same proportion of their revenue at stake in future negotiations with Aetna as they did before the proposed transaction. Aetna's acquisition of Prudential will not increase its bargaining power *vis-a-vis* physicians in those areas.[7]

The comments of the AMA, Genesis, and the APMA, however, were not limited to addressing the harm arising from this particular transaction. They also address the possible consequences of the ''All Products'' clause independent of any proposed transaction—in particular, its effect on physicians who currently derive a large share of their total patient revenue from an Aetna PPO health plan and who may be forced by the ''All Products'' clause to agree to participate in Aetna's HMO health plans.

The Complaint in this action is clearly limited to redressing the anticompetitive effects of Aetna's proposed acquisition of Prudential. Aetna's ''All Products'' clause was considered only in the context of that transaction. The United States did not purport to investigate—or remedy through the proposed Revised Final Judgment—all possible anticompetitive behavior by Aetna, and the proposed Revised Final Judgment is to be evaluated in that context. See Massachusetts School of Law, 118 F.3d at 783 (the proper role in determining whether the public interest would be served is to assess the adequacy of the relief obtained in light of the case brought, not to determine the appropriate relief had a different case been brought).[8]

E. The Plaintiff Is Not Required To Seek Alternative Relief That a Third Party Prefers

Robert D. Gross, M.D., of Forth Worth, Texas, suggests there is a better remedy than requiring Aetna to divest its interests in NYLCare-Gulf Coast and NYLCare-Southwest before being permitted to acquire Prudential. Dr. Gross believes that Prudential's organizations in the Houston and Dallas areas are of substantially higher quality than the former NYLCare organizations, and that Prudential had ''made an extraordinarily strong commitment to quality in the Dallas-Ft. Worth market.''[9] He suggests that it would be less disruptive to the health care markets and patient populations in those two areas if Aetna divested its Prudential assets rather than its NYLCare assets in those areas.[10]

The goal of the proposed Revised Final Judgment is to return the markets in the Houston and Dallas areas to the *status quo ante*. As discussed in Subsection B, above, the United States believes that the proposed remedy will do so. Indeed, it believes that the divestiture of NYLCare will result in an overall larger and stronger competitor than if Prudential had remained independent.[11] Dr. Gross' suggestion that there is an alternative to the proposed Revised Final Judgment that he thinks would be preferable is not sufficient reason to reject the settlement negotiated in this case. See *United States* v. *Microsoft Corp.*, 56 F.3d at 1460 (a court is not empowered to reject remedies agreed to in a consent decree merely because it believes other remedies are preferable).

F. The Judgment Adequately Protects the Viability and Independence of the NYLCare Businesses To Be Divested

The American Medical Association along with the Texas Medical Association and the Dallas and Harris County Medical Societies also expressed concern about the viability of the NYLCare businesses in Houston and Dallas to be divested, and requested that the United States closely monitor this aspect of the divestiture.

The proposed Revised Final Judgment and the Revised Hold Separate Agreement require Aetna to take ''all steps necessary to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are

of podiatric services for consumers and reduce the demand for podiatrists. Our investigation did not disclose any evidence that the transaction would diminish the availability or demand for podiatric services.

[7] Similarly, the ''Practice Closure'' contract provision discussed by the American Medical Association, the Texas Medical Association and the Dallas and Harris County Medical Societies, MAG, and the APMA, the provision reserving for Aetna the right to unilaterally amend the provider contract, discussed by Genesis, and the various other provisions discussed by MAG, all involve contracting practices of Aetna which predate the transaction with Prudential. They are not the result of the proposed transaction, nor are they impacted significantly by the proposed Revised Final Judgment. They are clearly beyond the scope of the Complaint and thus beyond the scope of this proceeding.

[8] It is worth noting that nothing in the proposed Reviewed Final Judgment limits the ability of the United States or the State of Texas to look into Aetna's ''All Products'' clause or other contractual provisions in the future, nor does it restrict in any way the rights of private parties to pursue the full range of remedies available under the antitrust laws.

[9] Our investigation revealed that many other physicians as well as employers and health care consultants/brokers do not share this view.

[10] Dr. Gross is also concerned with NYLCare's viability as an effective competitor. That issue is addressed in Subsec. F, below.

[11] As noted above, Prudential had approximately 172,000 enrollees in Houston and 171,000 in Dallas in its HMO–POS plans. In contrast, Aetna is required to divest the approximately 260,000 HMO–POS enrollees in Houston and 167,000 HMO–POS enrollees in Dallas covered by NYLCare. Since Aetna has also decided to divest NYLCare's HMO–POS enrollees outside the Dallas and Houston areas, as well as approximately 12,000 enrollees in Preferred Provider Organization (''PPO'') plans, it will be selling a total of approximately 526,000 enrollees.

maintained and operated as independent, on-going, economically viable, and active competitors until completion of the divestitures ordered by this Revised Final Judgment * * *.'' (proposed Revised Final Judgment, Sec. IV H.) Those steps include, but are not be limited to, the appointment of experienced senior management and the creation of separate and independent sales, provider relations, patient management/quality management, commercial operations, network operations, and underwriting organizations for the NYLCare entities. (*Id.*) Aetna is also required to provide specified transitional services, as well as such additional services requested by the management of NYLCare as may be necessary to ensure NYLCare's viability, including the funding of service quality guarantees. (*Id.*) Aetna is also required to fund an incentive pool of at least $500,000, which will be available to management of the NYLCare entities if they meet certain membership targets as of the closing date for the sale of the NYLCare entities. (*Id.*)

In addition, the proposed Revised Final Judgment (and the Revised Hold Separate Stipulation and Order) obligate Aetna to ''cause NYLCare-Gulf Coast and NYLCare-Southwest to maintain contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees in Houston and contracts or agreements for coverage of approximately one hundred sixty seven thousand (167,000) commercially insured HMO and HMO-based POS plan enrollees in Dallas through the date of signing the definitive purchase and sale agreement(s) for the divestiture of the two NYLCare entities.'' (*Id.* Sec. IV B; Revised Hold Separate Stipulation and Agreement at Sec. III B.)

The United States believes the procedures provided in the proposed Revised Final Judgment and the Revised Hold Separate Stipulation and Order are fully adequate to ensure that Aetna will divest its NYLCare businesses in Houston and Dallas as viable and independent competitors. No further additions or changes to the proposed Revised Final Judgment are necessary.

III. The Legal Standard Governing the Court's Public Interest Determination

Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), requires that the proposed Revised Final Judgment be in the public interest. The Act permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement and compliance mechanisms are adequate, and whether the decree may harm third parties. See *Microsoft,* 56 F.3d at 1461–62.

Consistent with Congress' intent to use consent decrees as an effective tool of antitrust enforcement, the Court's function is ''not to determine whether the resulting array of rights and liabilities is the one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.'' *Id.* at 1460 (internal quotations omitted); see also *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981), *cert. denied,* 454 U.S. 1083 (1981). As a result, a court should withhold approval of a proposed consent decree ''only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes 'a mockery of judicial power.' '' *Massachusetts School of Law at Andover, Inc.* v. *United States,* 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *Microsoft,* 56 F.3d at 1462).

None of these conditions are present here. The proposed Revised Final Judgment is closely related to the allegations of the Complaint, the terms are unambiguous, the enforcement mechanism adequate, and third parties will not be harmed by entry of this Judgment. The specific acquisition investigated—Aetna's purchase of certain health insurance-related assets from Prudential—is full remedied in the proposed Revised Final Judgment. The fact that Aetna may be acting in other ways detrimental to competition is simply not the issue here and can be addressed by means still available to the plaintiffs and others.

IV. Conclusion

The United States has concluded that the proposed Revised Final Judgment reasonably, adequately, and appropriately addresses the harm alleged in the Complaint. As required by the APPA, the United States will publish the public comments and this response in the **Federal Register**. After such publication, the United States will move this court for entry of the proposed Revised Final Judgment.

Dated: November 9, 1999.

Respectfully submitted,

Paul J. O'Donnell,
John B. Arnett, Sr.,
Steven Brodsky,
Deborah A. Brown,
Claudia H. Dulmage,
Dionne C. Lomax,
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Attorneys, U.S. Department of Justice, Antitrust Division, Health Care Task Force, 325 Seventh St. N.W., Suite 400, Washington, D.C. 20530, Tel: (202) 616–5933, Facsimile: (202) 514–1517.

July 14, 1999.

Attn: Joel L. Klein
Asst. Attorney General
Fax: 202–514–4371
Re: Aetna Inc. acquisition of Prudential Health Care
From: Charlene L. Toews
1057 Boca Cove Lane
Highland Beach, Florida 33487
Fax: 561–278–1306

Dear Mr. Klein: Please find attached some quotes from Molly Ivans regarding the acquisition by Aetna Inc of Prudential Health Care—which I totally agree with. PLEASE reconsider your approval of this acquisition. The citizens of the United States are NOT being served by this approval.

''Late last month, the Justice Department, showing the spinelessness for which it is so noted in these matters, approved the merger of Aetna and Prudential. The merged company will provide health care for one in every eleven Americans, and that makes it big enough to downsize services, hike prices and force doctors to accept unreasonable contract provisions and reimbursement rates.''

''Just a few years ago there were 18 big HMO's; today there are seven.''

''All seven of the giants decided—independently of course—on the very same day last year to dump rural seniors on Medicare. They also decided, in perfect concert, to cut back on the prescription drug benefits and no co-pay policy that got the seniors into the HMO's in the first place.''

''And every one of the seven has substantially hiked premiums for all their patients this year. And just over a week ago, they announced they were dumping another 250,000 Medicare patients, as well as cutting benefits and raising premiums.''

''We were supposed to be able to keep HMO's in line by quitting ones that provided poor service or cost too much, but it hasn't worked out that way. Only 17 percent of employers offer workers a choice of plans. Everybody else is stuck with whatever the company chooses; and the company chooses by cost of premiums, not by quality of care. As USA Today recently noted, ''Even without consolidation in the industry, patient choice has been slowly but inexorably vanishing.''

Mr. Klein, when are the people that ''we the people'' put in place to serve going to actually SERVE ''the people'' and put OUR best interests first?

Sincerely,

Charlene L. Toews.

October 18, 1999.

Gail Kursh, JD,

Chief, Professions and Intellectual Property Section, Health Care Task Force, Department of Justice, 600 E Street, NW, Room 9300, Washington, DC 20530.

Re: Proposed Acquisition of Prudential by Aetna

Dear Ms. Kursh: Please accept this letter as the written comments of the Medical Association of Georgia on the proposed acquisition (hereinafter ''the Acquisition'') by Aetna, Inc. (hereinafter ''Aetna'') of the Prudential Insurance Company of America's healthcare business (hereinafter ''Prudential'').

The Medical Association of Georgia (''MAG'') is a non-profit, voluntary professional association of Georgia physicians. MAG was founded in 1849, is a part of the American Medical Association and is the largest physicians' association in Georgia. Presently, MAG has over 8,000 members—more than 5,000 of whom are physicians actively practicing medicine in the State of Georgia.

MAG was founded to promote the art and science of medicine and the improvement of public health. With these ends in mind. MAG actively works to advocate physician and patient positions in the United States Congress, the Georgia General Assembly, the courts of this State and the United States, as well as before a variety of state and federal regulatory agencies.

The purpose of this letter is to formally OBJECT to the proposed acquisition of Prudential by Aetna. Our reasons for this objection are numerous and are presented in the following paragraphs. Additionally, we hereby adopt as our own as if stated herein, the positions and rationale proffered by the State of Texas in the civil lawsuit in which that sovereign state joined the United States of America, alleging that the acquisition would violate Section 7 of the Clayton Act and would be detrimental to patients and physicians throughout much of this country.

1. Two Primary Reasons MAG Opposes the Acquisition

A. Increased Market Strength Will Have Adverse Impact on Patient Care

The primary basis for the Medical Association of Georgia's objection to the acquisition of Prudential by Aetna lies in the fact that Aetna has shown a propensity to impose onerous contract provisions that have the effect of adversely impacting the quality of care patients receive. Historically, physicians have played the role of patient advocate. In fact, it is the public policy of the State of Georgia that physicians are encouraged to advocate on behalf of the best interests of their patients.[1] Unfortunately, physicians are unable to fully exercise this role in today's healthcare market.

In today's healthcare market, physicians have no bargaining power whatsoever when it comes to negotiating with health insurance plans regarding the obligations of the insurers, or those of the physicians, under the insurance plans. Given the current antitrust laws applicable to the contracting process between health insurers and physicians, physicians have no ability to collectively bargain on behalf of their patients or themselves. As such, they have no bargaining strength against the health insurers who are able to submit contracts to physicians virtually on a ''take it or leave it.'' basis. The Acquisition will only exacerbate that problem for Georgia physicians and patients as it will further empower Aetna to impose onerous contract provisions on physicians and other healthcare providers, eventually ''lead[ing] to a reduction in the quantity or a degradation in the quality of physician services'' provided to patients.[2]

B. The Double Whammy Effect of the Aetna/Prudential Acquisition Plus the Georgia Blue/Wellpoint Merger

The second major basis for the Medical Association of Georgia's objection to the Aetna/Prudential Acquisition is that is comes at the same time that Georgia is about to suffer the effects of a merger between the state's largest and oldest health insurer, Blue Cross/Blue Shield of Georgia (hereinafter ''Georgia Blue'') and Wellpoint Health Networks, Inc. The combination of Blue Cross/Blue Shield of Georgia and Wellpoint will place more than 32% of the Georgia health insurance market in the hands of one of the nation's largest publicly traded managed care insurance behemoths. The corporate entities that will follow the Aetna/Prudential acquisition and the Georgia Blue/Wellpoint merger will control nearly 60% of the HMO/POS markets in Georgia. The concurrence of these two transactions will dramatically reduce the competition among carriers and, therefore, the healthcare options available to all Georgians.

II. What Is There To Fear About an Enlarged Aetna?

Given the monopsony position of some insurers in some locales (such as the position Aetna would enjoy in Georgia if the acquisition were approved), many plans use this ''unlevel playing field'' to issue contracts to physicians on a ''take it or take it'' basis. The physicians are not in a position to negotiate any of the terms of the contract. For example, physicians' objections to gag clauses usually go unheeded. Reimbursement rates may not be disclosed in some contracts, much less negotiated. Yet, because of the number of patients that they have under the dominant insurer's plans, they cannot afford—financially or ethnically—to abandon their patients by rejecting the contract submitted to them by the insurer, regardless of how onerous some of the contents of the contract are. Their only option is to ''take it.'' Stated differently, when a physician's revenue from a single insurer gets to a certain point, i.e., a certain percentage of the overall revenue, that physician is ''locked in'' to the plan and has no bargaining power whatsoever. At that point, the plan's contract becomes a contract of adhesion and the physician has no ability to negotiate for his or her patients' rights and no opportunity to reject the contract.

Aetna has incorporated into their physician agreements many of the most onerous contract provisions popular among the managed care industry today. Some of the provisions that Aetna has used to control the quality and quantity of care that physicians provide to their patients include the following:

- *Aetna's Infamous ''All Products'' Clause*

Perhaps the single worst contract provision used by Aetna is its often criticized ''all products'' clause. ''All products'' clauses provide that if a physician participates in any of the carrier's plans, he or she must participate and take patients covered under all of their plans, now and in the future. These clauses, like most of the provisions discussed below, are usually non-negotiable. They are objectionable for many reasons. Health plan products differ substantially in operation. A physician may feel comfortable participating in a PPO product, but may have very valid reasons for not wanting to participate in an HMO product,

[1] O.C.G.A. § 33–20A–7(b). ''No healthcare provider may be penalized by a managed care plan for providing testimony, evidence, records, or any other assistance to an enrollee who is disputing a denial, in whole or in part, of a health care treatment or service or claim therefore.''

[2] [See, *Competitive impact Statement. U.S.A. and the State of Texas* v. *Aetna, Inc., Et al.,* USDC Northern District of Texas, CA 3–99CV1398–H (1999)].

which is a dramatically different product that requires physicians to assume certain risks. Those risks may not be viable for smaller practices with smaller patient bases because of practice size, patient mix or other valid actuarial and business concerns. Yet, these clauses require physicians to participate in products despite the existence of legitimate concerns.

Moreover, imposing these clauses on physicians (especially as a unilateral amendment to an existing contract) may sever existing patient-physician relationships. This has been seen most vividly in Texas where Aetna US Healthcare enforced its ''all products'' clause and terminated a large physician group that refused to take new patients under one of the insurer's HMO products. This resulted in thousands of patients losing access to their physicians and, for many of them, having to change doctors in mid-treatment. An additional concern with ''all products'' clauses is that where plans have significant market share (such as the 58% share WellPoint/Georgia Blue and Aetna/Prudential would have in Georgia), the non-negotiable ''all products'' clauses will operate to further limit patient choice by facilitating a conscious push of patients into HMO products and away from other options.

''All products'' clauses also harm premium-payers. An insured who selects a PPO product, usually does so in order to have access to a more attractive panel of physicians and other healthcare providers. Typically, that insured has to pay for that privilege with a higher premium than the basic HMO member will pay. Yet, if a physician agrees to be an authorized provider under Aetna's PPO plan, and is subject to the ''all products'' clause contained therein, that physician has to take Aetna HMO patients, as well as PPO patients. So, the HMO member will have the same access to that doctor as the higher premium-paying PPO member. Thus, the PPO member paid the higher premium but got nothing for the higher cost. Is this fair to patients? Is this fair to employers who purchase health insurance for their employees?

• *Aetna's Ability To Determine What Is ''Medically Necessary''*

Among the other more egregious contract provisions found in many managed care contracts, especially Aetna's, is the provision that authorizes the health plan to make the determination as to what is ''medically necessary'' for a patient. Testifying in support of managed care reform before a subcommittee of the United States House of Representatives in 1996 and again before a Georgia State Senate committee just this past March, Dr. Linda Peeno, M.D., a former medical executive for several managed care companies across the country, stated that ''the definition of 'medical necessity' is the 'smart bomb' of managed care.'' She explained that managed care companies can appear to offer all sorts of options and decision-making power to their insureds and providers but as long as they retain control over the definition of what is, and what is not, medically necessary, they have unfettered control over what medical treatment they will pay for on behalf of their insureds, despite the fact that the insured has paid to have the service covered by their plan.

Many insurance plan contracts in existence today, including most Aetna contracts, allow the insurer to supersede a treating physician's determination regarding the necessity of medical services without any consideration whatsoever of that physician's judgment or the patient's true needs. Aetna accomplishes this by retaining for itself the unfettered discretion to determine what they will, and what they will not, pay for—all under the guise of the service not being, ''medically necessary.'' For example, Aetna's contract with physicians provides as follows:

1.1 Provision of Covered Services * * * It is understood and agreed that Company, or when applicable, the Payor, shall have final authority to determine whether any services provided by Provider were Covered Services * * *

12.4 Covered Services. Those Medically Necessary Services which a Member is entitled to receive under the terms and conditions of the Plan.

12.7 Medically Necessary Services. * * * Health care services that are appropriate and consistent with the diagnosis in accordance with accepted medical standards and which are likely are result in demonstratable [sic] medical benefits, and which are the least costly of alternative supplies or levels of service which can be safely and efficiently provided to the patient.

• *Hold Harmless Clauses*

Aetna has unfairly shifted the legal liability associated with its policies to physicians through hold harmless clauses, clauses limiting their liability and clauses shortening the applicable statue of limitations. Aetna has insulated itself from liability by inserting hold harmless clauses in its contracts with physicians in blatant disregard of statutory prohibitions contained in some state's laws. Certainly, health plans should not be allowed to shift their own legal liabilities onto the physician while simultaneously deciding how and under what circumstances physicians can provide care. That is exactly what Aetna does when they have the right to decide what is, and what is not, ''medically necessary.'' Is there any reason to believe that Aetna will adhere to Georgia's newly enacted statutory prohibition against hold harmless clauses.[31]

• *Clauses Which Allow Aetna To Amend Unilaterally the Contract Without the Physician's Consent and Sometimes Knowledge*

Another onerous provision found in managed care plan contracts today is the clause that allows a plan to amend the contract entirely on its own and exclusively within its unfettered discretion. While traditionally such clauses have been utilized by insures to alter very minor features of an insurance contract—*e.g.*, changing the address where claim forms are to be sent, changing the payment dates, and other elements of a clerical nature—managed care plans have more recently been using these unilateral amendments to make major changes in the fundamental, core obligations of the parties which constitute the very essence of the contractual agreement between the insurer and the physicians. These fundamental obligations include the nature of the services that the physicians are to provide under the contract, the physician services that are to be paid for and the method by which reimbursements are to be calculated.

Moreover, the unilateral changes being made today by insurance plans, including those of Aetna, involve not only fees, but also utilization review/case management policies, which, in essence, dictate whether and under what circumstances patients are able to obtain medically necessary services.

• *Requirements That Force Physicians To Participate in Other Insurers' Plans About Which the Physicians Know Noting*

In light of the fact that physicians have no bargaining power whosoever with respect to contracting with health insurers about the contents of their plans, fairness certainly seems to require that the physicians at least be allowed to know with which plans they are contracting. Aetna's contracts have provisions that retain for Aetna the right to require that their physicians also

[3] See O.C.G.A. § 51–1–48(b).

participate with a network of plan ''affiliates'' or otherwise participate in other insurers' plans. Under such contractual provisions, physicians are not permitted to review the additional contracts to know or understand their terms and conditions. Physicians are not authorized to accept or reject these other insurers' contracts. When patients who are insured under the affiliate plans come to the physician's office for treatment, the physician must provide covered medical treatment to the patient and can only expect to be paid at the same discounted rates Aetna has imposed upon them in their contract. Further, physicians are required to accept payment not from Aetna, but from the ''affiliate'' insurer. If the affiliate insurer does not pay the physician, the only remedy is to seek payment from the patient. Moreover, when the physician treats the insured patient under the affiliate plan, the physician must follow that plan's definition of what is medically necessary.

• *Provisions Which Impose Unfair Penalties Upon Physicians*

Aetna, like many managed care health plans, reserves the right to punish physicians who do not follow certain plan rules and regulations. These contractual ''punishments'' often bear no relationship to alleged wrongdoing, run the potential of jeopardizing quality care, and are of questionable legality. Under the Aetna contract, if a physician fails to obtain appropriate prior authorization, he or she shall have their reimbursement reduced for all medical services provided to all patients that they treat after notification by Aetna. This provision is often referred to as a ''contamination'' clause—the theory being that if one patient goes out of plan, a physician's payment for all patients will be ''contaminated,'' *i.e.*, reduced

Sometimes physicians do not comply with utilization review requirements (such as prior approval rules) because they are not in a patient's best interest. Sometimes the noncompliance is inadvertent. In many cases, there was no mistake at all. Given the proliferation of managed care throughout Georgia and given the fact that physicians contract with numerous health plans, all with different procedures and requirements, billing for medical services has become cumbersome, complex and confusing. This scenario has placed an incredible burden on physicians (and their office staffs). So, it is understandable that some physicians' offices may fail on an isolated occasion to meet each and every billing, utilization review, or other procedure imposed by each and every one of the myriad health plans with which they have contracted. Healthcare insurance company acquisitions and mergers that further empower insurers to impose sanctions against physicians in this manner should not be allowed to occur. This type of disproportionate punishment provision should not be tolerated.

Further, penalizing physicians for failing to comply with a plan's utilization review program in order to advocate for medically necessary treatment or care is contrary to Georgia law. Is there any reason to believe that Aetna will abide by this newly enacted provision of Georgia law? Other managed care companies have continued to enforce such provisions against physicians in direct violation of some states' laws. Is this what Georgia patients and physicians deserve?

The Georgia General Assembly has spoken unequivocally (and nearly unanimously) on this point. With the passage of O.C.G.A. § 33–30A–7(b), the legislature made it clear that it is the public policy of the State of Georgia that a physician should be allowed, in fact encouraged, to advocate for medically appropriate health care for his or her patients. If Aetna is allowed to violate state law by penalizing physicians for such advocacy, as other companies have done (e.g., the way Wellpoint Health Networks, Inc. has done in violation of California law), then such important patient advocacy will be severely chilled and could result in a dangerous threat to patient care in Georgia.

III. The Double Whammy Effect Of Aetna/Prudential and Georgia Blue/Wellpoint

The second major reason for our objecting to the Acquisition is the fact that it comes at the same time that Georgia's largest and oldest health insurer, Blue Cross/Blue Shield of Georgia, is merging with WellPoint Health Networks, Inc., one of the nation's largest publicly traded managed care insurance behemoths. The combination of Blue Cross/Blue Shield of Georgia and WellPoint Health will control more than 32% of the health insurance market in Georgia [1.8 million persons]. The consequences of having one of the largest managed care networks in the country, which is not Georgia-based, take over one-third of the Georgia healthcare insurance market would be troubling enough for Georgia patients, Georgia physicians and other healthcare providers interested in providing the best quality of healthcare to their patients. However, the ill effects of that merger will be compounded by the fact that it will occur at the same time that Aetna and Prudential, the third and fourth largest health insurers in Georgia are dissolved into one. The concurrence of these two transactions will dramatically reduce the competition among carriers and, therefore, the healthcare options available to all Georgians. It will directly affect nearly 59% of the HMO/POS market in Georgia and more than 52% of that same market in the Metropolitan Atlanta area.[4] Because of the unfair market share that the two resulting insurance carriers will have, however, the effects will be hard felt throughout the entire state's health insurance market. The following market share chart shows how these two consolidating transactions will affect the health insurance market share landscape in Georgia.

[In percent]

HMO/POS market	Market share as of 07/01/99 for Aetna Inc.	Market share as of 07/01/99 for Prudential	Market share for Aetna/Prud following the acquisition	Market share affected by combination of Aetna/Prud acquisition and merger of BC/BS of GA with WellPoint
Market Share for all of Georgia	10.08	15.95	26.03	58.62
Market Share for Metropolitan Atlanta Area	9.35	18.13	27.48	52.34

[4] All statistics are based on information contained in the latest update of Harkey & Associates' 1999 report on managed care insurers operating in Georgia.

The merger of Georgia Blue with WellPoint would increase WellPoint's market share in Georgia from less than 2% of the market [100,000 persons insured currently under Wellpoint's subsidiary, UNICARE] to nearly 32% of the private health insurance market [1.8 million persons]. While the market share increase for Georgia Blue following the merger would appear to be fairly minimal, the dynamics of having one of the largest managed care networks in the country, which is California-based, take over one-third of the Georgia market will be extremely consequential for Georgia insureds and Georgia physicians and other healthcare providers interested in providing the best quality of healthcare to their patients.

The merger between Georgia Blue and WellPoint is worrisome in several respects. First, Georgia Blue would no longer be a Georgia-based company, would no longer be owned primarily by Georgians and would have little, if any, allegiance to Georgians. The influence and presence of California-based WellPoint, as a dominant managed care player, would be significant. WellPoint would immediately assume a dominant position in the Georgia health care insurance market. With this advantage, WellPoint would be expected to rapidly increase its market share in Georgia.

Furthermore, considering WellPoint's unparalleled focus on its managed care products and its dominant power in the managed care industry, it is reasonable to expect that the managed care portion of Georgia Blue will grow at an even faster rate in Georgia than it otherwise would have and with a concomitant decrease in their attention to the traditional indemnity market needs of Georgians. Patients will be faced with a marketplace that is less competitive and that offers far less choice.

If the merger is approved, Georgia Blue, in a period of less than 5 years, will have transformed from a Georgia-based, not-for-profit insurer that was loyal to its insured patients and that was accountable to the people and State of Georgia, into an indivisible piece of one of the nation's largest publicly traded managed care behemoths.

While the corporate entity that would follow the merger of Georgia Blue and WellPoint would not be an illegal monopoly in Georgia, it most certainly would constitute a monopsony with significant market share dominance. Given WellPoint's history of using abusive tactics in California and the significant market share that they would acquire from Georgia Blue, the merger between the two can only spell trouble for Georgia patients and their health care providers. The combination of market share dominance and a pattern of abusive managed care practices could be a lethal dose of bad medicine for Georgians.

Although the Medical Association of Georgia and its members acknowledge that managed care is here to stay, the amount of abuse that is already present in the managed care industry—even in Georgia—presents a significant concern. Thus, it is our obligation, by whatever means are appropriate, to raise the issues and concerns of our members and their patients whenever quality care is threatened by the managed care industry. We strongly feel that allowing the state's third and fourth largest healthcare insurers to merge at the same time the state's largest healthcare insurer is being taken over by one of the nation's largest managed care companies certainly constitutes just such a threat to Georgia patients.

Conclusion

In summary, Aetna, through the use of numerous onerous contract provisions, already constitutes a threat to quality care in Georgia and elsewhere. Allowing it to consume an even larger segment of the healthcare insurance market will only further empower Aetna to drive the delivery of healthcare in any direction that its financial incentives may dictate, regardless of the needs of patients. Aetna has shown in many ways (E.g., by its unrepentant use of its definition of ''medical necessity''), that its primary, if not singular, emphasis is in producing returns for its shareholders' investments—all to the detriment of their insureds and without regard for same. The larger they are allowed to become, the greater their dominance over the healthcare market will be and the less physicians and other healthcare providers will be able to determine what care patients can receive.

The concurrence of this Acquisition at the same time that Georgia's largest healthcare insurer and its tremendous market share are being turned over to one of the nation's largest managed care companies can only spell trouble for Georgia patients and physicians. Together, the two resulting corporate giants will control more than 58% of the Georgia HMO/POS markets. With that combined ability, the two insurers will dictate what care is provided throughout all of Georgia and they will lower the standard of healthcare services to that which is ''the least costly,'' just as Aetna says in its definition of ''medically necessary.'' Is this really the single criterion that should control the quality and quantity of healthcare that will be made available in Georgia or anywhere else in the United States? The Medical Association of Georgia arduously submits that it should not be.

Accordingly, and for the many reasons articulated above, the Medical Association of Georgia and its 8,000 Georgia physicians respectfully request that the proposed acquisition by Aetna of Prudential Insurance Company's healthcare insurance business be *disapproved*.

Thank you for your consideration in this matter that is of great importance to all Georgians.

Sincerely,

David A. Cook,

General Counsel.

William T. Clark,

Associate General Counsel.

September 7, 1999.

Gail Kursh, JD,

Chief, Professions and Intellectual Property Section, Health Care Task Force, Department of Justice, 600 E. Street, NW, Room 9300, Washington, DC 20530.

Re: Comments of the American Medical Association, Texas Medical Association, Dallas County Medical Society, and Harris County (Houston) Medical Society to the Proposed Revised Final Judgment pending in *United States* v. *Aetna, Inc.*, Civil Action no. 3–99CV 1398–H

Dear Ms. Kursh: The American Medical Association (AMA), along with the Texas Medical Association (TMA), the Dallas County Medical Society, and the Harris County (Houston) Medical Society (collectively, ''the Texas medical societies'') submit these comments regarding the proposed consent decree (''consent decree'') entered into by the United States Department of Justice, the Texas Attorney General (collectively, ''the Government''), and Aetna/U.S. Healthcare (''Aetna'') and Prudential Insurance Company of America (''Prudential'') in a complaint and final judgment submitted to the United States District Court for the Northern District of Texas on June 22, 1999.

Our organizations submit these comments in order to state to the Government our desire for a fair and balanced healthcare marketplace, including access by patients to the physicians our organizations represent. Our organizations have a first-hand familiarity will marketplace realities and the potential impact of this proposed merger on physicians and patients. During the course of the investigation of this proposed merger,

the AMA and the Texas medical societies have worked in partnership to respond to requests from the United States Department of Justice (DOJ) for information on the impact of this merger on physicians and patients in the Dallas and Houston area.

The AMA is a not-for-profit association of approximately 275,000 physicians in all areas of specialization throughout the United States and is the largest medical society in the United States. The Texas Medical Association (TMA) is a not-for-profit association of 36,000 physicians and medical students practicing in all areas of specialization in the State of Texas. TMA represents more than 83% of all licensed physicians in Texas. The Harris County Medical Society represents 8500 physicians, 80% of all physicians practicing in all areas of specialization in Harris County. The Dallas County Medical Society represents 6000 physicians practicing in Dallas County, 80% of all physicians practicing in all areas of specialization in the county. The foundation of all our organizations is the promotion of the science and art of medicine (including quality of care) and the betterment of public health. We also advocate on behalf of our physicians and their patients at all levels of state and federal government and in the private sector.

The underlying focus of our joint effort is our commitment to the preservation of quality medical care and the patient-physician relationship. The AMA and the Texas medical societies believe that in a well-balanced marketplace, patients and physicians will have the best opportunity to make informed decisions as to the appropriateness of care.

We are filing these comments because we believe there is a strong factual basis for the action taken by the Government to require Aetna to divest its NYLCare business in the Houston and Dallas markets. However, we also believe the consent decree should be broadened to address Aetna/U.S. Healthcare's contracting practices that directly impact and lessen competition in the Dallas and Houston marketplaces. Moreover, we are concerned that the Government continue to closely oversee the divestiture of NYLCare to ensure that there is a viable competitive alternative for patients and physicians in Dallas and Houston.

We also fully support the Government's allegations that the merger of Aetna and Prudential, if unchallenged, would lead to violations of the antitrust law because (1) it would substantially lessen competition in the fully-funded Health Maintenance Organization (HMO) and HMO Point of Service (POS) markets in Dallas and Houston resulting in increased price or decreased quality, thereby increasing prices for or decreasing the quality of services; and (2) it would result in consolidation over purchasing of physician services in Dallas and Houston, giving Aetna the ability to depress physicians' reimbursement rates, and allow Aetna to dictate all terms and conditions in its contracts, which is likely to result in a reduction in the quality or degradation in the quality of those services.

I. The AMA and the Texas medical societies believe that there is a strong factual basis for the Government's findings regarding the anticompetitive impact of the proposed merger in the Dallas and Houston HMO and HMO Point of Service markets

The AMA and the Texas medical societies believe there is a strong factual basis for the allegations that in the Houston and Dallas markets, the HMO and HMO–POS plans are an appropriate relevant product market and that an unchallenged merger would result in a reduction in competition in the sale of HMO and HMO–POS plans in Dallas and Houston. This is a significant shift from a number of litigated cases where the courts refused to recognize a separate market for HMO products and instead defined the relevant product market as all health care plans. A more flexible case-by-case approach that evaluates the actual dynamics of an individual marketplace is necessary to assure that a given marketplace remains competitive in a time of rapid market consolidation.

II. The AMA and the Texas medical societies support the Government's findings regarding the anticompetitive impact of the merger in the market for the purchase of physician services in Dallas and Houston and the potential impact on quality and/or quantity of care

The AMA and the Texas medical societies agree that the Government correctly identified the relevance of and the anticompetitive impact of Aetna's post-merger purchasing power over physician services in Dallas and Houston. There is a strong factual basis for the Government's allegations that physician services constitute a relevant product market within which to assess the likely effects of the proposed acquisition of Prudential by Aetna.

There is a strong factual basis to support the Government's contention that without divestiture. Aetna's consolidated purchasing power over physicians' services will enable the merged entity to unduly reduce the rates paid for those services. This will likely lead to a reduction in quantity and/or degradation in quality of physician services. The Government's recognition of the unique aspects of physician services (compares to other tangible services) that make it very difficult for physicians to replace lost business quickly are consistent with our experience of market realities.

Consistent with that, the Government correctly alleges that the contract terms a physician can negotiate with a health plan depend on the physician's ability to terminate his or her contract if the company demands unfavorable terms. In other words, if a physician cannot ''walk away'' from a contract, he or she has no ability to reject unfavorable terms—including those with clear patient care implications.

We believe there is a strong factual basis for the Government's allegation that in the Dallas and Houston markets, physicians' limited ability to encourage patient switching and consequent inability to reject Aetna's contracts post-merger will result in a violation of the Section 7 of the Clayton Act by giving Aetna the ability to reduce physician reimbursement rates, which will have a negative impact on the quality and/or quantity of physicians services.

In response to requests from the Department of Justice relating to the investigation of this proposed merger, the Texas Medical Association (TMA) developed a physician practice cost model that simulates the effects of the loss or termination of a family practice physician's managed care contract. Based on this model, should a physician terminate a managed care contract that accounts for 20 percent of total practice revenue, the physician would experience a loss of approximately $40,000 of net medical income. Where a plan accounts for a significant percentage of a physician's practice revenue, the prospect of severe financial repercussions greatly reduces—if not eliminates—the physician's ability to walk away from an unreasonable contract with that plan.

At the request of the Department of Justice (DOJ), the Harris County (Houston) and Dallas County Medical Societies went further and performed a survey to collect practice revenue data to determine the actual impact of the merger at the practice level. The results of the survey showed the impact would create tremendous market imbalance. Before the proposed acquisition of Prudential, 62% of Dallas County physicians limited their exposure to the combined Aetna/NYLCare entity to

under 20% of total practice revenue. However, after the acquisition, if NYLCare were not spun off, only 43% of Dallas physicians would be able to limit their exposure to the merged Aetna/Prudential entity to under 20% of total practice revenue.

In Houston, the results are more dramatic. Prior to Aetna's acquisition of NYLCare, 91% of Houston physicians were able to limit contract exposure to Aetna to under 20%. Subsequent to Aetna's acquisition of NYLCare and Prudential and without the spin-off of NYLCare, only 27% of Houston physicians could still limit exposure to the Aetna entity to under 20%.

Given the substantial financial damage to a physicians' practice that would result from declining an Aetna contract in these circumstances, it is reasonable to conclude that the 57% of Dallas physicians and 73% of Houston physicians with 20% or more practice revenues dependent on the merged Aetna/Prudential entity could not walk away from the Aetna contract.

III. The AMA and the Texas medical societies believe that additional relief is needed to guard against Aetna's ability to exercise anticompetitive power in the purchase of physician services in Dallas and Houston

The AMA and the Texas medical societies believe that the proposed divestiture is an appropriate first step to ward off the anticompetitive impact of the proposed merger in the combined HMO and HMO–POS market. However, we do not believe that the remedy adequately guards against Aetna's ability to exercise anticompetitive power in its purchase of physician services in the relevant geographic markets.

This is because Aetna's contracts include provisions that operate to ''lock-in'' physicians making it extremely difficult if not impossible to walk away from an Aetna contract that is disadvantageous to them or to their patients. The continuing threat that these provisions will enable Aetna to exert monopsonistic power in spite of the divestiture warrants modification of the Revised Final Judgment to include further relief.

The ''all products'' policy is the first and most obvious of these provisions. Under this ''take-it-or-leave-it'' policy, Aetna requires a physician to participate in all of Aetna's current and future health plans as a condition of participating to any current Aetna plan. Aetna has publicly stated that this provision is non-negotiable.

The consent decree recognizes the anticompetitive nature of this policy by noting that in Dallas and Houston, the policy ''significantly increases the volume of business that a physician would lose if he or she rejected (an Aetna Contract). Terminating the provider relationship thus would mean that a physician not only would lose his or her own patients who participate in the plan, but also access to other patients in that plan.'' Although the ''all products'' policy played a significant role in the Government's finding that the merger would result in an antitrust violation in the market for purchase of physician services, it is not addressed in the Revised Final Judgment.

Based on market realities, the AMA and Texas medical societies believe that the ''all products'' policy enhances Aetna's market power, operates to ''lock-in'' physicians to Aetna contracts, and therefore raises serious anticompetitive concerns in the Dallas and Houston markets for purchase of physician services. The ''all products'' policy enhances Aetna's market power by ensuring that physicians are funneled through the HMO product to have access to Aetna's patient populations within other products such as a PPO.

From a physician's perspective, Aetna's HMO product therefore serves as a ''gateway'' to Aetna's patient populations enrolled in other products. The provision ensures that Aetna becomes a sizable percentage of a physician's business even if a physician wishes to participate in only one of Aetna's products for legitimate business reasons (such as lack of access to information systems needed to manage risk contracts) or quality of care concerns. The ''all products'' policy seriously undercuts the ability of Houston and Dallas physicians to walk away from an Aetna contract, a key concern set forth in the Complaint.

Moreover, Aetna's ability to force this provision on Dallas and Houston physicians is further evidence of its anticompetitive market share. The substantial differences between HMO and PPO products from the Physicians' standpoint are poorly understood by most Americans. However, it is critical to understand this difference in order to fully grasp the pernicious nature of Aetna's ''all products'' policy, particularly as it would operate in Dallas and Houston.

A shorthand explanation is that under an HMO contract, physicians are compensated in a variety of ways. While many are paid using a substantially discounted fee schedule, some are paid on a ''capitated'' basis which means that the financial risk of insuring HMO members is passed from the insurer—in this case Aetna—to the treating physician. While risk-bearing by physicians in some settings may result in the provision of cost-effective quality medical care, managing insurance risk is a highly complex task that involves equally complex actuarial assumptions that are generally undertaken by large entities.

Entering into risk contracts is inadvisable for physicians without, among other things, (1) Access to the underlying acturial data on which the capitaton rate is based, (2) data to match costs related to patients with reimbursement received from them under a capitated contract; and (3) a large enough patient base to ''spread the risk.'' It is indisputable that entering into an HMO risk contract without a careful evaluation can have severe financial repercussions for a physician's practice, and potentially adversely impact the care that a physician can provide his or her patients.

Our organizations (as well as many other organizations) have developed educational information to assist physicians in deciding whether entering into an HMO risk contract is advisable for their practice and in evaluating capitation rates. Attached are *Capitation: The Physician's Guide:* (American Medical Association 1997) and *The Law of Managed Care, Chapter 5,* ''Risk Contracting'' (Texas Medical Association, 1997) which provide a more in-depth discussion of the many variables that physicians must consider.

Moreover, in 1997, the AMA Council on Ethical and Judicial Affairs (CEJA) issued a report on Financial Incentives and the Practice of Medicine (attached) which has been adopted by the AMA House of Delegates and Incorporated into the AMA Code of Ethics (see especially Section E–8.051, ''The Ethical Implications of Capitation,'' adopted June 1997) (attached). The Code of Medical Ethics unambiguously states that physicians have an ethical obligation to ''evaluate a health plan's capitation payments prior to contracting with the plan to assure that the quality of patient care is not threatened by inadequate rates.'' It also recommends, for example, that financial incentives be applied across broad physician groups so that an individual physician's incentive to inappropriately limit care is minimized.

The Aetna ''all products'' policy prohibits physicians from making any of these necessary evaluations. Instead, they are forced to blindly accept risk contracts (without even knowing what they are accepting as capitated risk) that they may be ill-equipped to manage. There is no opportunity for any type of

evaluation. Any physician who wishes to participate in any Aetna contract—including a PPO contract which does not involve sharing financial risk—must accept HMO risk contracts under terms set unilaterally by Aetna (which may be changed by Aetna unilaterally) with absolutely no opportunity to make the critical analysis outlined in the above-referenced document. Even worse, physicians' must agree to participate in future products—which may subject physicians to higher levels of insurance risk—under whatever conditions Aetna sets. Any reasonable attorney, business consultant, or ethicist would advise a client against agreeing to this type of blind risk-sharing contract, particularly a solo or small group practice for whom this kind of arrangement is even riskier.

In addition, another aspect of the Aetna contract works in concert with the ''all products'' policy to further ''lock-in'' the physician and significantly undercuts, if not eliminates any real ability of physicians to withdraw from an Aetna contract. This provision states that:

- ''To prevent discrimination against Company or its Members for such time as Provider declines to accept new Members as patients, Provider shall not accept as new patients additional members from any other health maintenance organization.''

This bar on closing a practice to new Aetna patients prevents a physician from being able to ameliorate the harsh effects of any Aetna policy by accepting patients in other plans or being available to see patients covered by a new entrant. Under this provision, a physician has no ability to limit exposure or reduce exposure to Aetna by increasing his or her participation level with another plan. It undercuts the ability of physicians to manage their ''book of business'' and thus establish an effective balance between revenue sources. This further exacerbates their dependence on Aetna.[1]

Because the divestiture does not limit Aetna's ability to impose both of these contract provisions on physicians, the Final Judgment does not provide a sufficient remedy to the monopsonistic power that Aetna will wield in the Dallas and Houston markets for physicians post-merger. To better address the anticompetitive effects of these contract provisions, the AMA and the Texas medical societies propose that the Government modify the Final Judgment to enjoin the use or enforcement of these provisions in any Aetna physician contract with a physician practicing in the Dallas and Houston markets for a period of five years following the proposed divestiture. This remedy is addressed toward the type of future injury to competition that Section 2 of the Clayton Act is designed to prevent.

An injunction would preserve a physician's ability to terminate or credibly threaten to terminate his or her relationship with Aetna if Aetna should seek to reduce the prices it pays to physicians in a manner likely to lead to a reduction in the quantity or a degradation in the quality of physician services in those geographic markets. The injunctive relief that the AMA and the Texas medical societies propose is consistent with prior injunctions that courts have issued to prevent enforcement of contract provisions in unlawful restraint of trade or to prevent the maintenance of a monopoly. See, e.g., Cass Student Advertising Inc. v. National Educational Advertising Services, Inc. 537 F. 2d 282 (7th Cir. 1976) (affirming injunction that prohibited defendant from enforcing a provision in its contracts that gave the defendant exclusive rights to represent college newspapers in student advertising).

It should also be noted that the ''all-products'' and ''practice-closure'' provisions also serve as substantial barriers to entry in light of Aetna's still significant position in the Dallas and Houston health care markets. The provision of managed care in a particular market is heavily dependent on maintaining a quality physician network. To justify the expense of developing and maintaining the network, there must be potential for competitors to generate some critical level of market penetration.

By using the ''all-products'' policy and barring participating physicians from reducing the amount of Aetna business in favor of another plan, Aetna's market share is self-perpetuating, and these policies operate to bar the entry of other plans in the Dallas and Houston markets. It is simply too difficult to put together the requisite provider network to compete in this situation. In the future, this may enable Aetna to extract monopoly prices or reduce quality of care to the detriment of consumers.

IV. It is critical that the Government closely monitor the divestiture of NYLCare.

The AMA and the Texas medical societies have serious concerns about the potential viability of a divested NYLCare entry. Prior to the divestiture agreement, Aetna representatives had informed us that they were well underway in their efforts to fully integrate NYLCare's Texas operations into their primary organization. It is our understanding that they had substantially dismantled NYLCare's separate administration, data processing, and claims processing and payment functions.

Although the Hold Separate Provisions require Aetna to recreate separate administrative, sales, provider relations, quality management, operations and underwriting departments for the NYLCare entity, the magnitude of this task is such that it would be very difficult to complete within the time frame specified in the Revised Final Judgment. Furthermore, Aetna will be subject to serious conflicts of interest in regard to its efforts to reassign appropriate staff and resources to NYLCare.

It will be extremely difficult for the Government to determine whether the recreated administration and operations will function effectively enough to preserve NYLCare's viability as a market competitor. Because of the inherent conflict of interest, the plans' assurances in that regard might not be sufficient evidence. We urge the Government to require NYLCare to demonstrate its viability over some reasonable period of time before it allows Aetna to consolidate the merger with Prudential.

We support the Government's action in the Revised Final Judgment to define the number of covered lives that must be divested with the NYLCare business. We are concerned, however, about what appears from Texas Department of Insurance figures to be a 10% decline in NYLCare covered lives in the Houston Market since the fourth quarter of 1998. A decline of this size is material and could be a signal of some ongoing deterioration of NYLCare's market position. Such deterioration could

[1] Another aspect of Aetna's business conduct recently brought to the attention of the AMA is worth noting in this respect. At least in some parts of the country (if not nationally) Aetna is requiring physicians groups and independent practice associations to enter into a two-tiered contract. The group of IPA must agree to secure individual contracts between Aetna and each individual physician member of the group or network that will bind the individual physician to Aetna if there is a termination between Aetna and the group or IPA. We believe that this practice is designed to defeat any leverage physicians have gained by forming legitimate groups and networks, and also in part due to the highly publicized contract disputes Aetna has encountered over the ''all products'' policies in at least three states—including Texas—with IPAs. When linked with the ''two tiered'' contracting approach, the all products policy becomes even more onerous because, as noted, it is much more difficult for a solo or small group practice to take on risk or capitated contracts for under any circumstances for obvious actuarial reason, particularly when Aetna requires the group to do so without ever stating the price it is willing to pay for risk or capitated contracts.

signal the beginning of an ongoing decline in market position caused by Aetna's actions prior to the divestiture agreement.

If that is the case, the ongoing loss of market share might continue into the fall reenrollment period, in spite of any current reparative actions undertaken by the new NYLCare administration. For example, we do not know to what extent Aetna may have already (prior to the divestiture agreement) encouraged providers and customers to sign agreements with Aetna in lieu of their former agreements with NYLCare. We urge the Government to monitor NYLCare's covered lives through the fall enrollment period in order to assure that the divested NYLCare business will include the requisite number of covered lives in the Houston market.

We consider the viability of NYLCare's provider network to be essential to NYLCare's overall viability as a competitor in the Houston and Dallas markets. We urge the Government to closely monitor this aspect of the divestiture because of many unknown factors relating to the current Aetna/NYLCare provider network. If the divestiture is to be meaningful, the provider networks that were previously in place for NYLCare business will need to be preserved or, if necessary, re-assembled.

We support the Government's requirements that a buyer for the NYLCare business must be capable of competing effectively and be substantially independent of Aetna. We would further advocate that the buyer be capable of assuming all support services for NYLCare, so that the divested entity would not be dependent on Aetna for critical operations. For example, the Revised Final Judgment allows Aetna to continue to provide ''support services'' to NYLCare until the divestiture, including software and computer operations support. To the extent that NYLCare continues to rely on Aetna for crucial business functions such as processing, pricing, and paying claims, it will not function as a separate entity and will not b e capable of standing alone as a viable entity. Any potential buyer should be capable of providing NYLCare with these support services without reliance on Aetna. Furthermore, a buyer should be required to have the demonstrated ability to comply with all state laws including those concerning reserves and timely claims payment, and offer a credible plan to continue to comply after absorbing the NYLCare business.

We would advocate that the Government carefully monitor the NYLCare divestiture process in order to assure that the divested plan has a viable administration and operating structure, and that it maintains its provider networks and customer base. Until the new NYLCare administration and operations have been shown to be effective and independent, acquisition of Prudential should not be allowed to proceed. We also suggest that the Final Judgment give this Court the power to evaluate the effectiveness of the divestiture one year from its conclusion.

V. Conclusion

The Proposed Consent Decree and Proposed Revised Final Judgment take a significant and needed step towards addressing the anticompetitive impact of the proposed acquisition of Prudential Health Insurance by Aetna/U.S. Healthcare. However, failure to address the contracting practices that play a key role in the alleged violations of the antitrust laws will undercut the effectiveness of the Consent Decree. Moreover, a commitment by the Government to carefully monitor the divestiture of NYLCare is also essential to achieving the purposes of the proposed settlement.

Sincerely,

Thomas R. Reardon, MD,

President, American Medical Association.

Gordon Green, MD,

President, Dallas County Medical Society.

Alan C. Baum, MD,

President, Texas Medical Association.

Carlos R. Hamilton, Jr., MD,

President, Harris County Medical Society.

September 21, 1999.

Steve Brodsky,

Antitrust Division, Department of Justice, 950 Pennsylvania Ave, NW, Suite 3101, Washington, D.C. 20530.

Re: AetnaUS Healthcare/Prudential Merger.

Dear Mr. Brodsky: This letter is written on behalf of Genesis Physicians Group, Inc. and Genesis Physicians Practice Association (collectively, ''Genesis'') and is a supplement to our earlier letters on the above matter. GPG believes that some of the current contracting activities related to the merger of AetnaUS Healthcare (''Aetna'') and Prudential HealthCare (''Prudential'') are anti-competitive and hopes that the information presented below will be helpful to you in your review of these post-merger activities.

Physician Office Practice

Earlier submissions to the Department of Justice have suggested that, once a payor becomes 20% of a physician's practice, the physician is unable to resist the unfair pressures of that payor. This is known as the ''lock-in'' percentage for physicians and, for primary care physicians (''PCPs''), Genesis believes that this figure is correct. As for specialist physicians (''SPCs''), Genesis believes that the ''lock-in'' figure is more like 10% because of the different referral patterns between PCPs and SPCs, particularly in the HMO contracts which Aetna has stated is its growth product. This lock-in percentage is important because, when it is reached, physicians are not able to resist the unfair contracting and operational activities of Aetna, some of which are described below.

Aetna/Prudential Contracting Activities

It is important to note that Prudential is requesting all physicians to sign individual contracts, even if they are in a group practice. This request is clearly aimed at isolating individual physicians from their lawfully constituted groups and utilizing the unequal bargaining power of a large insuror against an individual physician. Thus, as Genesis predicted, the size of Aetna/Prudential has led to coercive marketing and contracting activities. Although Aetna and Prudential are offering different contracts to physicians, the terms are very coercive and both result in threats to patient care. Genesis will summarize only two of those terms in this submission, i.e. the all products clause and the unilateral right to change the basic terms of the contract.

All Products Clause

This is the clause that requires physicians to participate in all products of Aetna in order to participate in any Aetna product. Because the contracts that Aetna is presenting to physicians contain a provision for unilateral imposition of a capitation (''risk'') reimbursement methodology, physicians may be forced into operational and financial constraints that will adversely affect patient care. Capitation payments shift the cost and administrative risk to the physician, generally with a lower reimbursement to the physicians. Under ''risk'' products, physicians have higher overhead costs because of the increased medical management and other administrative burdens by the payors. Increased physician overhead is, for example, due to more detailed medical management protocols, longer waiting times for payor pre-certification and referral procedures and more personnel to handle the increased administrative burden. Common sense dictates that physicians would not want to sign a contract that gives such unilateral rights to Aetna.

Coupled with the lack of full disclosure about the financial risks of capitation payment methodology, it is clear that the ''all products'' clause is a deceptive practice that could adversely affect patients, as well as physicians.

Aetna has libelled physicians by stating that their opposition to this clause is based on a desire to avoid treating poor patients that Aetna claims is the primary user of HMOs. Aetna has no evidence that Dallas-area physicians discriminate on the basis of HMO participation nor that only poor people use HMO products. The truth is that the all products clause (with its imposition of capitation reimbursement methdology) is a mechanism to shift costs and risks to the physicians without proper disclosure of the material aspects of the ''risk'' products offered by Aetna. Such cost and risk shifting is done to enhance shareholder value, not patient care.

Unilateral Right To Change Contract Terms

Under its proposed contract with physicians, Aetna has the power unilaterally to amend certain material terms of the contract without any requirement that Aetna notify physicians. In addition, the contract lacks a price term, which in a contract for services is an essential term. The power to unilaterally amend has major potential impact on patients. By reserving the right to unilaterally amend all terms, including clinical protocols, the contract gives Aetna very real power to impose barriers to care and to decrease medical expenses, especially if it is under financial pressure to meet shareholder expectations. These barriers can result in delays and denial of care to patients.

Aetna's National Focus on HMO Growth

Aetna has stated publicly that its growth will be in HMO contracts and that it is actively pursuing this aspect of their business. With this product's added burdens of onerous medical management, random reimbursement changes and other interference in the patient/physician relationship, the 20% lock-in threshold becomes even more important. Physicians believe that there must be a balance between insuror's rules and regulations and the objective decisions made by a physician for his/her patient's best interest. At the 20% level, that becomes problematic from the standpoint of the physician being able to say no to an onerous contract.

Aetna seeks to use its market position to require physicians who may wish to participate in a PPO product, to participate in an HMO—a substantially different product. This pressure occurs despite the fact that the physician may have ethical, operational or clinical objections to capitated HMO plans, and even if the practice is not in a position to accept the substantial amount of insurance risk involved in such HMO products.

Conclusion

The pressure on employers to offer HMO plans means more pressure on primary care physicians since they are a necessary element of any successful HMO strategy by Aetna. Because of the current method of financing premiums, either through Medicare or employer payments, there is a limit to the physicians' ability to influence payors and patients. Thus, patients—the true consumer of health care—have very little control over choice of plan. Physicians have an ethical and legal obligation to their patients and the clinical decisions made in the course of the patient-physician relationship, not the insurer/insured relationship. Consequently, physicians will always play a critical role as patient advocate in an increasingly financially-driven health care system. This role can be easily undermined when a physician has no leverage in the face of an antagonistic and monopsonistic health plan.

Because Aetna has exhibited such anti-patient and anti-physician behavior, it is obvious that their market power in selected markets will lead to increased use of their anti-competitive contractual provisions. Genesis requests that the Department of Justice prohibit the use of the ''all products'' clause for 5 years and to require more balanced contractual provisions, all in an effort to protect patients, physicians and employers, particularly small business owners, from the power of Aetna.

Sincerely,

J. Scott Chase.

October 8, 1999.

Gail Kursh,

Chief, Health Care Task Force, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 400, Washington, D.C. 20530.

Re: Comment of the American Podiatric Medical Association to the Proposed Revised Final Judgment in *United States, et al.* v. *Aetna, Inc., et al.* (No. 3–99 CV 1398–H).

Dear Ms. Kursh: This comment is being submitted by the American Podiatric Medical Association (APMA), the oldest and largest association representing podiatrists in the United States. These comments are submitted regarding the proposed Revised Final Judgment entered into by the plaintiffs, the United States of America and the State of Texas, and the defendants, Aetna, Inc. and The Prudential Insurance Company of America. Notification of the 60-day comment period regarding the consent decree and Revised Final Judgment was published in the **Federal Register** on August 18, 1999.

Podiatric medicine is the profession of the health sciences concerned with the diagnosis and treatment of conditions affecting the human foot and ankle. The podiatric medical education is based upon accepted principles of allopathic medicine. Podiatrists may employ both surgical and non-surgical modalities in the treatment of the ailments of the human foot and ankle. Since the late 1960s, foot and ankle services provided by doctors of podiatric medicine have been covered by Medicare. Podiatrists are recognized as physicians by Medicare and under many state licensure acts.[1]

The APMA is a non-profit organization representing over 10,000 licensed doctors of podiatric medicine in the United States; this number represents more than 80% of those licensed to practice podiatry. There are component state organizations for each of the 50 states, District of Columbia and Puerto Rico, and for those podiatrists employed by the federal government. The APMA is in a unique position in the field of podiatry to comment upon the subject matter of this litigation.

The general concern raised by the APMA is that a concentration of market power by insurance companies in general, and in this case by Aetna through its acquisition of The Prudential Life Insurance Company, is harmful to the provision of quality podiatric medical care. Patient care and the welfare of the patient is paramount in the practice of podiatry, as in other health care professions. The corporate interests of Aetna, in its accountability to its shareholders, is not necessarily compatible with the provision of the highest quality of care and the broadest availability of services to the public-at-large. The concentration of too much economic power in any one market reduces, rather than enhances, health care options and may lead to distortions to, and even interference in, the physician/patient relationship. The APMA has serious concerns when third parties, whose interests may not coincide with that of the patient, are

[1] Unless otherwise made plain by the context, the term ''podiatrist'' and ''physician'' are used interchangeably.

making financial decisions which ultimately impact on the availability and quality of care.

In addition, podiatrists are often confronted with other problems which are exacerbated when there is a concentration of power in the hands of third-party payors. As noted above, there are more than 10,000 podiatrists who are members of the APMA throughout the United States. By way of comparison, there are over 14,000 allopathic physicians practicing in Harris County and Dallas County alone; there are 145 podiatrists in the Houston area and 128 podiatrists in the Dallas area. Because of the relatively small number of podiatrists, as compared with the allopathic/osteopathic physicians, podiatrists have had the added burden of fighting for access to managed health care plans. The concern among podiatrists is that a concentration of power would restrict rather than enhance the ability of podiatrists to provide quality, cost-effective care to its patients within managed care plans. When HMO and HMO–POS plans prevent podiatrists from participating in their programs, it limits the choices of the patient in the health care market with the potential of harm to the patient's well-being and care. It is for those reasons that the APMA, on behalf of its members, files these comments with the Department of Justice.

I. The Complaint of the Department of Justice and the State of Texas is Justified Regarding the Potential Anti-Competitive Effects of the Merger of the Aetna and Prudential HMO and HMO–POS Plans

The concerns of the Antitrust Division of the U.S. Department of Justice and the State of Texas were well-founded regarding the anti-competitive effects of the proposed merger. As alleged by the Department of Justice and the State of Texas, the proposed transaction is part of a clear trend towards the increasing consolidation among health insurance companies. Managed care companies are clearly engaged in a separate market from fee-for-service-based plans. While all facets of the health care industry are concerned regarding rising health care costs, managed care programs (such as HMOs), which place limits on treatment options, restrict access to out-of-network providers, and use primary physicians as gatekeepers, are in a greater position to affect the physician/patient relationship. The concern that the insurance companies are making decisions that may interfere in the course of treatment and the management of patient care is real. Any aggregation of power which would reduce the competition among HMO and HMO–POS plans or consolidate the purchasing power of a managed care plan over podiatric services, would be inimical to the well-being of the patient consumer and, ultimately, contrary to the provision of the lowest, cost-effective provision of health care services to the public.

The Justice Department complaint amply demonstrates the economic power that Aetna would acquire in the Houston and Dallas markets if corrective action were not taken. In Houston, Aetna presently has 44% and Prudential has 19% of the HMO and HMO–POS enrollees. After the merger, without divestiture, almost two-thirds of the enrollees in the Houston metropolitan area would be enrolled under the Aetna HMO-controlled plans. In Dallas, while not as large, the numbers are nonetheless quite substantial. The combination of Aetna's current 26% of the HMO and HMO–POS enrollees with the 16% now controlled by Prudential totals 42% in the Dallas metropolitan area. These numbers, in and of themselves, represent significant market penetration by one insurer.

The experience of podiatrists in the Houston and Dallas area, as well as elsewhere, indicate that the concerns regarding a potential reduction in the quantity or in the degradation in the quality of physician services provided to patients are genuine. Due to a number of factors, most health insurance is provided to consumers by employers. In an effort to reduce costs, as more and more employers move to managed care programs, podiatrists are finding that their patients are not able to maintain their relationships with their chosen podiatrists because of the limitations in the managed care plans. As the number of fee-for-service programs shrink, there is not a readily available pool of other patients waiting to fill the slots of those patients who have been restricted in their access to podiatrists.

Further, as will be discussed more fully later, the experiences of podiatrists are that the managed care programs, where they utilize podiatric services, engage closed panels to perform such services. Fewer and fewer podiatrists are performing more and more services. The natural effect is to ultimately reduce the availability of podiatric services to the public-at-large. This is the very degradation in both the quantity and quality of services which the Justice Department was rightly concerned. The divestitures of NYLCare, and the maintenance of a separate plan until NYLCare is sold, is clearly warranted in the Houston and Dallas markets.

II. The Concentration of Economic Power in the Hands of a Few Managed Care Companies Creates the Potential for Greater Exclusion of Podiatrists in the Health Care Market Place

One of the principal concerns of podiatrists throughout the country, as well as in the affected markets in this case, is the propensity of managed care organizations to prohibit access to podiatrists or to offer podiatric services through such a small number of podiatrists that it acts as a barrier to the participation of podiatrists in the HMO and HMO–POS markets.

Large scale participation of podiatrists on hospital staffs is a relatively recent phenomenon, having principally occurred since the 1960s within the United States. With the development of managed care programs, podiatrists have found that in a number of plans, again particularly initially, podiatric services were not included within the benefits offered by the plans. With the passage of time, podiatric participation in managed health care plans, including HMOs and HMO–POS plans, has increased. Nonetheless, there are numbers of plans which do not include podiatric services or so limit the number of podiatrists included in the panel as to effectively foreclose large numbers of podiatrists from participating in the managed care plans.

The APMA undertook a nationwide survey of its members to determine what participation barriers exist in the managed care market. The most recent data available, from the 1993 survey, provided that 60% of those podiatric physicians who responded indicated that major HMO and PPO organizations had prevented, limited, or attempted to prevent or limit, them from participating in such plans. Aetna, U.S. Health Care, and Prudential were all prominently mentioned in the survey. Of those who responded, 73% found that there were closed panels of podiatrists (a small number of podiatrists who could exclusively handle the foot care needs under the plan) or that the plans were closed to podiatrists entirely. In a 1998 survey, of those podiatrists who reported that there net income decreased from the prior year, 44.7% indicated it was because of the impact on managed care.

To the extent that there is a concentration of ownership and operation of these managed care plans in any one area, such as in Dallas or Houston, it necessarily follows that the number of options available to consumers (either employers or individual patients) will be limited. The more limited the options within the

HMO and HMO–POS plans, such limitations may lead to a further reduction in the number of podiatrists participating in such plans.

While podiatrists provide many services which may be classified as primary care, podiatrists frequently receive referrals because of the specialist nature that they provide for the treatment of the human foot. Many general practitioners, whether allopathic or osteopathic, make referrals to podiatrists to handle specific foot ailments which require certain treatment (including surgeries) that the general practitioner believes in the best interest of a patient should be treated by a specialist. To the extent that an HMO neither permits podiatric participation or so limits the number of podiatrists on its panel, such limitation reduces the availability of podiatric services and may prevent the referring physician from making the referral to the podiatrist best-suited to handle the particular condition.

Again, it is for these reasons that the APMA believes that divestiture, as set forth in the Revised Final Judgment, and for the purpose of maintaining competition, is the minimum condition to be imposed in order to permit the merger to proceed.

III. Anti-Competitive Provisions of the Aetna Contracts, Which Operate to Lock in Physicians and Reduce the Ability of Physicians to Provide Quality Health Care Should Be Purged

While highlighted by the U.S. Department of Justice and the State of Texas in their complaint, the proposed remedy of divestiture does nothing as it relates to certain onerous contract provisions incorporated in the Aetna contracts. The APMA joins the American Medical Association and others in urging that these provisions be stricken as a further condition of approval for the merger.

Certain of Aetna's contract provisions have the effect of binding a physician, whether or not a podiatrist, to the Aetna plans, whether or not such continued participation is in the physician's best interest. Aetna includes an ''all products'' policy which requires that if you are a member of one plan you must participate in all of Aetna's plans. In the Dallas and Houston area, Aetna does permit podiatric participation in its plans. Like other physicians, once a podiatrist is included in the plan, the podiatrist must participate in all of the Aetna plans.

The result of this is that in a number of the Aetna plans, there are circumstances and conditions which make the provision of care unprofitable and there are certain requirements which arguably interfere in the physician/patient relationship. Without this all-products policy, podiatrists might choose not to treat patients under such circumstances. However, because that policy is in place, podiatrists are required to provide services at times for less than cost and to go through procedures which may not necessarily be in the best interest of the patient. A provision such as the all-products policy is not in the best interest of the consumer or the physician, particularly if the Aetna line of business represents a very significant portion of the podiatrist's practice.

Further, while a relatively innocuous anti-discrimination provision is included in the contract, its effects is likewise to restrict choices by podiatrists. The anti-discrimination provision provides that if a physician declines to accept new Aetna patients under the HMO or HMO–POS plans, that podiatrist ''shall not'' accept as new patients additional members from any other health maintenance organization. That is, regardless of the unprofitability or the concerns that a provider may have as it relates to the strictures on treatment as imposed by certain plans, if the podiatrist refuses to accept any new Aetna enrollees, podiatrists cannot provide services to members of any other HMOs. In conjunction with the ''all products'' policy, once a podiatrist is in the plan, if that podiatrist desires to treat participants of any other HMO program, that podiatrist must always be willing to accept participants under any Aetna HMO or HMO–POS program.

These ''lock-in'' provisions do nothing to enhance quality of care or to enhance or to further the physician/patient relationship. There effect is to virtually eliminate any of the bargaining power that providers, whether or not podiatrists, need when dealing with these plans. In addition to the requirement of divestiture, the Justice Department should require that these clauses be stricken from the Aetna contracts.

IV. Conclusion

The Revised Final Judgment, with the requirements of the maintenance of the NYL–HMO and HMO–POS plans with the specified number of enrollees, addresses the anti-competitive impact posed by the original Aetna/Prudential merger. It is requested that the clauses highlighted above be deleted as well in order to further reduce the anti-competitive effect of this merger.

Sincerely,

Ronald S. Lepow, DPW,

President, American Podiatric Medical Association.

Glenn B. Gastwirth, DPM,

Executive Director, American Podiatric Medical Association.

June 25, 1999.

Ms. Gail Kursh,

Chief, Healthcare Task Force, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW—Suite 400, Washington, DC 20530.

Re: Proposed consent decree allowing acquisition of Prudential Healthcare by Aetna in the Dallas-Fort Worth market.

Dear Ms. Kursh: I wish to express my disappointment in and opposition to the proposed consent decree requiring Aetna to divest NYLCare in the Dallas-Fort Worth and Houston markets.

As you are aware, NYLCare has already been absorbed by Aetna. As is usually the case when Aetna absorbs another company, all of the best management staff within the absorbed organization, such as NYLCare, are not kept with the new entity. This destroys all of the previous relationship that the absorbed entity had established in the marketplace and replaces them with less desirable Aetna relationships. This has led to contract terminations and disruption of care for countless NYLCare members, both in terms of their access to physicians and in terms of their access to hospitals.

On the other hand, it just so happens that Prudential Healthcare has made an extraordinarily strong commitment to quality in the Dallas-Fort Worth market. The medical director and associate medical directors of the Dallas-Forth Worth Prudential operation represents the ''who's who'' among medical directors in our region. They are individuals of the highest ethical and professional caliber. Their approach to managing care runs counter to Aetna's previous track record.

It makes no sense to dissemble a high quality operation which is serving its members well and then have Aetna divest a now disemboweled shell of a former HMO devoid of its experienced leadership. There is no rational basis for allowing Aetna to take over another HMO and give up one that has already taken over. The membership in question is approximately the same and Aetna should be allowed to retain its ownership of NYLCare in Dallas-Fort Worth and should be prohibited from absorbing Prudential Healthcare in this market.

In many consent decrees organized by your division it is not uncommon for

corporations to take over another corporation and then be required to sell that corporations holdings in only specific markets. It is my premise that the Department of Justice would be serving the healthcare needs of the patient population in the Dallas-Fort Worth market in a much better way and with much less disruption by simply allowing Aetna to continue business as it has been with NYLCare and require them to divest the Dallas-Forth Worth Prudential Healthcare portion of their new acquisition with the requirement that they make no changes in its management or business prior to sale.

In my view, this would create a much more level playing field and provide for significantly improved quality and continuity of care for managed care patients in the Dallas-Fort Worth market.

Your consideration of these comments is appreciated.

With best regards,

Sincerely yours,

Robert D. Gross, MD

Certificate of Service

I hereby certify that on this 9th day of November, 1999, I caused a copy of the Response of the United States to Public Comments to be served on counsel for all parties by U.S. First Class Mail, at the following addresses:

Mark Tobey, Esq.

Assistant Attorney General, Chief, Antitrust Section, State Bar No. 20082960, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711–2548.

Robert E. Bloch, Esq.,

Mayer, Brown & Platt, 1909 K Street, N.W., Washington, DC 20006.

Michael L. Weiner, Esq.,

Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, NY 10022.

Paul J. O'Donnell.

[FR Doc. 99–30832 Filed 11–26–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. *Morgan Drive Away, Inc., et al.*, Civ. Action No. 74–1781 (TAF) (D. D.C. 1976); United States Notice of Defendant's Motion To Terminate Final Judgment

Notice is hereby given that Morgan Drive Away, Inc. (''Morgan''), the only remaining defendant in the captioned matter, has moved to terminate the Final Judgment entered by the United States District Court for the District of Columbia on June 30, 1976. In a stipulation also filed with the Court, the Department of Justice (''Department'') has tentatively consented to termination of the Judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

On December 5, 1974, the United States filed its complaint in this case. The complaint charged the defendants with conspiracy in restraint of trade, conspiracy to monopolize and monopolization of the for-hire transportation of mobile homes in the United States in violation of Sections 1 and 2 of the Sherman Act. Among the violations alleged in the complaint were that the defendants deprived applicants to state and federal regulatory agencies for mobile home transportation authority of meaningful access to and fair hearings before those agencies. This was done by various means including (1) protesting virtually all applications regardless of the merits, (2) including others to protest such applications, (3) jointly financing the protests and providing personnel to aid in the protests, (4) using tactics to deter, delay and increase the costs of the applications, and (5) providing, procuring, and relying on testimony in agency application proceedings that they knew to be false and misleading. The suit also charged that the companies conspired to coerce competitors to charge the same rates as they charged and to fix rates without authorization of federal or state law.

The Final Judgment, filed January 21, 1976 and entered by the Court on June 30, 1976 after a Tunney Act review, prohibited the defendants from using litigation before administrative agencies to exclude competition in the interstate transportation of mobile homes. The Judgment also enjoined the defendants from joint activities in connection with regulatory applications, from fixing interstate, intrastate, or military rates without proper legal authorization, from mutual stabilization of driver compensation, and from agreements to refrain from hiring one another's personnel.

In the period between 1976 and 1999 substantial changes have been made in the regulation of motor carriers, including transporters of mobile homes, effectively eliminating the opportunity for firms to manipulate the regulatory process to exclude competitors, to limit their growth, or to fix rates.

The Department and Morgan have filed memoranda with the Court setting forth the reasons they believe termination of the Final Judgment would serve the public interest. Copies of Morgan's motion to terminate, the stipulation containing the Department's consent, the supporting memoranda, and all additional papers field with the Court in connection with this motion will be available for inspection at the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, Room 215, North, Liberty Place Building, 325 Seventh Street, NW., Washington, DC 20004, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the duplicating fee set out in Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination to the Department. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the Department. Comments should be addressed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St. NW., Suite 500, Washington, DC 20530, telephone: 202–307–6456.

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement.

[FR Doc. 99–30831 Filed 11–26–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request.

ACTION: Notice of Information Collection under Review: Study of Employment Eligibility.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the Federal Register on August 17, 1999 at 64 FR 44747. The notice allowed for a 60-day public review and comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the

estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Study of Employment Eligibility.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–21). Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Businesses or other for-profit. the surveys will be used to collect data that will be analyzed to determine the effectiveness of the pilots to deter the hiring of aliens who are not legally authorized to work.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,327 respondents with 7,158 responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,323 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 22, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–30866 Filed 11–26–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1255]

RIN 1121–ZB89

Announcement of the Availability of the National Institute of Justice Solicitation for The W.E.B. DuBois Fellowship Program

AGENCY: Office of Justice Programs, National Institute of Justice(NIJ), Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''W.E.B. DuBois Fellowship Program.''

DATES: Proposals must be received by close of business Tuesday, February 1, 2000.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–23 (1994).

Background

Through the W.E.B. DuBois Fellowship Program, NIJ seeks to advance the field of knowledge with respect to the confluence of crime, justice, and culture in various societal contexts. NIJ supports the investigation, analysis, and development of innovative approaches that enhance justice and advance public policy decision making on issues relating to crime, violence, and the administration of justice. Recognizing the dynamic influence of community factors on the aforementioned issues, NIJ has included in its research portfolio a body of work that explores diverse cultural perspectives in order to address criminal justice research questions. DuBois Fellows will be asked to focus on these questions in a manner that is policy relevant and reflective of their saliency as an integral part of the American past, present, and future.

The DuBois Fellowship provides talented researchers with the opportunity to elevate independently-generated research and ideas to the level of national discussion.

To be eligible to receive an award under the DuBois Fellowship program, an applicant must hold a Ph.D. or other doctoral-level degree or a legal degree of J.D. or higher. NIJ will fund successful applicants for an amount of up to $100,000 (subject to available appropriations) for a period to last from 6 to 12 months. The period in residency and starting date at NIJ are negotiable. It is anticipated that up to two awards of approximately $50,000 each will be made annually. Funding allocations for this program are based on the quality of the proposals received and the extent to which they are related to ongoing research, evaluation, or science and technology priorities.

Interested individuals should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''The W.E.B. DuBois Fellowship Program.'' (refer to document no. SL000391). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–30875 Filed 11–26–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 19, 1999.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) 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 the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King at (202) 219–5096 ext. 151 or E-Mail to King-Darrin@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: Occupational Safety and Health Administration (OSHA); Labor.

Title: Mechanical Power Presses, Inspection Certification Records.

OMB Number: 1218–0229.

Frequency: Monthly; Weekly.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 191,750.

Estimated Time Per Respondent: Varies from 5 minutes (0.08 hour) to 20 minutes (0.33 hour).

Total Burden Hours: 1,372,930.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The purpose of the information requirements (inspection certification records) is to provide information which can be used to properly maintain mechanical power presses and to ensure safe operating conditions for employees. If this information is not provided, maintenance programs could become deficient through inadequate monitoring and not contribute to the safe use of mechanical power presses. In addition, OSHA compliance officers may require employers to disclose the required certification records at the time of an inspection.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 99–30930 Filed 11–26–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on December 7 and 8. The Committee on Occupational Safety and Health Statistics will not meet this Fall. All of the meetings will be held in Rooms 8/10 of the Conference Center, in the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, December 7, 1999

9:30 a.m.—Committee on Employment and Unemployment Statistics

1. Current Employment Statistics (CES)—
   a. Impact of North American Industry Classification System (NAICS) implementation on CES
   b. Discussion of time series breaks
2. Current Population Survey (CPS)—
   a. Impact of new race/ethnic and industry and occupation classification on CPS
   b. Discussion of time series breaks
3. Job Openings and Labor Turnover Survey—
   a. Discussion of definitions for job openings, hires, and separations and availability of these data
   b. Discussion of upcoming Response Analysis Survey
4. Mass Layoff Statistics—Discussion of program review
5. Discussion of proposed metropolitan area standards
6. Ideas for the agenda of the next meeting

1:30 p.m.—Committee on Compensation and Working Conditions

1. Overview of union/non-union wage and benefit trends.
2. Discussion of stock options data collection test.
   a. Phase 1 results.
   b. Plans for Phase 2 incidence collection.
   c. Types of data on options of interest to Committee members.
3. Ideas for the agenda of the next meeting.

Wednesday, December 8, 1999

9:30 a.m.—Committee on Productivity, Technology and Growth/Office of Employment Projections

1. New employment projections (Employment Outlook 1998–2008).
2. Activities of the Division of International Technical Cooperation.
3. Report on the new set of measures of unit labor costs.
4. Ideas for the agenda of the next meeting.

Committee on Foreign Labor Statistics

1. Report on compendium of comparative labor force statistics.
2. Report on unemployment rate comparisons.
3. Ideas for the agenda of the next meeting.

1:30 p.m.—Committee on Prices and Living Conditions

1. Consumer Price Index.
   a. Quality adjustment and new goods.
   b. Report on Consumer Price Index (CPI) research series.
2. International Prices—proposed program improvements.
3. Producer Price Index (PPI).
   a. Effects on the PPI of deregulation in the utilities industries.
   b. Efforts to minimize new product bias in the PPI.
4. Ideas for the agenda of the next meeting.

The meeting are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 691–5970.

Signed at Washington, DC this 22nd day of November, 1999.

Katharine G. Abraham,

Commissioner.

[FR Doc. 99–30931 Filed 11–26–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–10830]

Proposed Amendment to Prohibited Transaction Exemption 80–26 (PTE 80–26) for Certain Interest Free Loans to Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of Proposed Amendment to PTE 80–26.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 80–26. PTE 80–26 is a class exemption that permits parties in interest with respect to employee benefit plans to make interest free loans to such plans, provided the conditions of the exemption are met. The proposed amendment, if adopted, would affect all employee benefit plans, their participants and beneficiaries, and parties in interest with respect to those plans engaging in the described transactions.

DATES: If adopted, the proposed amendment would be effective from November 1, 1999 through December 31, 2000. Written comments and requests for a public hearing should be received by the Department on or before January 13, 2000.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW, Washington, DC 20210, (attention: Y2K Interest Free Loans).

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara, Office of Exemptions Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219–8881. (This is not a toll-free number); or Wendy McColough, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 219–4600. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 80–26 (45 FR 28545, Apr. 29, 1980) [1]. PTE 80–26 provides an exemption from the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(B) and (D) of the Code.

The Department is proposing the amendment on its own motion pursuant to section 408(a) of ERISA 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).[2]

A. General Background

The prohibited transaction provisions of the Act generally prohibit transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Specifically, section 406(a)(1)(B) and (D) of the Act states that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(B) Lending of money or other extension of credit between a plan and a party in interest; or

(D) Transfer to, or use by or for the benefit of, a party in interest of any assets of a plan. Accordingly, loans, including interest free loans, to a plan from a party in interest and the repayment of such loans may be prohibited by those provisions of the Act.

In addition, section 406(b)(2) of the Act provides that a fiduciary with respect to a plan shall not, in his individual or any other capacity, act in a transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

B. Description of Existing Relief

PTE 80–26 permits the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, and the repayment of such loan or other extension of credit in accordance with its terms or other written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only:

(1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract; or

(2) For a period of no more than three days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

C. Discussion of the Proposed Exemption

The Department, on its own motion, proposes an amendment to PTE 80–26 in order to expand its interest free loan exemption to address potential Y2K problems. The Y2K problem is a computer problem where date-dependent computations or operations produce erroneous results because systems recognize years only by the last two digits, causing a ''00'' entry to be read as the year ''1900'' rather than the year ''2000''. Congress has passed several Acts [3] to address the Y2K problem and has found that it could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, government, and safety and defense systems, in the United States and throughout the world.

Employee benefit plans rely on computers to perform critical operations such as benefit calculations and

[1] A minor correction was made to the title of the final exemption in a notice published in the **Federal Register** on May 23, 1980. (45 FR 35040).

[2] Section 102 of the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

In discussion of the exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[3] Year 2000 Information and Readiness Disclosure Act, Pub. L. 105–271, 112 Stat. 2386 (1998) (encourages the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with Y2K); Y2K Act, Pub. L. 106–37, 106 Stat. 185 (1999) (established uniform legal standards to provide businesses and technology product users reasonable incentives to solve Y2K problems before they develop, encourages continued remediation and testing efforts, encourages parties to resolve Y2K disputes by alternative dispute mechanisms, and discourages insubstantial lawsuits).

payments, eligibility, vesting, start dates for required distributions, normal retirement age, QDROs, ESOP diversification rights, funding calculations, health claims processing, plan investments, and so on. Calculations performed by service providers, such as TPAs, insurance companies, banks, investment managers, and others, having systems that are not Y2K compliant, may result in a temporary interruption of plan operations.

To date, PWBA has implemented a comprehensive national outreach program designed to assist fiduciaries in preparing to address Y2K. Nevertheless, it remains possible that Y2K related problems could result in a temporary disruption of computer operations. As a result, plan fiduciaries must establish a contingency plan that will be implemented in the event that the plans' essential operations are affected.

Current information indicates that in some cases small and medium size businesses are taking a ''wait-and-see'' approach to Y2K and that, although the financial services sector appears highly prepared, the industry remains susceptible to secondary risks, such as borrowers failing to meet their obligations as a result of Y2K. [4]

Furthermore, there is some uncertainty about the cost and availability of funds to individual depository institutions. Potential liquidity exigencies created by Y2K might arise from the conversion of deposits to currency, heightened credit demands, greater lender and depositor caution, and potential market disruptions. In this regard, the Board of Governors of the Federal Reserve System established a special lending program under which Federal Reserve Banks may extend credit to depository institutions [5] and, in addition, Congress has passed the ''Small Business Year 2000 Readiness Act'' [6] to provide a loan guarantee program to small businesses.

The potential liquidity problem created by Y2K could be detrimental to employee benefit plans in trying to meet the many demands of plan participants and beneficiaries. Plan officials need to assure themselves that sufficient liquidity is available to pay benefits and administer the plan, including transfers among investment options, distributions, hardship withdrawals, health claim payments, and loans to participants and beneficiaries. In addition, employee benefit plans may incur costs associated with addressing and fixing Y2K problems that may arise. As a result, the Department has determined to amend PTE 80–26 to expand its provisions for interest free loans to employee benefit plans to meet Y2K contingencies.

In the event of a possible Y2K disruption to ordinary plan operations related to the payment of benefits or insurance premiums, relief for an interest free loan or extension of credit on an unlimited basis from a party in interest to deal with these problems would already be available under the first prong, paragraph (b)(1) of PTE 80–26.

However, plans may need interest free loans to address potential Y2K problems that are only incidental to the ordinary operation of the plan. Specifically, the Department notes that the three day limit on loans for purposes incidental to the ordinary operation of the plan, under the second prong, paragraph (b)(2), of PTE 80–26, may not be a sufficient period of time to address such Y2K contingencies. Accordingly, beginning November 1, 1999 and ending December 31, 2000, the proposed amendment to PTE 80–26 would permit certain interest free loans for an extended period of no more than fourteen months. All loans made pursuant to this amendment must be repaid by December 31, 2000.

Examples of transactions that may require loans or other extensions of credit for a period longer than three days due to temporary cash flow problems or computer malfunctions created by Y2K would include: (1) The transfer of all or part of a participant's account balance from one investment option to another; (2) participant loans; (3) temporary overdraft protection; (4) failure of a plan's internal computer systems; and (5) the crediting of dividends or interest by a bank trustee prior to receipt of such dividends or interest.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; 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) This exemption does not extend to transactions prohibited under section 406(b)(1) and (3) of the Act or section 4975(c)(1)(E) and (F) of the Code.

(3) Before an exemption may be granted under section 408(a) of ERISA and 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;

(4) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and 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.

Written Comments and Hearing Request

The Department invites all interested persons to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

Proposed Amendment

Under 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), the Department proposes to amend PTE 80–26 as set forth below:

Section I: General Exemption

Effective January 1, 1975, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section

[4] ''Investigating the Year 2000 Problem: The 100 Day Report,'' issued by the United States Senate Special Committee on the Year 2000 Technology Problem on September 22, 1999.

[5] 64 FR 41765 (1999).

[6] Pub. L. 106–8, 113 Stat. 13 (1999).

4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only:

(1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract; or

(2) For a period of no more than three days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

Section II: Temporary Exemption

Effective November 1, 1999 through December 31, 2000, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with the plan's inability to liquidate, or otherwise access its assets or data as a result of the Y2K problem.

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan;

(e) The loan or extension of credit begins on or after November 1, 1999 and is repaid or terminated no later than December 31, 2000.

Section III: Definition

For the purposes of section II, a Y2K problem is a disruption of computer operations resulting from a computer system's inability to process data because such system recognizes years only by the last two digits, causing a ''00'' entry to be read as the year ''1900'' rather than the year ''2000.''

Signed at Washington, DC, this 23rd day of November, 1999.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–30932 Filed 11–26–99; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 29, 1999 via conference call. The meeting will begin at 11:00 a.m and continue until conclusion of the Board's agenda.

LOCATION: 750 First Street, NE, 11th Floor, Washington, DC 20002, in Room 11026.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.

2. Consider and act on the Board of Directors' Semiannual Report to Congress for the period of April 1, 1999 to September 30, 1999.

3. Consider and act on a staff proposal to move funds from Grant Recoveries to Grants line in order to fund an emergency grant to Legal Services of North Carolina.

4. Consider and act on staff request to revise the Corporation's FY 2000 Consolidated Operating Budget to add to U.S. Court of Veterans Appeals line an additional $15,000 received from the U.S. Court of Veterans Appeals.

5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: November 24, 1999.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 99–31066 Filed 11–24–99; 1:44 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE 99–147]

National Environmental Policy Act; Mars Surveyor 2001 Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft environmental impact statement (DEIS) for implementation of the Mars Surveyor 2001 (MS 01) mission.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA has prepared and issued a DEIS for the MS 01 mission. The DEIS addresses the potential environmental impacts associated with continuing the preparations for and implementing the MS 01 mission. The purpose of this proposal is to continue global reconnaissance of Mars and perform surface exploration.

The mission is planned to consist of two components. NASA proposes to launch an orbiter spacecraft from Vandenberg Air Force Base (VAFB), California in March-April 2001, and a lander/rover spacecraft from Cape Canaveral Air Station (CCAS), Florida in April 2001. The orbiter would be launched aboard a Delta II 7925, while the lander/rover would be launched aboard a Delta II 7425. The lander/rover would include four small radioactive sources for instrument calibration and would use three radioisotope heater units (RHU's) for thermal control. The orbiter would carry no radioactive material.

DATES: Interested parties are invited to submit comments or environmental concerns on or before January 13, 2000, or 45 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the MS 01 mission DEIS, whichever is later.

ADDRESSES: Comments should be addressed to Mr. Mark R. Dahl, NASA Headquarters, Code SD, Washington, DC

20546–0001. While hard copy comments are preferred, comments by electronic mail may be sent to marsscop@hq.nasa.gov. The DEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546.

(b) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler beforehand at 407–867–2497 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

In addition, the DEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–4191).

(e) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–258–3449).

(f) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(g) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–0730).

(h) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(i) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–2030).

(k) NASA, Stennis Space Center, MS 39529 (228–688–2164).

Limited hard copies of the DEIS are available, on a first request basis, by contacting Mark Dahl at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: Mark R. Dahl, 202–358–1544; electronic mail (*marsscop@hq.nasa.gov*). The DEIS also is available in Acrobat® format at *http://www.hq.nasa.gov/office/oss* or *http://www.hq.nasa.gov/office/oss/mars.htm*.

SUPPLEMENTARY INFORMATION: MS 01 mission is part of a series of missions to characterize Mars' atmosphere, geologic history, climate, and the relationship to Earth's climate change process. These missions aim to determine what resources Mars provides for future exploration, and to search for evidence of past and present life. The MS 01 mission would specifically continue the global reconnaissance of Mars via an orbiter spacecraft, and continue the intense study of local areas of the surface via a lander/rover spacecraft.

The proposed action consists of continuing preparations for and implementing the MS 01 mission. The MS 01 orbiter would be launched on a Delta II 7925 from VAFB in March-April 2001. The MS 01 lander carrying the rover would be launched on a Delta II 7425 from CCAS in April 2001. Alternatives that were evaluated included an Orbiter-and-Lander-Only mission, an Orbiter-Only mission, and the No-Action alternative.

For the MS 01 mission, the potentially affected environment for normal launches includes the areas at and in the vicinity of the two launch sites, CCAS in Florida and VAFB in California. The environmental impacts of normal launches of the two spacecraft for the proposed action would be associated principally with the exhaust emissions from each of the Delta II launch vehicles. These effects would include short-term impacts on air quality within the exhaust cloud and near the launch pads, and the potential for acidic deposition on the vegetation and surface water bodies at and near each launch complex, particularly if a rain storm occurred. The potential exists for disturbance of some protected wildlife species, which has been addressed by the U.S. Air Force and the U.S. Fish and Wildlife Service pursuant to consultations under Section 7 of the Endangered Species Act, and incidental take permits and mitigation plans are in place.

A concern associated with launch of the MS 01 lander/rover spacecraft involves potential launch accidents that could result in the release of some of the radioactive material on board the lander/rover spacecraft. The lander would employ two instruments which use small quantities of cobalt-57 (1.30×10^{10} Becquerels or 350 millicuries) and curium-242 (up to 7.40×10^{5} Becquerels or 20 microcuries) as instrument sources. The rover would have three RHU's that use plutonium dioxide to provide heat to the electronics and batteries on board the rover. The radioisotope inventory of the three RHU's would total approximately 3.69×10^{12} Becquerels (99.6 curies) of plutonium. The rover would also carry curium-244 (up to 3.70×10^{9} Becquerels or 100 millicuries)) on its spectrometer and a small americium-241 source (up to 1.11×10^{6} Becquerels or 30 microcuries) on a dust experiment package.

The U.S. Department of Energy (DOE), in cooperation with NASA, has performed a risk assessment of potential accidents for the MS 01 lander/rover. This assessment used a methodology refined through applications to the Galileo, Cassini, and Mars Pathfinder missions and incorporates safety tests on the RHU's, as well as evaluation of the January 17, 1997, Delta II accident at CCAS. DOE's risk assessment for this mission indicates that in the event of a launch accident the expected impacts of released radioactive material at and in the vicinity of the launch area, and on a global basis, would be small.

Jeffrey E. Sutton,

Associate Administrator for Management Systems.

[FR Doc. 99–30864 Filed 11–26–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–146)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that CISC, Inc. of Akron, Ohio, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,379,469, entitled ''Constant Current Loop Impedance Measuring Device That Is Immune to the Effects of Parasite Impedances,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The fields of use will be limited to medical applications and sleep disorder devices. Written objections to the prospective grant of a license should be sent to the Assistant Patent Counsel of the NASA Management Office at the Jet Propulsion Laboratory.

DATE: Responses to this notice must be received by January 28, 2000.

FOR FURTHER INFORMATION CONTACT: John H. Kusmiss, Assistant Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Station 180–802, Pasadena, CA 91109–8099; Telephone (818) 354–7770.

Dated: November 19, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–30817 Filed 11–26–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Northern States Power Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses DPR–42 and DPR–60 Proposed No Significant Hazards; Consideration Determination, and Opportunity for a Hearing

[Docket Nos. 50–282 and 50–306]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses DPR–42 and DPR–60 issued to Northern States Power Company (the licensee) for operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota.

The proposed amendments would change Technical Specification Section 3.1.A.1.b to allow continued operation in Mode 3 with no reactor coolant pumps in operation for a period not to exceed 72 hours, provided that specified actions have been accomplished. The proposed amendments would also increase the time period in which both reactor coolant pumps are permitted to be turned off from 1 hour to 12 hours to allow sufficient time to conduct either preplanned maintenance or electrical lineup switching that would require both reactor coolant pumps to be turned off while in Mode 3.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does operation of the facility with the proposed amendment[s] involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not significantly affect any system that is a contributor to initiating events for previously evaluated accidents. The probability of occurrence for the ''Uncontrolled RCCA [reactor control cluster assembly] Withdrawal From a Subcritical Condition'' abnormal operational transient will be decreased by the actions required by the proposed change, and the consequences will remain unchanged. The probability of occurrence and consequences for the ''Chemical and Volume Control System Malfunction'' (Uncontrolled Boron Dilution) abnormal operational transient will not be changed by the actions required by the proposed change. Neither does the change significantly affect any system that is used to mitigate any previously evaluated accidents. The proposed change extends the time that the plant can remain in Mode 3 on natural circulation. This will not degrade the ability of the plant to later reduce reactor coolant system temperature and pressure to Mode 4 conditions where the diesel generators and RHR [residual heat removal] system are still available to remove decay heat. The proposed changes do not involve any significant increase in the probability or consequence of an accident previously evaluated.

2. Does operation of the facility with the proposed amendment[s] create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not alter the design, function, or manner of operation of any plant component and does not install any new or different equipment. The proposed change extends the time that the plant can remain in Mode 3 on natural circulation. A possibility of a new or different kind of accident from those previously analyzed has not been created.

3. Does operation of the facility with the proposed amendment[s] involve a significant reduction in a margin of safety?

The proposed change extends the time that the plant can remain in Mode 3 on natural circulation. Sufficient capacity to remove decay heat is still available. Under natural circulation conditions the availability of both steam generators provides the expected redundancy of this required safety function associated with the reactor coolant system Technical Specification basis. The proposed change does not involve a significant reduction in the margin of safety associated with the safety limits inherent in either the principle barriers to a radiation release (fuel cladding, RCS [reactor coolant system] boundary, and reactor containment), the maintenance of critical safety functions (subcriticality, core cooling, ultimate heat sink, RCS inventory, RCS boundary integrity, and containment integrity), or other structures, systems or components (SSCs) significant to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By, December 29, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by close of business on the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 19, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 23d day of November 1999.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–30910 Filed 11–26–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Appointment to the Senior Executive Service Performance Review Board

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board (Board) is announcing the membership on its Senior Executive Service Performance Review Board.

ADDRESSES: Comments concerning this notice may be addressed to the Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Charlene T. Kukla, Director of Personnel, telephone (312) 751–4674.

SUPPLEMENTARY INFORMATION: Agencies are required to publish notices of appointments to their Senior Executive Service Performance Review Boards (5 U.S.C. 4314(c)(4) and 5 CFR 430.307(b)).

The members of the Railroad Retirement Board's Performance Review Board are:

Chairman

Robert J. Duda, Director of Operations

Members

Steven A. Bartholow, General Counsel

Kenneth P. Boehne, Chief Financial Officer

Frank J. Buzzi, Chief Actuary

John L. Thoresdale, Director of Administration

Dated: November 18, 1999.

By authority of the Board.

For the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 99–30953 Filed 11–26–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27105]

Filing Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

November 19, 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 applications(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 person wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 14, 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 December 14, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System, et al. (70–9537)

New England Electric System (''NEES''), a registered public utility holding company, located at 25 Research Drive, Westborough, Massachusetts 01582; its electric utility subsidiaries: Massachusetts Electric Company (''Mass. Electric''), located at 55 Bearfoot Road, Northboro, Massachusetts 01532; Granite State Electric Company (''Granite State''), located at 9 Lowell Road, Salem, New Hampshire 03079, The Narragansett Electric Company (''Narragansett''), located at 280 Melrose Street, Providence, Rhode Island 02901, Nantucket Electric Company (''Nantucket''), New England Power Company (''NEP''), New England Hydro-Transmission Corporation (''N.H. Hydro'') and New England Hydro-Transmission Electric Company, Inc. (''Mass. Hydro''), all located at 25 Research Drive, Westborough, Massachusetts 01582, and New England Electric Transmission Corporation (''NEET''), 4 Park Street, Concord, New Hampshire 03301; its nonutility subsidiaries: Research Drive LLC (''LLC''), New England Power Service Company (''Service Company''), New England Energy Incorporated (''NEEI''), all located at 25 Research Drive, Westborough, Massachusetts 01582; and Eastern Utilities Associates (''EUA'') a registered public utility holding company, located at One Liberty Square, P.O. Box 2333, Boston, Massachusetts 02109, and its electric utility subsidiaries; Blackstone Valley Electric Company (''Blackstone''), Eastern Edison Company (''Eastern Edison''), Montaup Electric Company (''Montaup'') and Newport Electric Corporation (''Newport''), all located at 750 West Center Street, P.O. Box 543, Bridgewater, Massachusetts 02379 (together, ''Applicants''), have filed an application-declaration under sections 6, 7, 9, 10, 11, 12 and 13 of the Act, and rules 45, 46, 54, 80–91, 93 and 94 under the Act.

NEES proposes to acquire all of the outstanding common shares of EUA (''Transaction''). The Transaction will be carried out in a two-step process under the terms of an Agreement and Plan of Merger dated as of February 1, 1999 (''Merger Agreement''), among NEES, EUA and LLC, a Massachusetts limited liability company wholly-owned by NEES. First, LLC will be merged with and into EUA, with EUA as the surviving entity. Then, EUA will be merged with and into NEES, with NEES as the surviving entity. After the Transaction, EUA shall cease to exist and NEES will remain a registered holding company under the Act.[1]

Under the Merger Agreement, each one percent of the issued and outstanding membership interests in LLC will be converted into one transferable certificate of participation or share in EUA. All EUA shares that are owned by EUA as treasury shares and any EUA shares owned by NEES or any other wholly owned subsidiary of NEES will be canceled and retired and shall cease to exist, and no cash or other consideration shall be delivered in exchange. The remaining EUA shares issued and outstanding immediately prior to the Effective Date (as defined below) will be canceled and converted into the right to receive cash in the amount of $31.00 per share, as this amount may be adjusted. The Effective Date shall be the date upon which a certificate of merger has been executed and filed by EUA and LLC with the Secretary of Massachusetts, or any later date specified by the certificate.

The boards of directors of NEES and EUA, and the members of LLC have approved the Transaction. On May 17, 1999, a majority of the EUA shareholders approved the Transaction.[2]

NEES owns all of the voting securities of the following five electric public utility subsidiaries: Mass. Electric, Narragansett, Granite State, Nantucket, and NEET.

Mass. Electric provides electric service to approximately 980,000 customers in an area comprising approximately 43% of Massachusetts. For the year ended December 31, 1998, Mass Electric had total assets of $1.45 billion, operating revenues of $1.5 billion and net income of $49.4 million. Mass. Electric is subject to regulation by the Massachusetts Department of Telecommunications and Energy (''MDTE''), and the Federal Energy Regulatory Commission (''FERC'') under the Federal Power Act.

Narragansett provides electric service to approximately 335,000 customers in Rhode Island. For the year ended December 31, 1998, Narragansett had total assets of $664.1 million, operating revenues of $475.7 million, and net income of $30.5 million. Narragansett is subject to the regulation of the Rhode Island Public Utilities Commission (''RIPUC''), the Rhode Island Division of Public Utilities and Carriers (''RIDIV''), and the FERC.

Granite State provides electric service to approximately 37,000 customers in New Hampshire. For the year ended December 31, 1998, Granite State had total assets of $61.8 million, operating revenues of $65.7 million, and net income of $3.2 million. Granite State is subject to the regulation of the New Hampshire Public Utilities Commission (''NHPUC'') and the FERC.

Nantucket provides electric service to approximately 10,000 customers on Nantucket Island. For the year ended

[1] Under another Agreement and Plan of Merger, dated as of December 11, 1998, by and among The National Grid Group plc (''NGG''), NGG Holdings LLC, a Massachusetts limited liability company and a wholly owned subsidiary of NGG, and NEES, NGG Holdings LLC would be merged with and into NEES with NEES as the surviving entity (''NGG Merger''). As a result, NEES would become an indirect, wholly owned subsidiary of NGG, which would become a registered holding company under the Act. An application by NGG seeking approval of its acquisition of NEES is pending with the Commission (File No. 70–9519). The Commission issued a notice of the filing on October 12, 1999 (HCAR No. 27086).

[2] Under the merger Agreement, no vote of NEES shares or any class or series of equity securities of NEES or its subsidiaries is required for approval of the Transaction.

December 31, 1998, Nantucket had total assets of $44 million, operating revenues of $15.1 million, and net income of $500,000. Nantucket is subject to the regulation of the MDTE and the FERC.

NEET owns and operates a direct current/alternating current converter terminal facility for the first phase of the Hydro-Quebec and New England interconnection (''Interconnection'') and six miles of high voltage direct current transmission lines in New Hampshire.

NEES also owns 99.97 percent of the outstanding voting securities of NEP, its principal transmission subsidiary. NEP is engaged in the purchasing, transmitting and selling electric energy at wholesale. In 1998, 98% of NEP's revenues from the sale of electricity was derived from sales for resale to affiliated companies and two percent from sales to municipal and other utilities. NEP recently has completed the sale of substantially all of its non-nuclear generating business and currently is attempting to sell its minority interests in three operating nuclear power pants and one fossil-fueled generating station in Maine.[3] With the sale of its non-nuclear generating business, NEP is principally an electric transmission company. For the year ended December 31, 1998, NEP had total assets of $2.41 billion, operating revenues of $1.2 billion, and net income of $121.5 million. NEP is subject to regulation by the MDTE, the NHPUC, the Vermont Public Service Board, the Connecticut Department of Public Utility Control, the Maine Public Utilities Commission, the FERC, the Nuclear Regulatory Commission, and this Commission.[4]

NEES also owns 53.97 percent of the common stock of N.H. Hydro. N.H. Hydro operates 121 miles of high voltage direct current transmission lines in New Hampshire for the second phase of the Interconnection, extending to the Massachusetts border.

In addition, NEES owns 53.97 percent of Mass. Hydro. Mass. Hydro operates a direct current/alternating current terminal and related facilities for the second phase of the Interconnection and 12 miles of high voltage direct current lines in Massachusetts.

NEES is engaged in non-utility businesses through the following subsidiaries: LLC; Service Company, New England Hydro Finance Company (''N.E. Hydro Finance''), NEES Communications, Inc. (''NEESCom''), NEES Global, NEES Energy, Inc. (''NEES Energy''), *All*Energy Marketing Company, L.L.C., (''*All*Energy''), Granite State Energy, Inc. (''Granite State Energy''), NEEI, and Metrowest Realty, LLC.

LLC was formed solely to effect the Transaction. Service Company provides, at cost, administrative, engineering, construction, legal, and financial services as NEES and its subsidiaries request under a service agreement approved by the Commission in accordance with the Requirements of Rule 90. N.E. Hydro Finance provides debt financing required by Mass. Hydro and N.H. Hydro. NEESCom provides telecommunications and information-related products and services. NEES Global provides consulting services and product licenses to unaffiliated utilities in the areas of electric utility restructuring and customer choice. NEES Energy is a marketing subsidiary of NEES. *All*Energy markets energy commodities (natural gas, propane and oil) and provides energy-related services, such as marketing, brokering and sales of energy, audits, fuel supply, repair, maintenance, construction, operation, design, engineering and consulting to customers in New England and New York. Granite State Energy provides energy and energy-related services including sales of electric energy, audits, power quality, fuel supply, repair, maintenance, construction, design, engineering and consulting. NEEI participated in domestic and gas exploration, development and production. As part of NEES' plan to divest its generating business NEEI sold its oil and gas properties in February 1998. Metrowest Realty, LLC owns NEES' headquarters complex and the service center complex occupied by Mass. Electric in Massachusetts.

EUA directly owns all of the shares of common stock of the three following electric public utility companies: Blackstone, Eastern Edison, and Newport.[5]

Blackstone provides retail electric service to approximately 86,000 customers in Rhode Island. For the year ended December 31, 1998, Blackstone had total assets of $134.1 million, operating revenues of $130.2 million, and net income of $4.9 million. Blackstone is subject to the regulation of the RIDIV, RIPUC and the FERC.

Eastern Edison provides retail electric service to approximately 186,000 customers in Massachusetts. For the year ended December 31, 1998, Eastern Edison had total assets of $831.6 million, operating revenues of $408.2 million, and net income of $29.7 million. Eastern Edison is subject to regulation by the MDTE and the FERC.

Newport provides retail electric service to approximately 33,000 customers in Rhode Island. For the year ended December 31, 1998, Newport had total assets of $71.9 million, operating revenues of $59.5 million, and net income of $2.9 million. Newport is subject to the regulation of the RIDIV, RIPUC and the FERC.

EUA is engaged in nonutility business through the following subsidiaries: EUA Cogenex; EUA Energy Investment Corporation (''EUA Energy''); EUA Ocean State; EUA Energy Services, Inc. (''EUA Energy Services''); EUA Telecommunications Corporation (''EUA Telecommunications''), and Eastern Edison Electric Company. In addition, EUA owns all of the common stock of EUA Service.

EUA Cogenex is an energy services company. It has a number of subsidiary companies: EUA Citizens Conservation Services, Inc., which serves public and private multi-family housing; EUA Cogenex West (formerly EUA Highland Corporation), an energy services company that provides energy conservation services in Colorado, Texas, Ohio, North Carolina, and certain midwestern states; Northeast Energy Management, Inc., a demand side management company, and EUA Cogenex-Canada, Inc. (which holds all of the voting control of EUA Cogenex-Canada Energy Services, Inc., a company formed to participate in a marketing and development joint venture with Monenco Agra, an Ontario-based engineering firm). EUA Cogenex is also the managing general partner of the following general partnerships which operate and monitor existing demand side management and/or energy management services contractual obligations: EUA WestCoast L.P., EUA Energy Capital and Services I, EUA Energy Capital and Services II, EUA

[3] NEP also is a holding company because it owns more than ten percent of the outstanding voting securities of Vermont Yankee Nuclear Power Corporation, the licensed operator of the Vermont Yankee nuclear power facility. NEP also has minority interests in Yankee Atomic Electric Company and Connecticut Yankee Atomic Power Company, all of which permanently have ceased operations. NEP has been declared an exempt holding company by Commission order dated November 25, 1955 (HCAR No. 13048).

[4] Narragansett, Mass. Electric, Granite State, NEP and *All*Energy Marketing Company, L.L.C. are members of the New England Power Pool.

[5] Eastern Edison presently owns all of the outstanding securities of Montaup. Montaup currently is a subsidiary of Eastern Edison. On July 12, 1999, EUA filed an application with this Commission (File No. 70–9527) seeking authority for Eastern Edison to transfer to EUA, and for EUA to acquire from Eastern Edison, all of Eastern Edison's investment in Montaup's capitalization. The Commission issued a notice of the filing on August 23, 1999 (HCAR No. 27066).

FRC II Energy Associates, and Micro Utility Partners of America. As of December 31, 1998, EUA Cogenex also owned half of the voting power in APS Cogenex L.L.C., a limited liability company formed to develop, engineer and construct projects at the National Cancer Institute in an Army garrison at Fort Detrick, Maryland. For the year ended December 31, 1998, EUA Cogenex had total consolidated assets of $157.2 million, operating revenues of $54.8 million, and a net loss of $1.3 million.

EUA Energy invests in energy-related projects. The following are subsidiaries of EUA Energy: Renova LLC, which manufactures energy efficient lighting products; EUA BIOTEN, Inc. (''EUA BIOTEN''), which was formed to develop biomass-fueled generating units. EUA BIOTEN owns all of the common stock of the following companies: BIOTEN Operations, Inc., which owns a demonstration facility in Tennessee; Eastern Unicord Corporation, which was formed to invest in the construction of a wood burning energy plant in New Hampshire; EUA Compression Services, Inc., which was formed to provide compression stations along transmission lines; and EUA TransCapacity, Inc., which was formed to develop and market services and computer software for natural gas industry clients.[6] EUA Energy also holds 9.9 percent of the voting power of Separation Technologies, Inc. which markets and installs its own proprietary equipment for separating unburned carbon from coal fly-ash. For the year ended December 1998, EUA Energy had total assets of $30.4 million, operating revenues of $3.9 million, and a net loss of $5.3 million.

EUA Ocean State has ownership interests in two gas-fired generating units in Rhode Island. For the year ended December 31, 1998, EUA Ocean State had total assets of $49.2 million and net income of $4.1 million.

EUA Energy Services markets energy and energy-related services. For the year ended December 31, 1998, EUA Energy Services had total assets of $500,000 and a net loss of $200,000. EUA states that it plans to dissolve EUA Energy Services before the Transaction.

EUA Telecommunications provides telecommunications and information services. For the year ended December 31, 1998, EUA Telecommunications had total assets of $70,000 and a net loss of $100,000. EUA states that it plans to dissolve EUA Telecommunications before the Transaction.

EUA Service is a service company under section 13 of the Act. EUA provides various accounting, financial, engineering, planning, data processing, and other services to all EUA system companies under rule 90. For the year ended December 31, 1998, EUA Service had total assets of $35.3 million and net income of $260,000.

Eastern Edison Electric Company has been inactive for over six years. EUA states that it plans to dissolve Eastern Edison Electric Company before the Transaction.

As a part of the Transaction, Applicants propose the following mergers among their electric utility subsidiaries (''Subsidiary Mergers''): Eastern Edison and Mass. Electric, with Mass. Electric being the surviving entity,[7] NEP and Montaup, with NEP being the surviving entity; and Blackstone, Newport and Narragansett, with Narragansett being the surviving entity.

Also, as part of the Transaction, Applicants propose the merger of EUA Service into Service Company, with Service Company being the surviving service company, and the former EUA companies entering into service agreements with Service Company in the form authorized by the Commission.

Applicants also seek authority for NEES to assume certain guarantees under various debt instruments of EUA and its subsidiaries (''EUA System''), including EUA's guaranty of long-term debt of EUA Cogenex, EUA Cogenex's equity maintenance agreement and EUA Cognex's short-term debt under the EUA System revolving credit line, and including EUA's guaranty of the debt of EUA Ocean State.

As part of the Transaction, Applicants propose to acquire indirectly EUA's nonutility subsidiaries.

Applicants also state that following the Transaction, there will be a time period before the merger of EUA subsidiaries into NEES subsidiaries. Applicants request authority, during this time period, for the EUA subsidiaries to participate in the NEES holding company system money pool.

If the NGG Merger has not been consummated before the consummation of the Transaction, Applicants request approval of NEES' financing arrangements with a syndicate of banks, and authority for NEES to issue commercial paper or to engage in short-term borrowing, under which NEES may borrow up to $650 million aggregate amount of debt outstanding at any one time, in addition to debt borrowings currently authorized,[8] for the purpose of consummating the Transaction.

Applicants state that as a result of the application of the purchase method of accounting to the Transaction, the current retained earnings of EUA and its subsidiary companies will be recharacterized as additional paid-in-capital. In addition, Applicants state that the Transaction will give rise to a substantial level of goodwill, the difference between the aggregate fair values of all identifiable tangible and intangible (non-goodwill) assets on the one hand, and the total consideration to be paid for EUA and the fair value of the liabilities assumed, on the other. Applicants request authority to pay dividends out of the additional paid-in-capital account up to the amount of the EUA subsidiary companies' aggregate retained earnings just before the Transaction and out of earnings before the amortization of the goodwill after the Transaction.

Northeast Utilities, et al. (70–9541)

Northeast Utilities (''NU''), a registered public utility holding company, Western Massachusetts Electric Company (''WMECO''), an electric utility subsidiary of NU, both located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01090; The Connecticut Light and Power Company (''CL&P''), an electric utility subsidiary of NU, NU Enterprises, Inc., (''NUEI'') a sub holding company over certain of NU's nonutility subsidiaries, Northeast Generation Company (''NGC'') and Northeast Generation Services Company (''NGSC''), Select Energy, Inc. (''SE''), Select Energy Portland Pipeline Inc. (''SEPPI''), each a direct subsidiary of NUEI and an indirect nonutility subsidiary of NU, all located at 107 Selden Street, Berlin Connection 06037; Public Service Company of New Hampshire (''PSNH'') and North Atlantic Energy Corporation (''NAEC''), and an electric utility subsidiary of NU, and both located at 1000 Elm Street, Manchester, New Hampshire 03015; HEC Inc. (''HEC''), a direct subsidiary of NUEI and an indirect nonutility subsidiary of NU, and Select Energy Contracting, Inc. (''SECI''), a direct subsidiary of HEC and an indirect nonutility subsidiary of NU, both

[6] EUA states that EUA Energy plans to dissolve Eastern Unicord Corporation and EUA Compression Services, Inc. before the Transaction. TransCapacity, L.P. ceased normal operations effective July 31, 1999.

[7] As part of this merger, Applicants propose that Mass. Electric will assume Eastern Edison's pollution control revenue bonds and preferred stock.

[8] NEES currently has authority, through December 31, 2002, to issue short-term notes and/or commercial paper to dealers up to an aggregate amount of $500 million outstanding at any one time. HCAR No. 26793 (December 10, 1997).

located at 24 Prime Parkway, Natick, Massachusetts 01760; Reeds Ferry Supply Co., Inc. (''Reeds'') a direct subsidiary of HEC and an indirect nonutility subsidiary of NU, located at 605 Front Street, Manchester, New Hampshire 03102; and HEC Energy Consulting Canada Inc. (''HEC Energy'') direct subsidiary of HEC and an indirect nonutility subsidiary of NU, located at 242 Simcoe Street, Niagara on the Lake, Ontario, Canada L0S1J0 (collectively, ''Applicants'') have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 46(a) and 54 under the Act.

Applicants request authorization, through December 31, 2004, for: (1) CL&P to pay dividends to and/or repurchase stock from NU out of capital or unearned surplus in an amount not to exceed $310 million; (2) CL&P to pay dividends and/or repurchase stock in accordance with the provisions of CL&P's dividend covenant under its first mortgage indenture and deed of trust (''Mortgage Indenture'')[9] dated May 1, 1921 to the Bankers Trust Company as trustee; (3) WMECO to pay dividends to and/or repurchase stock from NU out of capital or unearned surplus in an amount not to exceed $145 million; (4) PSNH to pay dividends to and/or repurchase stock from NU out of capital or unearned surplus in an amount not to exceed $297 million; (5) NAEC to pay dividends to and/or repurchase stock from NU out of capital or unearned surplus in an amount not to exceed $164 million; (6) NUEI to pay dividends to and/or the repurchase stock from NU out of capital or unearned surplus in an amount not to exceed $132 million; (7) NGC to pay dividends to and/or the repurchase stock from NUEI out of capital or unearned surplus in an amount not to exceed $10 million; (8) NGSC to pay dividends to and/or repurchase stock from NUEI out of capital or unearned surplus in an amount not to exceed $10 million; (9) SE to pay dividends to and/or repurchase stock from NUEI out of capital or unearned surplus in an amount not to exceed $70 million; (10) HEC and SEPPI to pay dividends to and/or repurchase stock from NUEI out of the capital or unearned surplus; and (11) Reeds, SECI and HEC Energy to pay dividends to and/or repurchase stock from HEC out of capital or unearned surplus.[10] Further, NU requests authorization to issue 8.5 million shares of NU stock through December 31, 2000.

Applicants note that each of the states in which CL&P, WMECO, PSNH and NAEC (collectively, ''Utilities'') operate, i.e., Connecticut, Massachusetts, and New Hampshire, has enacted or will enact in the near future, restructuring legislation (''Restructuring Legislation'') that is intended to deregulate the electric utility industry and provide retail customers with a choice of electricity providers.[11] The Restructuring Legislation has, or will, require the Utilities to, among other things, divest their generating assets.

Applicants state that because the Restructuring Legislation mandates divestiture of generating assets and allows for the issuance of rate reduction bonds, the Utilities will almost simultaneously experience a significant decrease in the amount of tangible assets that they own and receive a significant influx of cash. Applicants propose to reduce their common equity capitalizations to reflect the Utilities unique financial situation.

Under the Restructuring Legislation, the electric generating assets of CL&P, PSNH and WMECO will be sold, and PSNH will buy out its power purchase agreement with NAEC. In addition to the proceeds raised from these sales of generating assets, CL&P, PSNH and WMECO, will receive proceeds from the issuance of rate reduction bonds as part of the restructuring process.[12] the Utilities plan to apply the net proceeds of their restructuring transactions, among other things, to retire outstanding debt and preferred stock, to buy down existing power purchase agreements with independent power producers (except NAEC, which has no such agreements) and to reduce their capitalizations.[13]

Applicants note that as a result of securitization debt, the issuance of rate reduction bonds, and the accounting treatment of the debt, NU and the Utilities equity-to-capitalization ratio will fall below the Commission's 30% equity standard.[14] Therefore, the Utilities request an exemption from the 30% equity standard through December 31, 2012 and NU seeks an exemption from the 30% equity standard through December 31, 2001.

CL&P expects to use approximately $310 million to reduce its common equity capitalization, WMECO expects to use approximately $145 million to reduce its common equity capitalization, PSNH expects to use approximately $297 million to reduce its common equity capitalization and NAEC expects to use approximately $164 million to reduce its common equity capitalization.[15]

Applicants state that the payment of dividends would not impair the financial integrity of CL&P, PSNH, WMECO or NAEC because, after the payment of these dividends, each Utility would still have adequate cash to operate its substantially smaller business.

NU seeks to reduce its equity capitalization through NUEI, NGC, NGSC, SE, HEC, Reeds, SECI, HEC Energy, and SEPPI, (collectively, ''competitive Subsidiaries''). To reduce common equity capitalizations, the Competitive Subsidiaries will either pay dividends to either NU or NUEI, buy back a portion of their outstanding common stock owned by NU or NUEI, or some combination of the above transactions. NU may also reduce its equity capitalization through the payment of dividends and/or the repurchase of stock from HEC by Reeds, SECI and HEC Energy; in each case out of capital or unearned surplus.

The Competitive Subsidiaries anticipate that they may have unrestricted cash available from time to time for distribution in excess of their current or retained earnings. To best arrange and deploy the NU system's equity capital, the Competitive Subsidiaries propose to use some of this unrestricted cash for the payment of dividends to NU, HEC and NUEI or to effect a stock repurchase from NU, HEC and NUEI, the proceeds of which NU ultimately would use to reduce its

[9] The Mortgage Indenture provides, among other things, that cash dividends may not be paid on the capital stock of CL&P, or distributions made, or capital stock purchased by CL&P, in an aggregate amount which exceeds CL&P's earned surplus after December 31, 1966, plus the earned surplus of CL&P accumulated prior to January 1, 1967 in an amount not exceeding $13,500,000, plus such additional amount as may be authorized or approved by the Commission under the Act.

[10] Collectively, HEC, SECI, HEC Energy and Reeds will pay dividends and/or repurchase stock out of capital or unearned surplus in an amount not to exceed $19 million. SEPPI will pay dividends and/or repurchase stock out of capital or unearned surplus in an amount not to exceed $8.5 million.

[11] The transmission and distribution of electricity will continue to be provided by the local utilities at regulated rates.

[12] The Restructuring Legislation allow for the issuance of rate reduction bonds to finance a portion of a utility's standard costs through securitization transactions. NAEC does not expect to receive proceeds from the issuance of rate reduction bonds.

[13] The buy-down of power purchase contracts and the retirement of debt and preferred stock can be accomplished without Commission approval.

[14] *See Georgia Pacific Co.,* 45 S.E.C. 610, 615 (1974).

[15] To reduce common equity capitalizations, the Utilities will either pay dividends to NU, buy back a portion of their outstanding common stock owned by NU, or some combination of the above transactions.

capitalization or for other corporate purposes.[16]

NU seeks authority to issue 8.5 million shares through December 31, 2000, in order to fund the share portion of its proposed merger with Yankee Energy System, Inc. (see File No. 70–9535). To facilitate the merger, NU anticipates entering into one or more forward stock purchase contracts (collectively, ''Forwards'') with a third party to repurchase NU shares.[17] Applicants state that because NU does not yet have sufficient proceeds from the various restructuring transactions described above, Forwards provide NU with a viable method of obtaining its own shares at anti-dilutive prices and with no balance sheet impact during the carrying period.

Northeast Utilities, et al. (70–9543)

Northeast Utilities (''NU''), a registered public utility holding company, located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01090 and Northeast Generation Services Company (''NGSC''), an indirect nonutility subsidiary of NU, located at 107 Selden Street, Berlin, Connecticut 06037 have filled an application-declaration under sections 6(a), 7, 12(b), 13(b), 32 and 33 of the Act and rules 45, 53, 54, 87, 90 and 91 under the Act.

Background

NU and each of its utility subsidiaries[18] are currently subject to, or will be subject to in the near future, state mandated electric utility restructuring legislation (''Restructuring Legislation''). The Connecticut and Massachusetts Restructuring Legislation provided that CL&P and WMECO divest their non nuclear generating assets and further allowed for the issuance of rate reduction bonds to finance a portion of the utility's stranded costs through securitization transactions.

In July 1999, CL&P and WMECO contracted to sell, for $865.5 million, 1,329 megawatts of hydroelectric and pumped storage generating assets (''Utility Assets'')[19] to Northeast Generation Company (''NGC''), an indirect nonutility subsidiary of NU that intends to file for exempt wholesale generator (''EWG'') status with the Federal Energy Regulatory Commission (''Generation Transaction''). As a result of the Generation Transaction, NGC executed purchase and sale agreements (''PSA'') with CL&P and WMECO, respectively.

Transactions

NU seeks authority to enter two assumption agreements ('' Assumption Agreements''). At the time of the Generation Transaction, NGC did not have financial resources, and therefore, NU executed Assumption Agreements to facilitate the Generation Transactions. The Assumption Agreements provide that NU will, subject to regulatory approval, perform the obligations set forth in the PSA as if it were the purchaser of the Utility Assets if NGC does not perform its obligations. NU estimates its obligations under the Assumption Agreement to be approximately $13 million.

NU further requests authorization, through June 30, 2001, to contribute $475 million (''Equity Investment'') to NU Enterprises, Inc. (''NUEI''), a sub holding company over certain of NU's nonutility subsidiaries. Thereafter, NUEI will contribute the Equity Investment to NGC and NGC will use the Equity Investment to finance the acquisition of the Utility Assets.

NGSC will provide services to NGC under a service agreement (''Service Agreement''),[20] and requests an exemption from the at-cost standards of section 13(b) and rules 87, 90 and 91 under the Act.

As a result of NGC's acquisition of Utility Assets and the Equity Investment, NU's aggregate investment in EWGs and foreign utility companies (''FUCOs'') will be approximately 85% of ''consolidated retained earnings,'' as defined in rule 53 under the Act.

By order dated November 12, 1998 (HCAR No. 26939) (''Order''), the Commission authorized NU and NEWCO (now known as ''NUEI'')[21] to, among other things, provide guarantees and similar forms of credit support or enhancements (collectively ''Guarantees'') in an amount not to exceed $75 million. The Order further authorized NU and NUEI to issue Guarantees in support of NU's investment in EWG or FUCO. By order dated May 19, 1999 (HCAR No. 27029), the Commission authorized an increase in Guarantee authority from $75 million to $250 million, and by order dated October 21, 1999 (HCAR No. 27093), the Commission authorized an increase in Guarantee authority from $250 million to $500 million.

Under the terms of these orders and rule 53(a)(1) under the Act, NU may not use the net proceeds of issuances of securities to invest in EWGs or FUCOs or issue guarantees for obligations in support of EWGs or FUCOs in NU's ''aggregate investment,'' as defined in rule 53(a) under the Act, exceeds 50% of NU's consolidated retained earnings. NU requests that the Commission modify this limitation and exempt NU from the requirements of rule 53(a)(1). Specifically, NU requests an order that would allow it, through June 30, 2001, to use financing proceeds to invest in EWGs and FUCOs and to issue guarantees of the obligations of these entities in an aggregate amount that, when added to NU's aggregate investment in EWGs and FUCOs, would not at any time exceed 100% of NU's consolidated retained earnings.

As of June 30, 1999, NU has invested an aggregate amount of approximately $6 million in EWGs or FUCOs, or approximately 1% of its consolidated retained earnings. NU's consolidated retained earnings was approximately $579 million at June 30, 1999.

NU states that the issuance and sale of securities to finance an investment in EWGs or to guarantee the securities of an EWG in an aggregate amount of up to 100% of consolidated retained earnings will not have a substantial adverse impact on the financial integrity of the NU system, or an adverse impact on any utility subsidiary of NU, its customers, or the ability of the affected state commissions to protect customers. In addition, NU states that it will not seek recovery through higher rates to its utility subsidiaries' customers in order to compensate for any possible losses that may be sustained on the investment in NGC or for any inadequate returns on these investments.

Chevron Corporation (70–9553)

Chevron Corporation (''Chevron''), 575 Market Street, San Francisco, California 94105; Chevron U.S.A. Inc. (''Chevron USA''), 1301 McKinney,

[16] Applicants state that the payment of dividends by the Competitive Subsidiaries directly or indirectly to NU or the repurchase of stock by the Competitive Subsidiaries is part of the NU system's overall plan to maintain its level of investment in each subsidiary that will most benefit its shareholders and ratepayers, and that this flexibility will improve, rather than harm, the financial integrity of the NU system and its operating companies.

[17] NU estimates that the issuance of 8.5 million shares is adequate to compensate for the possibility of negative Forward settlements.

[18] NU's utility subsidiaries are: The Connecticut Light and Power Company (''CL&P''), Western Massachusetts Electric Company (''WMECO''), Public Service Company of New Hampshire and North Atlantic Energy Corporation.

[19] The Utility Assets are comprised of 10 hydroelectric facilities owned by CL&P located in Connecticut, the Northfield Mountain pumped storage station (81% owned by CL&P and 19% owned by WMECO) located in Massachusetts, and the Cabot and Turners Falls No. 1 hydroelectric stations owned by WMECO and located in Massachusetts.

[20] Under the Service Agreement, NGSC will provide NGC with a variety of administrative, operation, management and support services.

[21] NUEI is engaged, through the use of multiple subsidiaries, in various energy-related and other activities.

Houston, Texas 77010; Illinova Corporation (''Illinova''), 500 South 27th Street, Decatur, Illinois 62521, an Illinois public-utility holding company exempt from registration under section 3(a)(1) of the Act; and Energy Convergence Holding Company (''New Dynegy''), 1000 Louisiana, Suite 5800, Houston, Texas 77002 (collectively ''Applicants'') have filed an application under sections 9(a)(2) and 10 of the Act.

Chevron USA is a wholly owned subsidiary of Chevron. Upon completion of the proposed transactions described below, Chevron USA will own approximately 28% of the common stock of New Dynegy. New Dynegy proposes to acquire Illinova. New Dynegy states that it will qualify for the exemption from registration provided for in section 3(a)(1) of the Act and rule 2 under the Act. Chevron and Chevron USA will seek no-action relief under section 2(a)(7) of the Act concerning their status following the acquisition.

Chevron, a Delaware corporation, manages its investments in, and provides administrative, financial, and management support to, domestic and foreign subsidiaries and affiliates that engage in petroleum and chemical operations in the United States and approximately 90 other countries. Neither Chevron nor Chevron USA currently has any public-utility company subsidiaries, neither is an affiliate of a public-utility company, and no part of either company's income is derived from the operations of a public-utility company as defined by the Act. Chevron USA is a Pennsylvania corporation which conducts operations worldwide through its various divisions. Its principal business activity is in its domestic upstream division that explores for and produces crude oil, natural gas liquids, and natural gas in the United States and its domestic downstream division that refines, markets, and transports gasoline and other refined products in the United States.

Chevron USA owns approximately 29% of the outstanding common and preferred stock of Dynegy Inc. (''Dynegy''), which markets and trades natural gas, natural gas liquids, electricity, and coal. Dynegy also owns power generation subsidiaries that develop, own, and operate projects that are not electric utility companies under the Act, including exempt wholesale generators (''EWGs''), as defined in section 32 of the Act, and companies with interests in qualifying facilities (''QFs'') under the Public Utility Regulatory Policies Act of 1978. The majority of Chevron's natural gas production, as well as the natural gas liquids extracted from that gas, are committed to Dynegy under various commercial agreements. In addition to Chevron USA, Dynegy has two industrial shareholders: NOVA Gas Services (U.S.) Inc. (''NOVA'') and BG Holdings, Inc. (''BG''), each of which owns approximately 25% of the outstanding voting stock of Dynegy.[22]

Illinova, an Illinois corporation, owns four subsidiaries with either public utility or energy-related operations: Illinois Power Company (''Illinois Power''); Illinova Generating Company (''Illinova Generating''); Illinova Energy Partners, Inc. (''Illinova Energy''); and Illinova Power Marketing, Inc. (''Illinova Marketing''). Illinois Power is Illinova's principal public-utility company subsidiary and is engaged in the generation, transmission, and distribution of electric energy and the sale of electric energy at wholesale and retail. Illinois Power also owns facilities for the distribution of natural gas and is engaged in the sale of natural gas at retail. It provides traditional utility service subject to state regulation to approximately 570,000 retail electric and 400,000 retail gas distribution customers located throughout central Illinois, and also transmits and sells power at wholesale. All of Illinois Power's utility assets are located in Illinois. Illinois Power is regulated by the Illinois Commerce Commission (''ICC'') and the Federal Energy Regulatory Commission (''FERC'').

Illinova Marketing, a wholly owned subsidiary of Illinova, is undertaking to own and operate 3,812 megawatts (''MW'') of fossil-fired generating capacity in Illinois formerly owned by Illinois Power. Illinova Marketing will use this generating capacity primarily to meet the power requirements of Illinois Power during the period of transition to competition in the electric power industry established under Illinois law.

Illinova Generating owns interests in EWGs and QFs located throughout North America, as well as interests in several generation facilities located outside of North America. It also owns 20% of the stock of Electric Energy Incorporated (''EEInc''), a public-utility company which generates electricity at a plant located in Joppa, Illinois for sale to the United States government nuclear processing plant near Paducah, Kentucky. Approximately 70% of the revenues associated with the Joppa plant are derived from sales to the United States Department of Energy under a contract that extends until 2005. Sponsoring utilities, including Illinois Power, purchase electric power from EEInc in excess of the federal government's requirements.

Illinova Energy brokers and markets electric power and gas. It also develops and sells energy-related services to the unregulated energy markets in the United States and Canada and owns interests in several gas marketing companies.

Illinova's revenues for 1998 were $2.43 billion, producing a net loss of $1.38 billion. Recently, the public-utility income of Illinova derived from Illinois Power has been negative and is the primary source of Illinova's consolidated net loss. In 1998, approximately 73% of Illinova's operating revenues were derived from Illinois Power's sale, transmission, and distribution of electricity, and 12% of Illinova's operating revenues were derived from Illinois Power's sale and transportation of natural gas. Approximately 15% of Illinova's operating revenues in 1998 came from its other, diversified enterprises.

New Dynegy is an Illinois corporation formed for the purposes of effectuating the transaction described below (''Transaction''). New Dynegy currently has no material assets and no public utility assets, subsidiaries, or affiliates.

The Transaction involves a combination of Dynegy and Illinova through a series of mergers that will establish New Dynegy as a public-utility holding company. New Dynegy will initially have two wholly owned subsidiaries, an Illinois corporation and a Delaware corporation, that will serve as acquisition companies. Illinova will be merged with the Illinois acquisition company, with Illinova surviving the merger, and Dynegy will be merged with the Delaware acquisition company, with Dynegy surviving the merger. Upon completion of the transaction, Illinova and Dynegy will be wholly owned subsidiaries of New Dynegy. The parties intend to simplify the New Dynegy holding company system after the Transaction by eliminating Illinova as a tier in the holding company structure.

In the Transaction, each Dynegy shareholder will elect to receive either cash or shares in New Dynegy. However, only approximately 40% of the shares of Dynegy common stock will be exchangeable for cash, with the remaining shares of Dynegy being exchangeable for shares of New Dynegy Class A common stock, Class B common stock, or Series A preferred stock.[23]

[22] Of the remaining outstanding voting stock of Dynegy, 11% is owned by management and the balance is publicly owned.

[23] The New Dynegy Class A common stock will be issued to the management and public

Continued

Each share of Illinova common stock will be exchangeable for one share of New Dynegy Class A common stock.

BG and NOVA have elected to receive all cash for their Dynegy shares, but the 40% limit on the cash portion of the merger consideration results in their receiving at least some portion of their consideration in the form of Series A preferred stock. To facilitate the Transaction and assist NOVA and BG in liquidating their investment in Dynegy, Chevron USA has agreed to purchase from New Dynegy additional shares of New Dynegy's Class B Common Stock for an aggregate purchase price of between $200 and $240 million. To the extent that BG and NOVA would otherwise receive less than 75% cash in exchange for shares of Dynegy Common Stock, Chevron USA has agreed to increase its investment, up to a maximum of $240 million.

Illinova states that it seeks this business combination with Dynegy in order to achieve financial, managerial and operating benefits that will position Illinova and Illinois Power to compete in the increasingly competitive wholesale and retail energy markets that have developed as a result of state and federal regulatory change. In these restructured markets, Illinova expects that customers, whether wholesale or retail, will purchase generated electricity separately from transmission and distribution services. In the case of electricity, recently enacted Illinois legislation provides that customers will have a choice in selecting their electricity provider, regardless of the geographic proximity of the source of physical generation to the customer. Illinova believes Dynegy will complement the utility operations of Illinois Power and allow Illinova to combine its small energy trading operations with the larger trading and marketing operations of Dynegy. A broader slate of energy products and an effective marketing organization will permit Illinova to remain competitive both for customers and for capital needed for exempt operations and public-utility company operations.

The Southern Company, et al. (70–9557)

The Southern Company (''Southern''), a registered holding company, 270 Peachtree Street, NW, Atlanta, Georgia 30303; and its subsidiary companies, Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35291; Gulf Power Company, One Energy Place, Pensacola, Florida 32520; Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501; Savannah Electric and Power Company, 600 Bay Street East, Savannah, Georgia 31401; Southern Communications Services, Inc., 5555 Glenridge Connector, Suite 500, Atlanta, Georgia 30342; Georgia Power Company, Southern Company Energy Solutions, Inc., and Southern Company Services, Inc., all located at 241 Ralph McGill Boulevard, N.E., Atlanta, Georgia 30308; Southern Energy Resources, Inc., 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338; and Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, Alabama 35242, (collectively, ''Applicants'') have filed an application-declaration under sections 6(a), 7, 9(a), 10, 32 and 33 of the Act and rules 53 and 54 under the Act.

Southern proposes to issue and sell up to 60,000,000 additional shares of its authorized but unissued common stock, par value $5 per share, under its Southern Investment Plan (''SIP'').[24] Southern also proposed to issue and sell up to 25,000,000 additional shares of its authorized but unissued common stock, par value $5 per share, under The Southern Company Employee Savings Plan (''Savings Plan''). Southern further proposes to issue and sell up to 3,000,000 additional shares of its authorized but unissued common stock, par value $5 per share in order to provide common stock for The Southern Company Employee Stock Ownership Plan (''ESOP''). Southern proposes to issue and sell shares of its common stock for these plans from time to time on or before September 30, 2004.

Southern Investment Plan

The SIP provides shareholders of record of Southern's common stock with a means of purchasing additional shares through the reinvestment of cash dividends and/or through optional cash payments. In addition, the SIP has a direct purchase feature that enables other eligible investors to become participants by making initial cash payments for the purchase of common stock.

Shares of common stock are purchased under the SIP, at the option of Southern, from newly issued shares or shares purchased on the open market. The price per share for shares purchased on the open market will be the weighted average price paid to acquire the shares, excluding broker commissions. When shares are purchased from Southern using cash dividends, the price per share generally will be equal to the average of the high and low sale prices on the dividend payment date. When shares are purchased from Southern with the investor's cash payments, the price per share generally will be equal to the average of the high and low sale prices on the 10th or 25th of the month, as applicable.

Employee Savings Plan

Under the Savings Plan, each employee of Southern's subsidiaries may generally contribute, through payroll deductions, up to sixteen percent of his compensation to an account administered on his behalf under the Savings Plan (''Voluntary Participant Contribution''). In addition, a Savings Plan member may elect to have his taxable compensation reduced up to sixteen percent, with that amount to be contributed to his account under the Savings Plan (''Elective Employer Contribution''). The maximum Voluntary Participant Contribution would be reduced by the percent, if any, which is contributed as an Elective Employer Contribution on behalf of the Savings Plan member. In addition, each Southern associate employing a Savings Plan member currently contributes, on behalf of the member, an amount equal to seventy-five percent of his combined Voluntary Participant Contribution and Elective Employer Contribution, but only to the extent that the sum of the Voluntary Participant Contribution and the Elective Employer Contribution does not exceed six percent of his compensation. Each Savings Plan member must direct that his contributions be invested in one or more of several funds, including a Southern Company Stock Fund consisting of Southern's common stock.

Investment purchases for the funds may be made either on the open market or by private purchase, provided that no private purchase may be made of common stock of Southern at a price greater than the last sale price or the highest current independent bid price, whichever is higher, for the stock on the New York Exchange, plus any applicable commission. In addition, common stock of Southern may be purchased directly from Southern under the SIP or under any other similar plan made available to holders of record of shares of common stock of Southern, at the purchase price provided for in that plan.

shareholders of Dynegy. The New Dynegy Class B common stock will be issued to Chevron USA. NOVA and BG will receive New Dynegy Class A preferred stock in the Transaction.

[24] The number of shares Southern proposes to issue for the plans discussed in the application-declaration may be adjusted from time to time for any share split or distributions later authorized by the Commission.

Employee Share Ownership Plan

The purpose of the ESOP is to enable eligible employees of Southern Company Services, Inc. (''SCS'') and other affiliates or subsidiaries of Southern that adopt the ESOP (the ''Employing Companies'') to share in the future of Southern, to provide participants with an opportunity to accumulate capital for their future economic security, and to enable participants to acquire Southern common stock. All of the Applicants are currently Employing Companies.

The ESOP permits the Employing Companies to contribute cash or common stock in an amount or under a formula that SCS will determine in its sole and absolute discretion. Cash contributions would be used to purchase common stock at market value, as determined by SCS. Cash dividends paid on the contributed common stock allocated to participating employees' accounts generally would be reinvested in additional shares of common stock, unless the employees elects to have the dividends distributed to him.

Southern states that the proceeds from the proposed sale of the common stock will be used by Southern to acquire the securities of associate companies and interests in other businesses, including interests ''exempt wholesale generators'' (''EWGs'') and ''foreign utility companies'' (''FUCOs''), in any transaction permitted under the Act, and for other general corporate purposes. Southern does not seek in this proceeding any increase in the amount it is permitted to invest in EWGs and FUCOs.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30919 Filed 11–26–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24148; 812–11846]

Conning Asset Management Company, et. al., Notice of Application

November 19, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (The ''Act'') for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory and subadvisory and subadvisory agreements (collectively, ''New Agreements'') for a period of up to 150 days beginning on the later of the date on which Metropolitan Life Insurance Company (''MetLife'') acquires all the common stock of GenAmerica Corporation (''GAC'') from General American Mutual Holding Company (''GAMHC'') or the date the requested order is issued and continuing until the date the New Agreements are approved or disapproved by shareholders of the respective investment companies (but in no event later than April 30, 2000) (''Interim Period''). The order also would permit payment of all fees earned under the New Agreements during Interim Period following shareholder approval.

APPLICANTS: Conning Asset Management Company (''Conning Management'') and Cova Investment Advisory Corporation (''COVA'') (collectively, ''Advisers'').

FILING DATE: The application was filed on November 5, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 by 5:30 p.m. on December 13, 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 who wish to be notified of a hearing may request notification by writing the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants: Conning Asset Management Company, 700 Market Street, St. Louis, Missouri 63101; Cova Investment Advisory Corporation, One Tower Lane, Suite 3000, Oakbrook Terrace, Illinois 60181–4644.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120 or Nadya B. Roytblat, Assistant Director, 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, NW., Washington, DC 20549–0102 (Telephone (202) 942–8090).

Applicants' Representations

1. Conning Management, a Missouri corporation, is an investment adviser registered under the Investment Advisers Act of 1940 Act (''Advisers Act''). Conning Management is a wholly-owned, indirect subsidiary of Conning Corporation, which in turn is a majority-owned, indirect subsidiary of GAC. COVA, an Illinois corporation, is an investment adviser registered under the Advisers Act, and a wholly-owned, indirect subsidiary of GAC. General American Life Insurance Company (''General American'') is a wholly-owned subsidiary of GAC and indirectly owns 100% of COVA and a controlling interest in Conning Management. GAC is a wholly-owned subsidiary of GAMHC, a Missouri mutual holding company.

2. Conning Management serves as investment adviser or subadviser to certain open-end management investment companies, or their portfolios, registered under the Act.[1] COVA serves as investment adviser to series of the Cova Series Trust, an open-end management investment company registered under the Act.[2] The Advisers serve as investment advisers to the Funds pursuant to existing advisory or subadvisory agreements (''Existing Agreements'').

3. On August 26, 1999, GAMHC and MetLife entered into a stock purchase agreement under which GAMHC agreed to sell all of the stock it owns in GAC to MetLife (the ''Transaction''). The Transaction is currently expected to occur during December 1999 or during

[1] Conning Management serves as investment adviser to the following portfolios of General American Capital Company: Money Market Fund, Bond Index Fund, Asset Allocation Fund, Managed Equity Fund, S&P 500 Index Fund, Mid-Cap Equity Fund, Small-Cap Equity Fund, and International Index Fund. Conning Management also serves as subadviser to the Money Market Fund, a portfolio of Sage Life Investment Trust, and the Conning Money Market Portfolio, a portfolio of Mercantile Funds, Inc.

[2] The portfolios include the Quality Bond Portfolio, Small Cap Stock Portfolio, Large Cap Stock Portfolio, Select Equity Portfolio, International Equity Portfolio, Emerging Markets Equity Portfolio, Bond Debenture Portfolio, Mid-Cap Value Portfolio, Large Cap Research Portfolio, Developing Growth Portfolio, Lord Abbett Growth and Income Portfolio, Balanced Portfolio, Small Cap Equity Portfolio, Equity Income Portfolio, Growth & Income Equity Portfolio, Riggs Stock Portfolio, Riggs Small Company Stock Portfolio, and Riggs U.S. Government Securities Portfolio.

the first quarter of 2000 (''Closing Date'').

4. Applicants state that the Transaction will result in a change of control of the Advisers, which will result in an assignment and automatic termination of the Existing Agreements. Applicants request an exemption to: (i) Permit the Advisers to provide investment advisory services to the Funds pursuant to the New Agreements during the Interim Period without obtaining prior shareholder approval, and (ii) permit the Advisers to receive fees earned under the respective New Agreements with respect to each Fund during the Interim Period if, and to the extent that, the New Agreements are approved by the shareholders of the Funds. The requested exemption would cover an Interim Period commencing on the later of the date the Transaction is consummated or the date the requested order is issued and continuing until the New Agreements are approved or disapproved by the Funds' shareholders (but in no event later than April 30, 2000).[3] Applicants state that the New Agreements will have the same terms and conditions as the Existing Agreements except for the effective and termination dates.

5. Applicants state that the boards of directors (''Boards''), including a majority of directors who are not ''interested persons'' as that term is defined in section 2(a)(19) of the Act (the ''Independent Directors''), of Mercantile Funds, Inc., General American Capital Company, and Cova Series Trust held an in-person meeting in accordance with section 15(c) of the Act on October 19, October 27, and November 12, 1999, respectively, to evaluate whether the terms of the New Agreements are in the best interests of the Funds and their shareholders and to approve the New Agreements.[4] The Boards, including the Independent Directors, voted to approve the relevant New Agreements and to recommend that Fund shareholders approve the New Agreements. Proxy materials seeking the approval of the New Agreements are expected to be mailed to shareholders of each Fund during the last quarter of 1999 or the first quarter of 2000.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution (''Escrow Agent''). The fees payable to the Advisers during the Interim Period under the New Agreements will be paid into an interest-bearing escrow account maintained by the Escrow Agent. The Escrow Agent will release the amounts held in the escrow account (including any interest earned): (a) To the relevant Adviser only if that Fund's shareholders approve the applicable New Agreement or (b) to the applicable Fund if the Interim Period has ended and the New Agreements have not been approved by the requisite shareholder vote. The Escrow Agent will release the moneys as provided only upon receipt of a certificate from officers of the Adviser that the action is appropriate based on shareholder votes. Before any such certificate is sent, the Adviser will notify the relevant Board, including the Independent Directors.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and beneficial ownership of more than 25% of the voting securities of a company is presumed under section 2(a)(9) to reflect control. Applicants state that the Transaction will result in a change of control of the Advisers. Accordingly, applicants state that the Transaction may result in an assignment of each Existing Agreement and, therefore, that each agreement will terminate according to its terms.

2. rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser ''directly or indirectly receives money or other benefit'' in connection with the assignment. Applicants state that because of the benefits to GAMHC, the Advisers' indirect parent, arising from the Transaction, applicants cannot rely on rule 15a–4.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, 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 Act. Applicants believe that the requested relief meets this standard.

4. Applicants state that the terms and timing of the Transaction were determined in response to a number of factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants assert that there is insufficient time to obtain shareholder approval of the New Agreements before the Transaction is consummated. Applicants further assert that the requested relief would prevent any disruption in the delivery of investment advisory and subadvisory services to the Funds during the period following consummation of the Transaction. Applicants represent that, under the New Agreements during the Interim Period, the Funds will receive substantially identical investment advisory and subadvisory services, provided in substantially the same manner, as they received prior to the consummation of the Transaction. Applicants state that, in the event of any material change in personnel of either Adviser providing services pursuant to the New Agreements during the Interim Period, the respective Adviser will apprise and consult the relevant Fund's Board to assure that the Board, including a majority of the Independent Directors, is satisfied that the services provided by the Adviser will not be diminished in scope and quality.

[3] Applicants state that if the consummation of the Transaction precedes the issuance of the requested order, the Advisers will serve after the consummation of the Transaction and prior to the issuance of the order in a manner consistent with their fiduciary duties to provide investment advisory and subadvisory services to the Funds even though approval of the New Agreements has not yet been secured from the Funds' shareholders. Applicants also state that, in such event, the Advisers will be entitled to receive from the Funds, with respect to the period from the date of consummation of the Transaction until the issuance of the order, no more than the actual out-of-pocket costs to the Advisers for providing investment advisory or subadvisory services to the Funds.

[4] Applicants acknowledge that, to the extent that the Board of any other Fund cannot meet to approve a New Agreement prior to the Closing Date, the Fund may not rely on the exemptive relief requested in the application.

Applicants' Conditions

The Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The New Agreements will have the same terms and conditions as the corresponding Existing Agreements, except for their dates of effectiveness and termination.

2. Fees earned by the Advisers in respect of the relevant New Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such fees) will be paid to (a) an Adviser in accordance with the New Agreements only after the requisite approvals are obtained, or (b) the respective Fund, in the absence of such approval with respect to such Fund.

3. Each Fund will hold shareholders' meetings to vote on approval of the relevant New Agreements within the Interim Period (but in no event later than April 30, 2000).

4. The Advisers, or an entity controlling, controlled by, or under common control with the Advisers, not the Funds, will bear the costs of preparing and filing the application and the costs relating to the solicitation of the relevant shareholders and beneficial owners of the approval or disapproval of the applicable New Agreements.

5. The Advisers will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Fund's Board, including a majority of the Independent Directors, to the scope and quality of services previously provided under the Existing Agreements. If personnel providing material services during the Interim Period change materially, the relevant Adviser will apprise and consult with the Board to assure that the Board, including a majority of the Independent Directors, of the Fund are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30835 Filed 11–26–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42160; File No. SR–NASD–98–74]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 3110(f) Governing Use of Predispute Arbitration Agreements With Customers

November 19, 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 October 6, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On May 26, 1999 and July 27, 1999 the NASD submitted Amendments No. 1 and 2 to the proposed rule change, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend NASD Rule 3110(f) to: require additional disclosure in predispute arbitration agreements regarding the arbitration process, including possible limits on eligibility of claims; require member firms to provide certain information regarding arbitration and predispute arbitration agreements to customers upon request; and clarify the rule regarding use of choice of law provisions in predispute arbitration agreements. Below is the text of the proposed rule change. Proposed new language is in italic; proposed deletions are in brackets.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Alden S. Adkins, Sr. Vice President and General Counsel, NASD Regulation, dated May 26, 1999 and letter to Richard C. Strasser, Assistant Director, Division of Market Regulation, Commission, from Joan C. Conley, Sr. Vice President and Corporate Secretary, NASD Regulation, dated July 26, 1999.

RULES OF THE ASSOCIATION

3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS, EMPLOYERS, AND OTHERS' EMPLOYEES

3110. BOOKS AND RECORDS

(f) Requirements When Using Predispute Arbitration Agreements [With] *for* Customer *Accounts*

(1) Any predispute arbitration agreement clause shall be highlighted and shall be immediately preceded by the following [disclosure] language [(printed] in outline form [as set forth herein) which shall also be highlighted].

This agreement contains a predispute arbitration clause. By signing an arbitration agreement, the parties agree as follows:

(A) [Arbitration is final and binding on the parties.] *All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.*

(B) [The parties are waiving their right to seek remedies in court, including the right to a jury trial.] *Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.*

(C) [Pre-arbitration discovery is generally more limited than and different from court proceedings.] *The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.*

(D) [The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings of the arbitrators is strictly limited.] *The arbitrators do not have to explain the reason(s) for their award.*

(E) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

(2) (A) [Immediately preceding the signature line,] *In any agreement containing a predispute arbitration agreement,* there shall be a *highlighted* statement *immediately preceding any signature line or other place for*

indicating agreement [which shall be highlighted] that *states that* the agreement contains a predispute arbitration clause. the statement shall also indicate at what page and paragraph the arbitration clause is located.

(B) At the time of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(3) [A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.]

(A) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request.

(B) Upon request by a customer, a member shall provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(4) [No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.]

(A) No predispute arbitration agreement shall include any condition that:

(i) limits or contradicts the rules of any self-regulatory organization;

(ii) limits the ability of a party to file any claim in arbitration;

(iii) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(vi) limits the ability of arbitrators to make any award.

(B) No member may seek to enforce any choice-of-law provision unless there is a significant contact or relationship between (i) the law selected and (ii) either the transaction at issue or one or more of the parties.

(5) [The requirements of subapragraphs (1) through (4) shall apply only to new agreements signed by an existing or new customer of a member after September 7, 1989.[*If a customer files a complaint in court against a member that contains claims that are subject to arbitration pursuant to predispute arbitration agreement between the member and the customer, the member may seek to compel arbitration of the claim that are subject to arbitration. If the member seeks to compel arbitration of such claims, the member must agree to arbitrate all of the claims contained in the complaint if the customer so requests.*

(6) All agreements shall include a statement that ''No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class action who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.''

(7) [The requirements of subparagraph (6) shall apply only to a new agreements signed by an existing or new customer of a member after October 28, 1993.] *The provisions of this Rule shall become effective on (effective date). Agreements signed by a customer before (effective date) are subject to the provisions of this Rule in effect at the time the agreement was signed.*

(g)–(h) Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these staements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is threefold: to require additional disclosure in predispute arbitration agreements regarding the arbitration process, including possible limits on eligibility of claims; to require member firms to provide certain information regarding arbitration and predispute arbitration agreements to customers upon request; and to clarify the rule regarding use of choice-of-law provisions in predispute arbitration agreements.

Background

Many broker-dealers require that customers seeking to open accounts, particularly margin and option accounts or accounts with a checking or money market feature, agree in writing to arbitrate disputes concerning the account, typically in an SRO-sponsored forum. These agreements, called ''predispute arbitration agreements,'' are generally part of the non-negotiated customer agreement drafted by the firm.

To ensure that customers are advised about what they are agreeing to when they sign predispute arbitration agreements, NASD Conduct Rule 3110(f) requires that such agreements contain highlighted disclosure about the differences between arbitration and litigation, including notice that by agreeing to arbitrate their disputes, customers may be waiving certain rights that would be available in court. Rule 3110(f) also requires that the agreement itself be highlighted, and that a copy of the agreement be given to the customer and acknowledged by the customer in writing.

Despite these precautions, investor representatives have expressed concern that many customers who sign predispute arbitration agreements still do not adequately understand what they are agreeing to. For example, some predispute arbitration agreements contain ''choice-of-law'' provisions that specify that the law of a certain state will govern disputes arising out of the agreement. In some cases, the member knows that the law of the chosen state may limit the ability of a customer to bring a claim or obtain an award, but the customer would not be aware of these restrictions from the face of the agreement. By signing an agreement that contained a choice-of-law provision, a customer might inadvertently waive certain rights and remedies. Customers' perceptions of unfairness are heightened by the fact that, when customers must sign predispute arbitration agreements in order to open accounts, their participation in SRO-sponsored arbitration may be involuntary.

Consequently, in its 1996 report, *Securities Arbitration Reform: Report of the Arbitration Policy Task Force to the Board of Governors, National Association of Securities Dealers, Inc.* (''Task Force Report''), the Arbitration Task Force, chaired by David Ruder (formerly Chairman of the SEC and a

former NASD Board member), recommended that members be required to provide more disclosure about arbitration to customers who sign predispute arbitration agreements, and that the use of certain provisions that limit rights and remedies be restricted.

Moreover, the NASD noted in its rule filings concerning the proposed eligibility (SR–NASD–97–44) and punitive damages rules (SR–NASD–97–47) that the NASD would amend Rule 3110(f) to require disclosure of the limitations contained in those rules. This rule filing amends Rule 3110(f) to provide disclosure of the proposed eligibility rules. Simultaneous with this filing, the NASD filed an amendment to the punitive damages rule filing to include proposed amendments to Rule 3110(f) relating to punitive damages.

Proposed Amendments

Required Disclosure and Notice of Possible Restrictions on Eligibility

Currently, paragraph (f)(1) of Rule 3110 mandates certain disclosure language about the differences between litigation and arbitration that must be included in predispute arbitration agreements. The proposed amendments would simplify the existing language in some existing provisions, and would add new provisions.

One of the most significant new provisions concerns notice of possible limits in some arbitration forums on the time for bringing claims. Paragraph (f)(1)(F) would require disclosure that the rules of some arbitration forums may impose time limits for bringing claims in arbitration, and that, in some cases, claims that are ineligible for arbitration may be brought in court. This provision is intended to give notice to customers of the NASD's proposed eligibility rule, as well as the rules in other forums.

Applicability of Disclosure Requirements to New and Existing Account Agreements

Members would be required to add the new disclosure requirements to all *new* customer account agreements containing predispute arbitration agreements as of the effective date of the rule. The proposed rule does not require members to replace existing agreements with current customers.

Incorporation of Arbitration Forum Rules

Paragraph (f)(1)(G) would provide that the rules of the arbitration forum in which a claim is brought, and any amendments thereto, shall be incorporated into the agreement. The purpose of this provision is to ensure that the rules of a forum apply to cases brought in that forum, and to avoid having to execute new agreements each time a forum changes its rules. For example, if a customer filed a complaint in an NASD Regulation arbitration forum, the NASD's arbitration rules would apply in all respects to the agreement.

Requirement That Members Provide Copies of Customer Agreements and Information Regarding Arbitration Forums to Customers Upon Request

In some cases, customers have complained that they have not been able to obtain copies of the predispute arbitration agreements they have signed from members in a timely manner, and that they had unequal access to information about the respective rules of the arbitration forums in which claims may be filed under a given agreement. Under the proposed amendments, paragraph (f)(3)(A) would require that, within ten days of receiving a request, members must provide a customer with a copy of any predispute arbitration agreement clause or agreement that the customer had signed, or inform the customer that the member does not have a copy of the agreement. In addition, paragraph (f)(3)(B) would require that, upon request of a customer, a member must provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

Restrictions on Provisions That Limit Rights and Remedies

Much of the criticism of predispute arbitration agreements has focused on the use of choice-of-law provisions. A choice-of-law provision specifies that the law of a certain state will govern disputes arising our of an agreement. In some cases, the law of a state might limit the availability of certain remedies, such as punitive damages, or the ability of a customer to bring a claim. For example, previously under New York law, courts could award punitive damages, but arbitrators could not. A customer who agree to arbitrate disputes under New York law could inadvertently forfeit the ability to obtain punitive damages that might have been available in court. (New York law on this subject has begun to shift in favor of arbitrators being able to award punitive damages.) Customers have argued that it is unfair for members to include provisions in predispute arbitration agreements that limit the availability of remedies, particularly when the effects of the provisions are not explained in the agreement.

Currently, Rule 3110(f) prohibits any choice-of-law provision that limits or contradicts the rules of any self-regulatory organization, or that limits the ability of a party to file any claim in arbitration or of arbitrators to make any award. However, the application of this provision has not always been consistent or clear. In addition, some investors have expressed concern that choice-of-law provisions select arbitrary jurisdictions that have no relationship to the customer or the transaction at issue.

To address these concerns, paragraph (f)(4) of the Rule would be amended to clarify the prohibition against provisions that limit rights or remedies, including provisions that would circumvent the eligibility rule. The amendment rule would also state that no choice-of-law provision will be enforceable unless there is a significant contact or relationship between the law selected and either the transaction at issue or the one or more of the parties.

Non-Bifurcation Provision

The NASD's proposed eligibility rule contains certain provisions intended to provide customers with a forum for all of their claims but to prevent them from having to bifurcate their claims, that is, from being forced to litigate their claims in two forums (court and arbitration) at the same time.[4] NASD Regulation also stated in the eligibility rule filing that it would amend Rule 311(f) to include a provision prohibiting members from seeking to compel arbitration of some but not all of a customer's court-filed claims, in order to prevent members from forcing customers to litigate in two forums when they filed a complaint in court that contained both eligible and ineligible claims. Therefore, NASD Regulation is proposing to add a new paragraph (f)(5) to Rule 3110(f) that would require members seeking to compel arbitration of claims filed in court to agree to arbitrate all of the claims contained in the court-filed complaint, even if some of the claims would be ineligible for arbitration under the eligibility rule. The purpose of these provisions in the eligibility rule and Rule 3110(f) is to give the customer

[4] Under the proposed eligibility rule, if the Director of Arbitration rules that the claims contained in a complaint are ineligible for arbitration because they are based on occurrences or events that took place more than six years before the complaint was filed, the customer may file the complaint in court. If the Director rules that some of the transactions are eligible for arbitration, the customer has the option either to pursue the eligible claims in arbitration and the ineligible claims in court, or to pursue both the eligible and ineligible claims in court.

control over whether claims are bifurcated.

Effective Date Provisions

The proposed amendments to Rule 3110(f) would require various changes to the customer agreements used by member firms, including adding disclosure of proposed amendments to the NASD's eligibility rule contained in a currently-pending rule filing (SR–NASD–97–44). The proposed punitive damages rule (SR–NASD–97–47) would also require changes to the customer agreements used by member firms. In order to prevent multiple amendments to customer agreements as a result of these three rule filings, the NASD has determined that these three rule filings, if approved, should take effect at the same time. In addition, the effective date of the rules must provide enough time for firms to modify their customer agreements. Therefore, the proposed amendments to Rule 3110(f) and the eligibility rule, and the proposed punitive damages rule, will become effective 120 days after final Commission action on the last of the three rule filings. The NASD will announce the effective date of the rules in a Notice to Members published prior to the effective date.

The proposed amendments to Rule 3110(f) would also provide that agreements signed before the effective date of the Rule amended would be subject to the provisions of 3110(f) in effect at the time the agreement was signed.

Restriction of Rule of Customer Account Agreements

Some members of the NASD's National Arbitration and Mediation Committee (''NAMC'') expressed concern that the rule, which currently applies to all predispute arbitration clauses in any agreement between member firms and customers, could be construed to apply to agreements between a member firm and large institutional clients with whom they had face-to-face negotiations over the terms of the agreement. To address this concern, the rule would be amended to clarify that it only applies to customer accounts and not to other agreements between member firms and large institutional clients with whom they had negotiated contract terms.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed amendments to Rule 3110(f) will serve the public interest by providing customers with more complete information about the arbitration process.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–74 and should be submitted by December 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30836 Filed 11–26–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42156, File No. SR–Phlx–99–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Exchange Rule 98, Emergency Committee

November 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder[2] notice is hereby given that on October 13, 1999, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 98, *Emergency Committee* (''Emergency Committee'') to update the composition of the Emergency Committee to correspond with previous revisions to the Exchange's governance structure, and to clarify that the Emergency Committee is authorized to take action if any emergency condition is created by the Year 2000 date change. The proposed rule change also deletes a provision authorizing the Emergency Committee to take action regarding CENTRAMART, an equity order entry system which is no longer used on the Exchange's equity trading floor. The text of the proposed

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change is available at the PHLX 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 proposed rule change updates the Emergency Committee's composition to reflect recent changes to the Exchange's governance structure. In 1997, various amendments to the Exchange's Certificate of Incorporation and By-Laws dealing with the governance structure of the Exchange were approved by the Commission.[3] Among other things, a provision was added authorizing the Board of Governors to appoint a Chairman of the Board who would be the full-time, paid Chief Executive Officer of the Exchange, and the President position was eliminated.[4] This filing conforms the membership of the PHLX's Emergency Committee to the 1997 structural amendments.

The Emergency Committee was formed in 1989,[5] prior to the aforementioned changes to the Exchange's governance structure. Currently, Rule 98 provides that the Emergency Committee shall consist of the Chairman of the Exchange, the President of the Exchange and the Chairmen of the Floor Procedure, Options, and Foreign Currency Options Committees. The proposed rule change would replace the ''Chairman of the Exchange'' with the current ''Chairman of the Board'' designation, delete the word ''President'' from the rule as the Exchange no longer has a ''President''; and include the Exchange's On-Floor Vice Chairman[6] as a member of the Emergency Committee.

Thus, under the proposed rule, the Emergency Committee would include five individuals: The Chairman of the Board of Governors; the On-floor Vice Chairman of the Board of Governors; and the Chairmen of the Floor Procedure Committee, the Options Committee, and the Foreign Currency Options Committee. The Exchange represents that replacing the President with the On-Floor Vice Chairman preserves the five-member structure of the Emergency Committee, minimizing the possibility of a tie vote on the Emergency Committee, and provides the Emergency Committee with the most qualified replacement for the President; that is, a member that can contribute direct knowledge of any potential or existing emergencies existing on the trading floor.[7]

The proposed rule change also clarifies that potential emergency conditions created by the Year 2000 date change are considered ''extraordinary market or emergency conditions'' warranting action by the Emergency Committee.[8] Previously, the Exchange described ''extraordinary market or emergency conditions'' as, among other things, a declaration of war, a presidential assassination, an electrical blackout, or events such as the 1987 market break or other highly volatile trading conditions that require intervention for the market's continued efficient operation.[9] The proposed rule also relates to a component of the Year 2000 contingency plan designed by the Exchange's Year 2000 Task Force.[10]

Finally, the proposed rule change also deletes references to CENTRAMARK, an equity order system which is no longer used on the Exchange Equity Floor.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5),[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest by updating the composition of the Emergency Committee to reflect the current governance structure of the Exchange, by clarifying the procedures for taking the necessary and appropriate action to respond to extraordinary market conditions or other emergencies, and by eliminating reference to a defunct Exchange trading system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. 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

[3] *See* Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997).

[4] *Id.* Other corresponding amendments to the By-Laws were made in connection with the 1997 changes to the Exchange's governance structure. For example, references to ''President'' were changed to ''Chief Executive Officer'' or ''Chairman of the Board.'' *See* PHLX By-Law Article IV, Section 4–1 and PHLX By—Law Article V, Section 5–1.

[5] *See* Securities Exchange Act Release No. 26858 (May 22, 1989), 54 FR 23007 (May 30, 1989).

[6] *See* PHLX By-law, Article IV, Section 4–2.

[7] Letter from Richard S. Rudolph, Counsel, PHLX, to Rebekah Liu, Special Counsel, Division of Market Regulation (''Division''), SEC, dated November 16, 1999 (Amendment No. 1).

[8] Telephone conversation between Richard S. Rudolph, Counsel, PHLX, and Mandy Cohen, Special Counsel, Division, SEC, on November 16, 1999.

[9] Letter from William W. Uchimoto, General Counsel, PHLX, to Sharon L. Itkin, Division, SEC, dated March 15, 1989.

[10] Telephone conversation between Richard S. Rudolph, Counsel, PHLX, and Rebekah Liu, Special Counsel, Division, SEC, on November 17, 1999.

[11] 15 U.S.C. 78F(b)(5).

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, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–42, and should be submitted by December 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30837 Filed 11–26–99; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/States, SDX/BENDEX Files—Match Numbers 6001, 6002, 6004)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with the States.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate; the Committee on Government Reform and Oversight of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 640l Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Susan M. Daniels,

Deputy Commissioner for Disability and Income Security Programs.

Dated: November 9, 1999.

Notice of Computer Matching Program, Social Security Administration (SSA) with the States

A. Participating Agencies

SSA and the States.

B. Purpose of the Matching Program

Section 1137 of the Social Security Act requires individual States to have in effect an income and eligibility verification system meeting certain requirements in order to administer certain State benefit programs.

A chief purpose of this matching program is to facilitate administration of this provision. Individual agreements with the States will describe the conditions under which SSA and other States agree to disclose information to each other relating to the eligibility for, and payment of, Social Security and supplemental security income benefits and State-administered income, food assistance, and medical assistance programs described in section 1137, including tax return information disclosed by SSA in accordance with applicable provisions of the Internal Revenue Code.

The matching program will also be used to implement provisions of Pub. L. 104–193, the Personal Responsibility and Work Reconciliation Act of 1996, involving the significance of Social Security coverage information to the eligibility of certain aliens for some Federal and State public benefits. Under this matching program, SSA will disclose certain Social Security coverage information on specific persons to States administering appropriate benefit programs.

C. Authority for Conducting the Matching Program

Sections 1106 and 1137 of the Social Security Act. Sections 402, 412, 421 and 435 of Pub. L. 104–193. Relevant provisions of the Internal Revenue Code under 26 U.S.C. 6103.

D. Categories of Records and Individuals Covered by the Match

States will provide SSA with names and other identifying information of appropriate benefit applicants or recipients. Specific information from participating States will be matched as provided in the agreement for the specific program with the following systems of records maintained by SSA:

1. SDX—Supplemental Security Income Record, SSA/OSR (09–60–0103);
2. BENDEX—Master Beneficiary Record, SSA/OSR (09–60–0090) and the Earnings Recording and Self-Employment Income System, SSA/OSR (09–60–0059);
3. EVS—Master Files of Social Security Number (SSN) Holders and SSN Applications, SSA/OSR (09–60–0058).
4. SVES—Supplemental Security Income Record, SSA/OSR (09–60–0103), Master Beneficiary Record, SSA/OSR (09–60–0090), the Earnings Recording and Self-Employment Income System, SSA/OSR (09–60–0059), and the Master Files of Social Security Number (SSN) Holders and SSN Applications, SSA/OSR (09–60–0058).
5. Quarters of Coverage Query—the Earnings Recording and Self-Employment Income System, SSA/OSR (09–60–0059), and the Master Files of Social Security Number (SSN) Holders and SSN Applications, SSA/OSR (09–60–0058).

SSA and the States will exchange information through the File Transfer Management System (FTMS). Cartridge or magnetic tape will be used in the event FTMS is inoperable.

E. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever is later. Individual State matching agreements under the program may also become effective upon the signature of the agreements by the parties to the agreements. The agreements with individual States will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 99–30945 Filed 11–26–99; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice No.3149]

United States International Telecommunication Advisory Committee, Radiocommunication Sector (ITAC–R); Notice of Meeting

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee Radiocommunication Sector (ITAC–R). The purpose of the Committee is to advise the Department on policy and positions with respect to the International Telecommunication Union and international radiocommunication matters.

The ITAC–R will meet from 9:30 to 12:30 on December 1, 1999 at the Department of State in room 1205 to prepare for the Radiocommunication Advisory Group meeting, January 17–21, 2000 and the special joint meeting of Study Groups 10 and 11 December 15–17, 2000. Members of the general public may attend this meeting and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend ITAC–R meeting and subsequent preparatory meetings for the CPM should send an e-mail to Cheryl Williams (williamscd@state.gov) or fax to (202) 647–7407 no later than 48 hours before the meeting. The fax should include the name of the meeting (Prep for Radio communications Advisory Group), date of the meeting, your name, social security number, date of birth, and organization. One of the following will be required for admission. U.S. driver's license, U.S. passport, or U.S. Government identification card. Enter from the 23rd Street Entrance; in view of escorting requirement, non-government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: November 19, 1999.

John T. Gilsenan,

Chairman, ITAC–R National Committee.

[FR Doc. 99–30904 Filed 11–26–99; 8:45 am]

BILLING CODE 4710–45–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–41]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 20, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–10, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on November 23, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29741.

Petitioner: Air Platforms, Inc.

Section of the FAR Affected: 14 CFR 21.25(a), part 36 and 91.313(e) (1) and (2).

Description of Relief Sought: To (1) Permit API to obtain a restricted-category airworthiness certificate for its English Electric Canberra B.6 airplanes without meeting the part 36 noise standards and (2) operate the Canberra over a densely populated area and in a congested airway.

Dispositions of Petitions

Docket No.: 28718.

Petitioner: The Goodyear Tire & Rubber Company.

Section of the FAR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/ Disposition: To allow Goodyear to issue export airworthiness approvals for aircraft tires produced at its Bangkok, Thailand, facility.

Grant 11/12/99, Exemption No. 6682B.

[FR Doc. 99–30888 Filed 11–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for December 7–8, 1999, beginning at 8:30 a.m. on December 7. Arrange for oral presentations by December 2.

ADDRESSES: Aerospace Industries Association of America, 1250 I Street, NW, Suite 1200, Goddard Room, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held December 7–8, 1999, at Aerospace Industries Association of America, 1250 I Street, NW, Suite 1200, Goddard Room, Washington, DC.

The agenda will include:

Tuesday, December 7, 1999

- Open Remarks
- FAA Report
- Joint Aviation Authorities Report
- Transport Canada Report
- Executive Committee Report
- Harmonization Management Team Report
- Engine Harmonization Working Group (HWG) Report and Vote
- Flight Guidance System HWG Report
- Ice Protection HWG Report
- Powerplant Installation HWG Report and Vote
- Seat Test HWG Report
- Avionics Systems HWG Report and Vote

Thursday, September 8, 1999

- Human Factors HWG Report
- General Structures HWG Report and Vote
- Airworthiness Assurance WG Report
- Flight Test HWG Report and Vote
- Electromagnetics Effects HWG Report
- Loads and Dynamics HWG Report and Vote
- Flight Control HWG Report
- Mechanical Systems HWG Report and Vote
- Electrical Systems HWG Report and Vote
- Review Action Items

Six harmonization working groups—Powerplant Installation, Avionics Systems, General Structures, Flight Test, Mechanical Systems, and Electrical Systems—plan to request TAE agreement on reports completed to address tasking statements.

The Engine HWG plans to request a vote for formal FAA legal and economic reviews for proposed rules addressing fatigue pressure test/safety analysis and 30-second and 2-minute one-engine out ratings, and rotor integrity for engine components. The working group also plans to request a vote to submit its disposition of comments addressing bird ingestion to the FAA. The Loads and Dynamics HWG plans to request approval of a proposed rule addressing interaction of systems and structures.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by December 2 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on November 22, 1999.

Brenda D. Courtney,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–30885 Filed 11–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation issues.

DATES: The meeting is scheduled for December 9, 1999, beginning at 8:30 a.m. Arrange for oral presentation by December 2.

ADDRESSES: Aerospace Industries Association of America, 1250 I Street, NW., Suite 1200, Goddard Room, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM-209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held December 9, 1999, at Aerospace Industries Association of America, 1250 I Street, NW., Suite 1200, Goddard Room, Washington, DC.

The agenda will include:

- Opening Remarks
- FAA/Joint Aviation Authorities (JAA) Harmonization Report
- JAA Report
- FAA Report
- ARAC Executive Committee Report
- New Task Assignments
- Performance Standard Work Group Report and Work Plan Proposal

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by December 2 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on November 22, 1999.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–30887 Filed 11–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 1999, there were 13 applications approved. This notice also includes information on one application, approved in September 1999, inadvertently left off the September 1999 notice. Additionally, four approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Lehigh Northampton Airport Authority, Allentown, Pennsylvania.

Application Number: 99–04–C–00–ABE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $1,500,000.

Earliest Charge Effective Date: December 1, 1999.

Estimated Charge Expiration Date: February 1, 2001.

Class of Air Carriers Not Required to Collect PFC's: Air taxi and commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Lehigh Valley International Airport.

Brief Description of Project Approved for Collection and Use: Renovate original satellite.

Decision Date: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Roxane Wren, Harrisburg Airports District Office, (717) 730–2830.

Public Agency: City of Naples Airport Authority, Naples, Florida.

Application Number. 99–02–C–00–APF.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $250,000.

Earliest Charge Effective Date: November 1, 1999.

Estimated Charge Expiration Date: August 1, 2001.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled air carriers and charter flights using aircraft with less than 10 seats.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Naples Municipal Airport.

Brief Description of Project Approved for Collection and Use: Purchase of three commute-a-walks.

Brief Description of Project Disapproved: Commercial airline terminal renovation.

Determination: Disapproved. Based on information contained in the PFC application, this project consists of stand-alone carpet replacement, painting, and wallpapering without major renovations associated with interior reconstruction. The FAA has, therefore, determined that this project involves regular or recurring work necessary on a continuing basis to preserve the existing terminal facilities in good condition, i.e, maintenance. Therefore, this project is ineligible in accordance with paragraph 501, FAA Order 5100.38A, Airport Improvement Program Handbook (October 24, 1989).

Decision Date: October 8, 1999.

FOR FURTHER INFORMATION CONTACT: Miguel A. Martinez, Orlando Airports District Office, (407) 812–6331, ext. 23.

Public Agency: City of Philadelphia, Division of Aviation, Philadelphia, Pennsylvania.

Application Number: 99–08–U–00–PHL.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $672,000,000.

Charge Effective Date: January 1, 1999.

Estimated Charge Expiration Date: July 1, 2011.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use

Terminal One Building (new international terminal), including associated renovations.

Terminal F building (new commuter terminal).

Aircraft parking apron for Terminal One.

Aircraft parking apron for Terminal F.

Airport roadway modifications—phase II.

Acquisition of property west of Terminal One.

Planning and design of new highway access ramps from I–95.

Decision Date: October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Roxane Wren, Harrisburg Airports District Office, (717) 730–2830.

Public Agency: City of Durango and the La Plata County Board of County Commissioners, Durango, Colorado.

Application Number: 99–03–C–00–DRO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $699,627.

Earliest Charge Effective Date: August 1, 2000.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers Not Required to Collected PFC's: None.

Brief Description of Projects Approved for Collection and Use: Construct connector taxiway A2, Acquire rotary snowblower, Update airport master plan, Install glycol retrieval system, Replace aircraft rescue and firefighting (ARFF) vehicle.

Brief Description of Projects Approved for Collection Only: Rehabilitate runway 2/20, Install distance remaining signs.

Brief Description of Project Disapproved: Replace snowplow blades.

Determination: Disapproved. The FAA has determined that snowplow blades are an expendable item and, therefore, replacement of snowplow blades is considered a regular maintenance expenses. Maintenance expenses are not AIP eligible per paragraphs 501 and 565c of FAA Order 5100.38A. AIP Handbook (October 24, 1989). Therefore, maintenance expenses are not PFC eligible.

Decision Date: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (301) 342–1258.

Public Agency: State of Alaska, Department of Transportation and Public Facilities, Anchorage, Alaska.

Application Number: 99–01–C–00–ANC.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $15,000,000.

Earliest Charge Effective Date: January 1, 2000.

Estimated Charge Expiration Date: April 1, 2003.

Class of Air Carriers Not Required to Collected PFC's: Passengers enplaned by any class of carrier or foreign air carrier if the passengers are enplaned on a flight to an airport serving a community which has a population of less than 10,000 and is not connected by a land highway to the land-based national

highway system (as defined by § 103(b)(5) of Title 23).

Determination: Disapproved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for more than 1 percent of the total annual enplanements at Anchorage International Airport. Therefore, under the terms of $158.11, the requested class would not qualify for exclusion. Furthermore, the requested exemption does not fit within the definition of a class of carriers in the PFC regulation. In this context, a class of carriers is most commonly determined by the size of aircraft and/or type of operation such as air taxis or charters.

Brief Description of Project Approved for Collection and Use: Terminal redevelopment.

Decision Date: October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Alaska Region Airports Division, (907) 271–5443.

Public Agency: State of Alaska, Department of Transportation and Public Facilities, Fairbanks, Alaska.

Application Number: 99–01–C–00–FAI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $5,460,000.

Earliest Charge Effective Date: January 1, 2000.

Estimated Charge Expiration Date: March 1, 2006.

Class of Air Carriers Not Required To Collect PFC'S: Passengers enplaned by any class of carrier or foreign air carrier if the passengers are enplaned on a flight to an airport serving a community which has a population of less than 10,000 and is not connected by a land highway to the land-based national highway system (as defined by § 103(b)(5) of Title 23.)

Determination: Disapproved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for more than 1 percent of the total annual enplanements at Fairbanks International Airport. Therefore, under the terms of § 158.11, the requested class would not qualify for exclusion. Furthermore, the requested exemption does not fit within the definition of a class of carriers in the PFC regulation. In this context, a class of carriers is most commonly determined by the size of aircraft and/or type of operation such as air taxis or charters.

Brief Description of Projects Approved for Collection and use:

Terminal improvements.

ARFF and snow removal equipment.

Maintenance facility.

Decision Date: October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Alaska Region Airports Division, (907) 271–5543.

Public Agency: City of Detroit, Michigan.

Application Number: 99–01–C–00–DET.

Application Type: Impose and use a PFC.

PFC Level: $3.00

Total PFC Revenue Approved in This Decision: $3,650,000.

Earliest Charge Effective Date: January 1, 2000.

Estimated Charge Expiration Date: March 1, 2004.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Detroit City Airport.

Brief Description of Projects Approved for Collection and use:

Snow removal equipment.

Jetways.

Terminal expansion study.

Brief Description of Project Approved for Collection Only: Terminal expansion.

Decision Date: October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Gary J. Migut, Detroit Airports District Office, (734) 487–7278.

Public Agency: Tri-Cities Airport Commission, Blountville, Tennessee.

Application Number: 99–02–C–00–TRI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $5,829,873.

Earliest Charge Effective Date: November 1, 2005.

Estimated Charge Expiration Date: August 1, 2013.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use

Extend runway 5 safety area 200 feet.

Terminal concourse expansion.

Decision Date: October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Cager Swauncy, Jr., Memphis Airports District Office, (901) 544–3495.

Public Agency: City of Aberdeen, South Dakota.

Application Number: 99–01–C–00–ABR.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $677,809.

Earliest Charge Effective Date: January 1, 2000.

Estimated Charge Expiration Date: May 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Aberdeen Regional Airport.

Brief Description of Projects Approved for Collection and Use

Snow removal equipment.

Snow removal equipment—snow blower/sweeper.

Taxiway D rehabilitation.

Taxiway B reconstruction.

Runway 13/31 reconstruction and narrowing.

Taxiway C construction.

Runway 17/35 reconstruction.

Runway 17/35 extension.

ARFF vehicle.

PFC application.

Decision Date: October 15, 1999.

FOR FURTHER INFORMATION CONTACT: Irene R. Porter, Bismarck Airports District Office, (701) 250–4385.

Public Agency: Akron-Canton Regional Airport Authority Board, Akron, Ohio.

Application Number: 99–04–C–00–CAK.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $3,175,200.

Earliest Charge Effective Date: April 1, 2002.

Estimated Charge Expiration Date: July 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Akron-Canton Regional Airport.

Brief Description of Projects Approved for Collection and Use

Snow removal equipment, spreader truck (A).

Ground run-up noise study.
Storm water drainage improvements.
Passenger loading bridge.
Storm water pollution prevention plan.
Snow removal equipment, spreader truck (B).
Environmental assessment for runway 1 extension phase II.
Benefit cost analysis for runway 1 extension.
Part 107 security access control system upgrade.
Terminal master plan.
Airport entrance road signage design.
Property acquisition—Daily.
Airport layout plan update.
Property acquisition—Kuhar.
Airport entrance road signage.
Storm water drainage control.

Brief Description of Projects Approved for Collection Only

Ground run-up enclosure.
Relocate Mount Pleasant and Frank Roads.
Runway 1 extension.
Runway 19 threshold relocation.
Decision Date: October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie R. Swann, Detroit Airports District Office, (734) 487–7277.

Public Agency: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

Application Number: 99–06–C–00–BNA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $2,660,000.

Earliest Charge Effective Date: October 1, 2001.

Estimated Charge Expiration Date: January 1, 2002.

Class of Air Carriers Not Required to Collect PFC's: Part 135 (air taxi).

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Nashville International Airport.

Brief Description of Projects Approved for Collection and Use

Surface movement guidance and control system.
Airport operations center relocation.
Airfield lighting control panel.
Runway deicer truck.
Decision Date: October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Wills, Memphis Airports District Office, (901) 544–3495, ext. 16.

Public Agency: County of Kern, Bakersfield, California.

Application Number: 99–02–C–00–BFL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $792,605.

Earliest Charge Effective Date: January 1, 2000.

Estimated Charge Expiration Date: May 1, 2002.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use

Planning and design new terminal and apron/master plan.
Design and install touchdown and centerline lights for runway 30R/12L.
Install midfield and rollout runway visual range sensors on runway 30R/12L.

Brief Description of Project Approved in Part For Collection: Land Acquisition for airport expansion.

Determination: Partially approved. The public agency did not propose sufficient alternatives to cover the entire proposed PFC amount for this project. Therefore, the approved PFC amount has been reduced to equal the cost of the alternative listed.

Brief Description of Disapproved Project: Construct an ARFF station.

Determination: This project was previously approved for authority to impose a PFC on March 30, 1995. However, the public agency failed to obtain approval to use PFC revenue, submit an application to use PFC revenue, or receive FAA approval granting an extension of time to submit a use application prior to June 1, 1998. Therefore, in accordance with § 158.33(c), the authority to impose a PFC for this project expired on June 1, 1998, resulting in no PFC revenue to be used on the project.

Decision Date: October 22, 1999.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western Pacific Region Airports Division, (310) 725–3621.

Public Agency: Kenton County Airport Board, Covington, Kentucky.

Application Number: 99–05–C–00–CVG.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $15,050,000.

Earliest Charge Effective Date: March 1, 2000.

Estimated Charge Expiration Date: August 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: (1) Part 121 supplemental operators which operate at the airport without an operating agreement with the public agency and enplane less than 1,500 passengers per year; and (2) Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Cincinnati/Northern Kentucky International Airport.

Brief Description of Projects Approved for Collection and Use

Replacement of security identification display area perimeter fence.
Taxiway K–2, taxiway M–2, and runway 27 threshold reconstruction, and taxiway K–3 construction.
Crossfield taxiway N phase 2 construction.
Part 107 security system replacement.
Terminal area master plan.
Replacement of two crash trucks.
Deicing system enhancements: increase storage capacity.
Snow removal equipment—runway 36R large hold pad and deicing recovery systems.
Replacement of snow broom.
Terminal 1 and 2 apron rehabilitation.
Decision Date: October 22, 1999.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, (901) 544–3495.

Public Agency: Virgin Islands Port Authority, St. Thomas, U.S. Virgin Islands.

Application Number: 99–06–C–00–STT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $3,000,000.

Earliest Charge Effective Date: December 1, 1999.

Estimated Charge Expiration Date: December 1, 2002.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Construct new air traffic control tower.

Determination: Approved. This project is AIP eligible in accordance with Program Guidance Letter 93–4. This relocation of the air traffic control tower is AIP eligible under § 47102(3)(E) of Title 49 U.S.C. if the relocation is necessary to carry out an AIP or PFC project. This relocation is needed to accommodate an AIP-funded 2,400-foot extension of runway 9/27 and its parallel taxiway. The current control

tower would not provide air traffic controllers with an adequate line-of-sight to aircraft using the extended runway and taxiway. The FAA's Air Traffic and National Airspace System Implementation Offices concluded that there was no feasible alternative to relocating the control tower.

Decision Date: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Pablo Auffant, Orlando Airports District Office, (407) 812–6331, ext. 30.

Amendments to PFC Approvals

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
96–03–C–02–TUL, Tulsa, OK	08/30/99	13,586,900	16,356,000	11/01/99	06/01/00
92–01–C–04–DTW, Detroit, MI	10/06/99	1,802,657,000	1,604,483,000	10/01/31	10/01/29
97–03–C–02–DTW, Detroit, MI	10/06/99	60,000,000	54,967,000	10/01/31	10/01/29
99–04–C–01–DBQ, Dubuque, IA	10/19/99	171,391	365,003	11/01/00	01/01/02

Issued in Washington, DC. on November 22, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–30886 Filed 11–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 29, 1999 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0096.

Form Number: ATF F 5130.12 (1689).

Type of Review: Extension.

Title: Beer for Exportation.

Description: Untaxpaid beer may be removed from a brewery for exportation without payment of the excise tax normally due on removal. In order to ensure that exportation took place as claimed and that untaxpaid beer does not reach domestic market, ATF requires certification on Form 5130.12.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 392.

Estimated Burden Hours Per Respondent: 1 hour, 39 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 38,808 hours.

OMB Number: 1512–0133.

Form Number: ATF F 5400.8.

Type of Review: Extension.

Title: Explosive Delivery Record.

Description: This information collection activity is used to verify distributor's compliance with Federal law and regulations, thereby document the flow of explosives in commerce; and as a tracing tool to prevent misuse and traffic stolen explosives.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 25,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1512–0298.

Recordkeeping Requirement ID Number: ATF REC 5120/1.

Type of Review: Extension.

Title: Usual and Customary Business Records Relating to Wine.

Description: Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,650.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 165 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 99–30917 Filed 11–26–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

[T. D. 99–86]

Annual User Fee for Customs Broker Permit; General Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of due date for broker user fee.

SUMMARY: This is to advise Customs brokers that the annual fee of $125 that is assessed for each permit held by an individual, partnership, association or corporate broker is due by January 3, 2000. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Adline Tatum, Broker Management, (202) 927–0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit held by an individual, partnership, association, or corporation. This fee is set forth in the Customs Regulations in § 111.96 (19 CFR 111.96).

Customs Regulations provide that this fee is payable for each calendar year in each location where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually.

Section 1893 of the Tax Reform Act of 1986 (Pub.L. 99–514), provides that notice of the date on which a payment

is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** no later than 60 days before such due date. This document notifies brokers that for 2000, the due date for payment of the user fee is January 3, 2000. It is expected that annual user fees for brokers for subsequent years will be due on or about the third of January of each year.

Dated: November 22, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–30820 Filed 11–26–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Tuesday December 7, 1999.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Tuesday December 7, 1999, 6:00 p.m. to 7:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555.

The public is invited to make oral comments from 6:50 p.m. to 7:00 p.m. on Tuesday December 7, 1999.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice. This meeting is scheduled in place of the meeting that had been scheduled for Friday, December 10, 1999. The December 10th meeting is cancelled.

Dated: November 22, 1999.

John J. Mannion,

Chief, Special Projects.

[FR Doc. 99–30943 Filed 11–26–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0104]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to support a claim for disability benefits based on accidental injury.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0104'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Accidental Injury in Support of Claim for Compensation or Pension, VA Form 21–4176.

OMB Control Number: 2900–0104.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used in support of claims for disability benefits based on disability, which is the result of an accident. The information given by the veteran is used as a source to gather specific data regarding the accident and to afford the veteran an opportunity to provide information from his or her own knowledge regarding the accident.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,200.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 4,400.

Dated: October 28, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–30757 Filed 11–26–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0105]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of

1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine if a claimant's accidental injury was the result of the claimant's misconduct.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0105'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Witness to Accident, VA Form Letter 21–806.

OMB Control Number: 2900–0105.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to gather information to support veterans' claims for disability benefits based on disability(ies) which is/are the result of an accident. The information given by a witness to the accident is used as a source to gather specific data regarding the accident and to obtain from the witness opinions as well as facts based on his or her own knowledge and beliefs regarding the accident. Benefits may be paid if a disability is incurred in the line of duty and is not the result of the veteran's own willful misconduct.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,400 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 13,200.

Dated: November 4, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–30758 Filed 11–26–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0133]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the proper individual(s) who may be entitled to accrued benefits of deceased beneficiaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0133'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Amounts on Deposit for Deceased Veteran, VA Form 21–6898.

OMB Control Number: 2900–0133.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to gather the necessary information to determine the individual(s) who may be entitled to accrued benefits of deceased beneficiaries.

Affected Public: Individuals or households.

Estimated Annual Burden: 175 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 700.

Dated: October 29, 1999.

By direction of the Secretary.

Sandy McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–30759 Filed 11–26–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0165]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, with change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the financial status of a debtor, his/her ability to pay, and the feasibility of exploring a compromise on debts due the United States under the Federal Claims Collection Act of 1966 and the Joint Regulations issued by the General Accounting Office and Department of Justice (Title 4, CFR Part 102).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0165'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Financial Status Report, VA Form 20–5655.

OMB Control Number: 2900–0165.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VA Form 20–5655 is mailed with the first and second demand letters to debtors who owe amounts over $50. The information collection on the form enables VA to determine the financial status of the debtor, his ability to pay, and the feasibility of exploring compromise.

Affected Public: Individuals or households.

Estimated Annual Burden: 41,800 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 41,800.

Dated: November 1, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–30760 Filed 11–26–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0399]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to confirm the continued entitlement of a beneficiary under the Restored Entitlement Program for Survivors (REPS) program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0399'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Student Beneficiary Report—REPS, VA Form 21–8938.

OMB Control Number: 2900–0399.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to verify that an individual who is receiving the REPS (Restored Entitlement Program for Survivors) benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The form is released each March and sent to all student beneficiaries. If the form were not used, payments would continue to

be made to ineligible payees and substantial overpayments would result.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,767.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 5,300.

By direction of the Secretary.

Dated: November 2, 1999.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 99–30761 Filed 11–26–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0459]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each reinstatement, with change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to reimburse management brokers for expenses and payment of fees associated with management of VA-acquired properties.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0459'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Property Management Consolidated Invoice, VA Form 26–8974.

OMB Control Number: 2900–0459.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The Consolidated Property Management Invoice is computer-generated by VA and sent to management brokers monthly to obtain management brokers' bills for reimbursement of expenses and payment of fees associated with management of VA-acquired properties.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 44,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 1,080.

Estimated Number of Responses: 22,000.

Dated: October 29, 1999.

By direction of the Secretary.

Sandy McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–30762 Filed 11–26–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0564]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to enroll VA Compensation and Pension beneficiaries in the Direct Deposit/Electronic Funds Transfer (DD/EFT) program for recurring benefits payments.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0564'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501 '' 3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the

quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Direct Deposit Enrollment, VA Form 24–0296.

OMB Control Number: 2900–0564.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 24–0296 is used to gather the necessary information required to enroll VA Compensation and Pension beneficiaries in the DD/EFT program for recurring benefits payments. The information will be used to process the payment data from VA to the beneficiary's designated financial institution.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,600 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 198,000.

By direction of the Secretary.

Dated: November 1, 1999.

Sandra S. McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–30763 Filed 11–26–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0573]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to extend the eligibility period of a spouse or surviving spouse to use Survivors' and Dependents' Educational Assistance (DEA).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0573'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Extension of Eligibility Period under Survivors' and Dependents' Educational Assistance (Title 38 CFR 21.3047).

OMB Control Number: 2900–0573.

Type of Review: Extension of a previously approved collection.

Abstract: VA is required by statue (Title 38, U.S.C., Section 3512) to extend the period of eligibility a spouse or surviving spouse has to use Survivors' and Dependents' Educational Assistance (DEA) if during that period she or he was prevented from initiating or completing a program of education due to a physical or mental disability. VA has no way of knowing who needs such an extension unless the individual applies for it. In order for VA to make the proper decision on such an application, VA requires that the claimant provide medical evidence to support the claim that the disability exists. If VA doesn't collect supporting medical evidence, the department may give this extension to someone who doesn't meet the criteria for an extension, or, conversely, the department may deny the extension to someone who meets the criteria for an extension.

Affected Public: Individuals or households.

Estimated Annual Burden: 120 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120.

By direction of the Secretary.

Dated: November 2, 1999.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 99–30764 Filed 11–26–99; 8:45 am]

BILLING CODE 8320–01–P

federal register

Monday
November 29, 1999

Part II

Department of the Treasury
Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Department of the Treasury
Office of Thrift Supervision

12 CFR Part 30, et al.
Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness; Final Rule
Safety and Soundness Standards; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket No. 99–16]

RIN 1557–AB67

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–1017]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 364

RIN 3064–AC18

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 570

[Docket No. 99–35]

RIN 1550–AB27

Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

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

ACTION: Final uniform guidelines.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are adopting in final form the interim guidelines establishing Year 2000 safety and soundness standards for insured depository institutions published by the Agencies on October 15, 1998, and in effect since that date. This issuance of final guidelines (Guidelines), pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act), is a technical action of the Agencies, which remain confident that, based on their reviews, insured depository institutions are appropriately preparing for the Year 2000.

EFFECTIVE DATE: The final Guidelines are effective November 29, 1999.

FOR FURTHER INFORMATION CONTACT: OCC: Mark L. O'Dell, Director, Year 2000 Bank Supervision Policy (202) 874–2340; Brian McCormally, Assistant Director, Enforcement and Compliance (202) 874–4800; Karl Betz, Attorney, Legislative and Regulatory Activities (202) 874–5090; or Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board of Governors: Angela Desmond, Special Counsel, Division of Banking Supervision and Regulation (202) 452–3497; or Nancy Oakes, Counsel, Division of Banking Supervision and Regulation (202) 452–2743. For the hearing impaired only, Telecommunication Device for Deaf (TDD), Diane Jenkins (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington DC 20551.

FDIC: Frank Hartigan, Year 2000 Project Manager, Division of Supervision (202) 898–6867; Sandy Comenetz, Year 2000 Project Manager, Legal Division (202) 898–3582; Richard Bogue, Counsel, Legal Division (202) 898–3726; or Nancy Chase Burton, Counsel, Legal Division (202) 898–6533, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Dorothy Van Cleave, National Year 2000 Coordinator (202) 906–7380; Stephen E. Hart, Assistant Chief Counsel, Office of Enforcement, Office of Chief Counsel (202) 906–7204; or Timothy P. Leary, Counsel (Banking & Finance), Regulations and Legislation Division, Office of Chief Counsel (202) 906–7170, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The Agencies today are issuing Guidelines establishing Year 2000 standards for safety and soundness pursuant to section 39 of the FDI Act. 12 U.S.C. 1831p–1. Section 39 requires the Agencies to establish operational and managerial standards either in the form of a regulation or guidelines for insured depository institutions relating to, among other things, internal controls, information systems, and internal audit systems. Section 39 also authorizes the Agencies to prescribe operational and managerial standards as they determine to be appropriate, and to require institutions that fail to meet such standards to submit corrective action plans.[1]

On October 15, 1998, the Agencies requested comment on joint interim guidelines establishing Year 2000 standards for safety and soundness. 63 FR 55480. After careful review of the comments received, the Agencies adopt the interim guidelines with only minor technical changes, discussed in the following.

The Guidelines are distilled from—and are intended to be consistent with—key principles contained in several FFIEC guidance papers[2] on important aspects of Year 2000 readiness. Among other things, the Guidelines describe certain essential steps that insured depository institutions must take at the awareness, assessment, renovation, validation (testing), and implementation phases of their efforts to achieve Year 2000 readiness. The Guidelines, for instance, establish standards for management and boards of directors in developing and managing Year 2000 project plans, validating remediation efforts, and planning for contingencies. The Guidelines do not replace or supplant the FFIEC guidance, which will continue to apply to all entities regulated or examined by the Agencies. Insured depository institutions also should refer to the FFIEC guidance.[3]

The Agencies will use the existing rules regarding safety and soundness standards to require submission of

[1] Standards issued under section 39 may take the form of regulations or guidelines. If an agency determines that an insured depository institution fails to meet any standard established by regulation, then, by the terms of the statute, the agency must require the institution to submit an acceptable plan to achieve compliance with the standard. If an agency determines that an insured depository institution fails to meet any standard established by guideline, the agency may require the institution to submit an acceptable compliance plan.

[2] Additional Questions and Answers Concerning Year 2000 Business Resumption Contingency Planning (May 6, 1999); Year 2000 Customer Communication Outline (February 17, 1999); Questions and Answers Concerning Year 2000 Contingency Planning (December 11, 1998); Guidance Concerning Fiduciary Services and Year 2000 Readiness (September 2, 1998); Questions and Answers Concerning FFIEC Year 2000 Policy (August 31, 1998); Guidance Concerning Contingency Planning in Connection with Year 2000 Readiness (May 13, 1998); Guidance on Year 2000 Customer Awareness Programs (May 13, 1998); Guidance Concerning Testing for Year 2000 Readiness (April 10, 1998); Guidance Concerning the Year 2000 Impact on Customers (March 17, 1998); Guidance Concerning Institution Due Diligence in Connection with Service Provider and Software Vendor Year 2000 Readiness (March 17, 1998); Safety and Soundness Guidelines Concerning the Year 2000 Business Risk (December 17, 1997); Year 2000 Project Management Awareness (May 5, 1997); and The Effect of Year 2000 on Computer Systems (June 1996) [collectively, the FFIEC guidance].

[3] The standards in the Guidelines are described in mandatory terms in order to clarify the specific actions insured depository institutions are expected to take to achieve Year 2000 readiness. Nevertheless, as explained in the following, an Agency will decide whether to require corrective action under section 39 for an institution's noncompliance with these standards based on the circumstances of the particular case.

compliance plans by institutions that fail to comply with the Guidelines. Under those rules, an insured depository institution must file a compliance plan within 30 days of a request to do so from an appropriate Federal banking agency, unless a different date is prescribed by the agency. Within 30 days of the compliance plan's receipt, the agency must provide written notice to the insured depository institution of whether the compliance plan has been approved or if additional information is required.

An insured depository institution that fails to submit an acceptable compliance plan within the time allowed or fails in any material respect to implement an accepted compliance plan will be subject to supervisory action, including an agency order directing the institution to correct the deficiency. The agency order is directly enforceable in Federal district court; there is no requirement for a prior administrative adjudication. *See* 12 U.S.C. 1818(i)(1). A violation of such an order can serve as the basis for assessing civil money penalties and other enforcement remedies. *See* 12 U.S.C. 1818(i)(2). Section 39 also describes certain supervisory actions that an agency may take, and in certain cases must take, until the deficiency is corrected.

Description of the Guidelines and Comments Received

In response to the interim guidelines, the Agencies received nine comments. The commenters include three depository institutions, three trade associations, one state banking regulator, and two individuals. The commenters supported the interim guidelines. Several commenters, however, suggested modifications to the interim guidelines. A discussion of these comments and changes to the interim guidelines follows.

Definitions (I.B.)

The Guidelines define certain key terms to help clarify the types of actions insured depository institutions are expected to undertake. For example, the Guidelines define the terms ''external system,'' ''internal system,'' ''external third party supplier,'' ''other material third party,'' ''renovation,'' and ''remediation contingency plan.'' The Agencies received no comments on these definitions and are adopting them without any changes.

The Guidelines also define the key term ''mission-critical system.'' The interim guidelines defined a mission-critical system as ''an application or system that is vital to the successful continuance of a core business activity.'' The Agencies made one clarifying change to this definition in the Guidelines so that it covers ''an application or system that is vital to the successful continuance of a core business activity or process.'' The FFIEC guidance interchangeably uses the terms core business activity, core business process, or core business function in the context of discussing a mission-critical system. The Agencies find that these terms are synonymous and, therefore, may be used interchangeably for purposes of defining a mission-critical system.

Under the Guidelines, applications or systems interfacing with designated mission-critical systems and software products also may be mission-critical. Two commenters suggested that the Agencies revise the definition of a mission-critical system to clarify further the types of interfacing applications and software products that may be mission-critical. The first commenter urged the Agencies to consider an application that interfaces with a mission-critical system to be mission-critical only if the application's failure would prevent the continuance of the core business activity supported by such mission-critical system. The second commenter requested additional guidance on what systems and applications, particularly software products, are mission-critical and suggested that the definition contrast mission-critical systems with non-mission-critical systems.

To address these concerns, the Agencies emphasize that the question whether a specific system or application qualifies as ''mission-critical'' depends on whether it is ''*vital to the successful continuance of a core business activity or process.*'' Since it is conceivable that a system or application that is mission-critical for one insured depository institution may not be mission-critical for another, neither the FFIEC guidance nor the Guidelines provide illustrative examples of mission-critical systems. The FFIEC guidance, however, further describes core business activities or processes. As stated in the FFIEC guidance, a core business activity or process means a task or group of tasks that must be performed together to ensure that an insured depository institution continues to be viable. A core business activity or process is generally defined along functional lines. For example, the deposit function, lending function, payments function, and investment function are examples of a core business activity or process.

Likewise, an application or system that interfaces with a designated mission-critical system also qualifies as mission-critical if it is vital to the successful continuance of a core-business activity or process. Specific mission-critical systems may be components of a number of core business activities or processes and may serve as interfaces between and among the operations of core business activities or processes. For example, the deposit taking function is a core business activity or process that could depend on various interfacing mission-critical systems, such as the automated clearing house (ACH), proof, and deposit systems.[4]

The Guidelines also define ''business resumption contingency plan'' as a plan that ''describes how mission-critical systems of the insured depository institution will continue to operate if there are system failures * * *'' One commenter requested the Agencies to revise this definition to focus on the resumption of core business activities in the event of Year 2000-related system failures. As noted above, the term ''mission-critical system'' covers those systems and applications that are vital to the successful continuance of a core business activity or process. Accordingly, the Agencies find that the definition of a business resumption contingency plan, as stated in the interim guidelines, already focuses only on the resumption of systems vital to the successful continuance of a core business activity or process and, therefore, no change to the Guidelines is necessary.

Finally, the Agencies made minor, but clarifying changes to the definitions of ''business resumption contingency plan'' and ''Year 2000 ready or readiness.'' The interim guidelines inadvertently used the conjunction or instead of and in these two definitions, and this has been corrected in the final Guidelines.

Review of Mission-Critical Systems for Year 2000 Readiness (II.A.)

The Guidelines specify that an insured depository institution's initial review of mission-critical systems for Year 2000 readiness should provide the basis for establishing priorities and deadlines and for identifying and allocating available resources. The development and implementation of a written due diligence process to monitor and evaluate Year 2000 efforts by third party service providers and software vendors is a critical component of an institution's initial assessment. The

[4] See FFIEC Questions and Answers Concerning Year 2000 Contingency Planning (December 11, 1998) (discussing how core business processes relate to mission-critical systems).

Guidelines also require each insured depository institution to develop and adopt a written project plan that addresses each phase of the planning process. However, an insured depository institution that has already developed and adopted an adequate written project plan, or other plans and procedures for achieving Year 2000 readiness, need not prepare a new, separate project plan, or other plans and procedures, just to satisfy the Guidelines. Plans and procedures already adopted may suffice if they have been reviewed and deemed acceptable under the Guidelines by the appropriate Agency. The Agencies did not receive any comments on these provisions and, therefore, adopt them without any changes.

Renovation of Internal and External Mission-Critical Systems (II.B. and II.C.)

The Guidelines distinguish between renovation of systems controlled by the insured depository institution (internal mission-critical systems) and those controlled by a third party (external mission-critical systems). Renovation of internal mission-critical systems must be completed in sufficient time for testing to be substantially complete by December 31, 1998.

Insured depository institutions relying on systems controlled and renovated by external third party suppliers must determine the ability of their service providers and software vendors to address Year 2000 readiness for external mission-critical systems that are not Year 2000 ready and to establish programs that allow testing and remediation to be substantially completed by March 31, 1999. Insured depository institutions also must develop in writing an ongoing due diligence process to monitor and evaluate the efforts of external third party suppliers to achieve Year 2000 readiness. As part of this process, the institutions must maintain written documentation of their communications with external third party suppliers regarding the third party suppliers' efforts to achieve Year 2000 readiness and review the institution's contractual arrangements with third party suppliers to determine the parties' respective rights and obligations to achieve Year 2000 readiness. In response to one commenter's concerns, the Agencies clarify that the Guidelines require the institution to review only those contracts pertaining to external mission-critical systems.

Testing of Mission-Critical Systems (II.D.)

The Agencies consider testing to be a critical process in achieving Year 2000 readiness. Failure of an insured depository institution to perform adequate testing of mission-critical systems poses a risk to the safe and sound operation of the institution. Failure to conduct thorough testing may mask serious remediation problems. Failure to properly identify or correct those problems could threaten the safety and soundness of the institution. The Guidelines reflect the Agencies' expectations on the timing and scope of required testing.

One commenter raised concerns about the inability of an institution to meet the internal testing deadline because of extended delays by software vendors in producing software that is Year 2000 ready. Software products may be either internal or external systems, depending on whether the insured depository institution has control over the renovation. For example, in ''turnkey'' situations, where an institution has purchased software from a vendor and does all the data processing in-house or where it has a software license from a vendor and does all the data processing in-house, these are ''internal'' systems. Under the Guidelines, the purchase or license arrangement is deemed to give the institution responsibility for renovation, even though the software vendor must perform the actual renovation. Therefore, these situations were subject to the testing deadline for ''internal'' systems, which was December 31, 1998.

Contingency Planning (II.E. and II.F.)

Another essential component of achieving Year 2000 readiness addressed in the Guidelines is the development and implementation of effective contingency plans for Year 2000 technology failures. The Guidelines require an insured depository institution to design contingency plans appropriate for the institution's technological systems and operating structure that describe how the institution will mitigate the risks associated with the failure of systems (the business resumption contingency plan) and, as applicable, the failure to complete renovation, testing, or implementation of its mission-critical systems (the remediation contingency plan).

As noted in recent FFIEC guidance, contingency planning is a dynamic process. An effective contingency plan may become inadequate at a later date if the institution does not revise the plan to address current needs. Accordingly, each insured depository institution must continue to update the contingency plans it has developed and implemented, as needed, to ensure that the plans remain effective. For example, some institutions rated less than satisfactory after June 1999 may need to establish plans that address obtaining alternative sources of service, transitioning to a new service provider, discontinuing the provision of certain bank services, and/or creating standardized backup programs for their deposit and loan accounts.

Customer Risk (II.G.)

The Guidelines require insured depository institutions to implement a due diligence process that identifies customers posing material Year 2000 risks, evaluates their Year 2000 preparedness, assesses their Year 2000 risk, and implements appropriate risk controls. The Agencies received no comments on this section and, therefore, adopt this section without any changes.

Involvement of the Board of Directors and Management (II.H.)

The Guidelines require the board of directors and management to be involved in all stages of the institution's efforts to achieve Year 2000 readiness. Management and the board of directors together must be actively involved in efforts to plan, allocate resources, and monitor progress towards attaining Year 2000 readiness. Management must provide to the board of directors written status reports at least quarterly or as otherwise required to keep the board of directors fully informed of the institution's Year 2000 efforts.

One commenter noted that the Guidelines are inconsistent with the FFIEC guidance in that they impose on the board of directors an inappropriate management function and a greater burden than would exist under accepted notions of corporate governance. The Agencies do not intend to alter traditional notions of corporate responsibility of the board of directors. The FFIEC guidance, as reflected in the Guidelines, emphasizes that Year 2000 issues present an enterprise-wide challenge, necessitating the active involvement of both senior management and the board of directors in overseeing the insured depository institution's internal Year 2000 efforts and monitoring its business risks. As stated in the FFIEC guidance, however, senior management continues to be responsible for the day-to-day management of the project. In order to erase any confusion on this point, however, the Agencies deleted the word ''managing'' from

section H.1. of the Guidelines. The Guidelines now require only that the board of directors and management ''be actively involved in efforts to plan, allocate resources, and monitor progress towards attaining Year 2000 readiness.''

Another commenter noted that management, in the past, generally provided oral status reports to the board of directors documented in the minutes. The commenter requested clarification whether this practice would satisfy the requirement for written status reports. The Agencies recognize that practices for documenting management's status updates to the board of directors varied from institution to institution. To ensure consistency in documenting an institution's progress in attaining Year 2000 readiness, however, the Agencies will require management to provide to the board of directors written status reports. Therefore, the Agencies are adopting this section without any changes.

Section 39 Remedies

The Guidelines enable the Agencies to use the streamlined compliance and enforcement mechanisms provided by section 39 to address, in appropriate circumstances, Year 2000 readiness-related safety and soundness concerns in insured depository institutions. Section 39 remedies for insured depository institutions allow the Agencies to move promptly in situations where immediate supervisory action is essential for safety and soundness reasons.

Nonetheless, issuance of a safety and soundness order pursuant to section 39 may not be the most appropriate remedy in every case where an insured depository institution fails to comply with the Guidelines. It is for this reason the Agencies have chosen to proceed by guideline, within the meaning of section 39, rather than by regulation. As is the case with respect to the Agencies' 1995 safety and soundness guidelines, the Agencies also wish to preserve their discretion to require supervisory actions different from those prescribed by section 39 with respect to the Guidelines if a different action is warranted by the facts and circumstances of a particular situation.

The Guidelines do not limit the authority of an Agency to address unsafe or unsound practices or conditions, violations of law, or other practices, or to adopt appropriate remedies to achieve compliance with the Guidelines, including requiring actions by dates that are different from those set forth in the Guidelines. Actions under section 39 and the Guidelines may be taken independently of, in conjunction with, or in addition to, other appropriate enforcement actions.

The Agencies note that by law the Guidelines apply only to insured depository institutions, not to all financial institutions supervised by the Agencies, such as bank holding companies and U.S. offices of foreign banking organizations. The Agencies will continue to examine and inspect all financial institutions that they supervise for compliance with the FFIEC guidance and may use their authority under section 8 of the FDI Act if these institutions fail to comply with the FFIEC guidance.

Effective Date

The Agencies find good cause for issuing the Guidelines effective immediately. *Cf.* 5 U.S.C. 553(d) (good cause exception to APA requirement for a 30 day delayed effective date for final rule); 12 U.S.C. 4802(b)(1) (good cause exception to the CDRIA requirement that the Federal banking agencies make rules effective on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form). Making the Guidelines effective immediately is essential for ensuring that the Agencies can properly and timely address the Year 2000 problem and that insured depository institutions can achieve Year 2000 readiness in the relatively short time remaining before Year 2000 problems may begin to occur. The Agencies note that Congress has recently underscored the importance and urgency of ensuring Year 2000 readiness in the financial services sector by passing the Examination Parity and Year 2000 Readiness for Financial Institutions Act, Public Law 105–164, sec. 2, 112 Stat. 32, 32 (1998). Congress expressly found that the Year 2000 problem poses a serious challenge to the American economy, including the Nation's banking and financial services industries, and that Federal financial regulatory agencies must have sufficient examination authority to ensure that the safety and soundness of the Nation's financial institutions will not be at risk. Under these circumstances, the Agencies conclude that they have good cause for issuing the Guidelines with an immediate effective date.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603. In issuing the interim guidelines, the Agencies concluded, for good cause, that they are not required to publish a notice of proposed rulemaking. Accordingly, they issued the interim guidelines without prior notice and comment to be effective immediately. Since the RFA does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking, the Agencies also conclude that the RFA does not require a regulatory flexibility analysis of these joint final guidelines.

Nonetheless, the Agencies considered the likely economic impact of the Guidelines on small entities and believe that the Guidelines do not have a significant impact on a substantial number of small entities. The potential inability of computers to correctly recognize certain dates in 1999 and on and after January 1, 2000, compels all institutions, including small institutions, to formulate appropriate and timely management responses. The Guidelines provide a procedural framework for formulating that response and reiterate the Agencies' expectations, distilled from existing FFIEC guidance, regarding appropriate business practices for achieving Year 2000 readiness. For example, as indicated earlier in this preamble, plans and procedures that institutions have already developed to achieve Year 2000 readiness can satisfy the Guidelines if they have been reviewed and deemed acceptable by the appropriate Agency. The Agencies requested comments on the impact of the Guidelines on small entities and received no comments.

Paperwork Reduction Act

These Guidelines contain no continuing information collections that must be approved by the Office of Management and Budget (OMB).

Executive Order 12866

The OCC and OTS have determined that the Guidelines are not a significant regulatory action under Executive Order 12866.

OCC and OTS: Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMA), Public Law 104–4, applies only when an agency is required to promulgate a general notice of proposed rulemaking or to a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, the Agencies did not publish a general notice of proposed rulemaking when they, for good cause, issued the interim guidelines with an immediate effective date. Accordingly, the OCC and OTS conclude that the UMA does not require an unfunded mandates analysis of the Guidelines.

Moreover, the OCC and OTS believe that the Guidelines 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.

Text of Uniform Final Guidelines (All Agencies)

The text of the Agencies' uniform final guidelines appears below:

Appendix ____ To Part ____ Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

Table of Contents

I. Introduction
A. Preservation of existing authority
B. Definitions
II. Year 2000 Standards for Safety and Soundness
A. Review of mission-critical systems for Year 2000 readiness
B. Renovation of internal mission-critical systems
C. Renovation of external mission-critical systems
D. Testing of mission-critical systems
E. Business resumption contingency planning
F. Remediation contingency planning
G. Customer risk
H. Involvement of the board of directors and management

I. Introduction

The Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness (Guidelines) set forth safety and soundness standards pursuant to section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p–1) that are applicable to an insured depository institution's efforts to achieve Year 2000 readiness. The Guidelines, which also interpret the general standards in the Interagency Guidelines Establishing Standards for Safety and Soundness adopted in 1995, apply to all insured depository institutions.

A. Preservation of Existing Authority

Neither section 39 nor the Guidelines in any way limits the authority of the Federal banking agencies to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. The Federal banking agencies, in their sole discretion, may take appropriate actions so that insured depository institutions will be able to successfully continue business operations after January 1, 2000, including on a case-by-case basis requiring actions by dates that are later than the key dates set forth in the Guidelines. Action under section 39 and the Guidelines may be taken independently of, in conjunction with, or in addition to any other action, including enforcement action, available to the Federal banking agencies.

B. Definitions

1. In general. For purposes of the Guidelines the following definitions apply:

a. *Business resumption contingency plan* means a plan that describes how mission-critical systems of the insured depository institution will continue to operate in the event there are system failures in processing, calculating, comparing, or sequencing date or time data from, into, or between the 20th and 21st centuries; and the years 1999 and 2000; and with regard to leap year calculations.

b. *External system* means a system the renovation of which is not controlled by the insured depository institution, including systems provided by service providers and any interfaces with external third party suppliers and other material third parties.

c. *External third party supplier* means a service provider or software vendor that supplies services or products to insured depository institutions.

d. *Internal system* means a system the renovation of which is controlled by the insured depository institution, including software, operating systems, mainframe computers, personal computers, readers/sorters, and proof machines. An internal system also may include a system controlled by the insured depository institution with embedded integrated circuits (e.g., heating and cooling systems, vaults, communications, security systems, and elevators).

e. *Mission-critical system* means an application or system that is vital to the successful continuance of a core business activity or process. An application or system may be mission-critical if it interfaces with a designated mission-critical system. Software products also may be mission-critical.

f. *Other material third party* means a third party, other than an external third party supplier, to whom an insured depository institution transmits data or from whom an insured depository institution receives data, including business partners (e.g., credit bureaus), other insured depository institutions, payment system providers, clearinghouses, customers, and utilities.

g. *Remediation contingency plan* means a plan that describes how the insured depository institution will mitigate the risks associated with the failure to successfully complete renovation, testing, or implementation of its mission-critical systems.

h. *Renovation* means code enhancements, hardware and software upgrades, system replacements, and other associated changes that ensure that the insured depository institution's mission-critical systems and applications are Year 2000 ready.

i. *Year 2000 ready or readiness* with respect to a system or application means a system or application accurately processes, calculates, compares, or sequences date or time data from, into, or between the 20th and 21st centuries; and the years 1999 and 2000; and with regard to leap year calculations.

II. Year 2000 Standards for Safety and Soundness

A. Review of Mission-Critical Systems For Year 2000 Readiness. Each insured depository institution shall in writing:

1. Identify all internal and external mission-critical systems that are not Year 2000 ready;

2. Establish priorities for accomplishing work and allocating resources to renovating internal mission-critical systems;

3. Identify the resource requirements and individuals assigned to the Year 2000 project on internal mission-critical systems;

4. Establish reasonable deadlines for commencing and completing the renovation of such internal mission-critical systems;

5. Develop and adopt a project plan that addresses the insured depository institution's Year 2000 renovation, testing, contingency planning, and management oversight process; and

6. Develop a due diligence process to monitor and evaluate the efforts of external third party suppliers to achieve Year 2000 readiness.

B. Renovation of Internal Mission-Critical Systems. Each insured depository institution shall commence renovation of all internal mission-critical systems that are not Year 2000 ready in sufficient time that testing of the renovation can be substantially completed by December 31, 1998.

C. Renovation of External Mission-Critical Systems. Each insured depository institution shall:

1. Determine the ability of external third party suppliers to renovate external mission-critical systems that are not Year 2000 ready and to complete the renovation in sufficient time to substantially complete testing by March 31, 1999;

2. Maintain written documentation of all its communications with external third party suppliers regarding their ability to renovate timely and effectively external mission-critical systems that are not Year 2000 ready; and

3. Develop in writing an ongoing due diligence process to monitor and evaluate the efforts of external third party suppliers to achieve Year 2000 readiness, including:

a. monitoring the efforts of external third party suppliers to achieve Year 2000 readiness on at least a quarterly basis and documenting communications with these suppliers; and

b. reviewing the insured depository institution's contractual arrangements with external third party suppliers to determine the parties' rights and obligations to achieve Year 2000 readiness.

D. Testing of Mission-Critical Systems. Each insured depository institution shall:

1. Develop and implement an effective written testing plan for both internal and external systems. Such a plan shall include the testing environment, testing methodology, testing schedules, budget projections, participants to be involved in testing, and the critical dates to be tested to achieve Year 2000 readiness;

2. Verify the adequacy of the testing process and validate the results of the tests with the assistance of the project manager responsible for Year 2000 readiness, the owner of the system tested, and an objective independent party (such as an auditor, a consultant, or a qualified individual from within or outside of the insured depository institution who is independent of the process under review);

3. Substantially complete testing of internal mission-critical systems by December 31, 1998;

4. Commence testing of external mission-critical systems by January 1, 1999;

5. Substantially complete testing of external mission-critical systems by March 31, 1999;

6. Commence testing with other material third parties by March 31, 1999; and

7. Complete testing of all mission-critical systems by June 30, 1999.

E. Business Resumption Contingency Planning. Each insured depository institution shall develop and implement an effective written business resumption contingency plan that, at a minimum:

1. Defines scenarios for mission-critical systems failing to achieve Year 2000 readiness;

2. Evaluates options and selects a reasonable contingency strategy for those systems;

3. Provides for the periodic testing of the business resumption contingency plan; and

4. Provides for independent testing of the business resumption contingency plan by an objective independent party, such as an auditor, consultant, or qualified individual from another area of the insured depository institution who was not involved in the formulation of the business resumption contingency plan.

F. Remediation Contingency Planning. Each insured depository institution that has failed to successfully complete renovation, testing, and implementation of a mission-critical system, or is in the process of remediation and is not on schedule with the key dates in section II.D., shall develop and implement an effective written remediation contingency plan that, at a minimum:

1. Outlines the alternatives available if remediation efforts are not successful, including the availability of alternative external third party suppliers, and selects a reasonable contingency strategy; and

2. Establishes trigger dates for activating the remediation contingency plan, taking into account the time necessary to convert to alternative external third party suppliers or to complete any other selected strategy.

G. Customer Risk. Each insured depository institution shall develop and implement a written due diligence process that:

1. Identifies customers, including fund providers, fund takers, and capital market/asset management counterparties, that represent material risk exposure to the institution;

2. Evaluates their Year 2000 preparedness;

3. Assesses their existing and potential Year 2000 risk to the institution; and

4. Implements appropriate risk controls, including controls for underwriting risk, to manage and mitigate their Year 2000 risk to the institution.

H. Involvement of the Board of Directors and Management.

1. During all stages of the renovation, testing, and contingency planning process, the board of directors and management of each insured depository institution shall:

a. be actively involved in efforts to plan, allocate resources, and monitor progress towards attaining Year 2000 readiness;

b. oversee the efforts of the insured depository institution to achieve Year 2000 readiness and allocate sufficient resources to resolve problems relating to the institution's Year 2000 readiness; and

c. evaluate the Year 2000 risk associated with any strategic business initiatives contemplated by the insured depository institution, including mergers and acquisitions, major systems development, corporate alliances, and system interdependencies.

2. In addition, the board of directors, at a minimum, shall require from management, and management shall provide to the board of directors, written status reports, at least quarterly and as otherwise appropriate to keep the directorate fully informed, of the insured depository institution's efforts in achieving Year 2000 readiness. Such written status reports shall, at a minimum, include:

a. The overall progress of the insured depository institution's efforts in achieving Year 2000 readiness;

b. The insured depository institution's interim progress in renovating, validating, and contingency planning measured against the insured depository institution's Year 2000 project plan as adopted under section II.A.5. of appendix B;

c. The status of efforts by key external third party suppliers and other material third parties in achieving Year 2000 readiness;

d. The results of the testing process;

e. The status of contingency planning efforts; and

f. The status of the ongoing assessment of customer risk.

[End of text of Uniform Interagency Guidelines]

List of Subjects

12 CFR Part 30

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Safety and soundness, Securities.

12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 570

Accounting, Administrative practice and procedure, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Savings associations, Safety and soundness.

Adoption of Uniform Interagency Final Guidelines

The agency specific adoptions of the uniform interagency final guidelines, which appear at the end of the common preamble, are set forth below.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the common preamble, part 30 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 30—SAFETY AND SOUNDNESS STANDARDS

1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1831p–1, 3102(b).

2. Appendix B to part 30 is revised to read as set forth at the end of the common preamble:

Appendix B to Part 30—Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

Dated: October 12, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the common preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for 12 CFR Part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1823(j), 1828(o), 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909, 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. The interim rule redesignating Appendix D to 12 CFR part 208 as Appendix D–1 to 12 CFR part 208 published at 63 FR 55480 on October 15, 1998, is adopted as final.

3. Appendix D–2 to part 208 is revised to read as set forth at the end of the common preamble:

Appendix D–2 to Part 208—Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

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

Dated: October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the common preamble, part 364 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

1. The authority citation for 12 CFR part 364 continues to read as follows:

Authority: 12 U.S.C. 1819 (Tenth), 1831p–1.

2. Appendix B to part 364 is revised to read as set forth at the end of the common preamble:

Appendix B to Part 364—Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

By Order of the Board of Directors.

Dated at Washington, DC, this 8th Day of November, 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 forth in the common preamble, part 570 of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

PART 570—SUBMISSION AND REVIEW OF SAFETY AND SOUNDNESS COMPLIANCE PLANS AND ISSUANCE OF ORDERS TO CORRECT SAFETY AND SOUNDNESS DEFICIENCIES

1. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1831p–1.

2. Appendix B to part 570 is revised to read as set forth at the end of the common preamble:

Appendix B to Part 570—Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

Dated: October 15, 1999.

Ellen Seidman,

Director.

[FR Doc. 99–30284 Filed 11–26–99; 8:45 am]

BILLING CODE 4810–33–U; 6210–01–U; 6714–01–U; 6720–01–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket No. 99–17]

RIN 1557–AB67

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–1018]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 364

RIN 3064–AC18

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 570

[Docket No. 99–50]

RIN 1550–AB27

Safety and Soundness Standards

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

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are issuing this joint final rule to update their procedural rules pertaining to safety and soundness standards issued under section 39 of the Federal Deposit Insurance Act (FDI Act). This joint final rule adopts, with only one technical change, the Agencies' interim rules. This final rule is intended only to incorporate appropriate references to the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness published elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: This joint final rule is effective on November 29, 1999.

FOR FURTHER INFORMATION CONTACT: OCC: Karl Betz, Attorney, Legislative and Regulatory Activities (202) 874–5090; or Brian McCormally, Assistant Director, Enforcement and Compliance (202) 874–4800, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Stephanie Martin, Managing Senior Counsel, Legal Division (202) 452–3198. For the hearing impaired only, Telecommunication Device for Deaf (TDD), Diane Jenkins (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Sandy Comenetz, Year 2000 Project Manager, Legal Division (202) 898–3582; Richard Bogue, Counsel, Legal Division (202) 898–3726; or Nancy Chase Burton, Counsel, Legal Division (202) 898–6533, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Dorothy Van Cleave, National Year 2000 Coordinator (202) 906–7380; Stephen E. Hart, Assistant Chief Counsel, Office of Enforcement, Office of Chief Counsel (202) 906–7204; or Timothy P. Leary, Counsel (Banking & Finance), Regulations and Legislation Division, Office of Chief Counsel (202) 906–7170, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background and Discussion of Final Rule

In 1995, the Agencies jointly adopted Guidelines Establishing Standards for Safety and Soundness pursuant to section 39 of the FDI Act. 12 U.S.C. 1831p–1. At the same time, each Agency adopted rules establishing procedures for requiring submission of a compliance plan and issuing an enforceable order for violation of safety and soundness standards pursuant to section 39. The Guidelines Establishing Standards for Safety and Soundness are set forth in an appendix to each Agency's procedural rules. 60 FR 35674 (July 10, 1995).

On October 15, 1998, the Agencies adopted interim Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness (Year 2000 Guidelines) under section 39 of the FDI Act. 63 FR 55480. Elsewhere in this issue of the **Federal Register**, the Agencies are publishing final Year 2000 Guidelines. These Year 2000 Guidelines

will appear as a second appendix to the Agencies' respective procedural rules.

On October 15, 1998, the Agencies also published interim rules that made minor conforming amendments to their procedural rules to incorporate appropriate references to the Year 2000 Guidelines. 63 FR 55486. The Agencies received one comment on the interim rule. The commenter, a banking trade association, supported the interim rule.

The Agencies are now adopting the interim rule as published with two exceptions.

First, the OTS is making a minor, technical change to a reference in its rule.

Second, the OCC's current rules of procedure, set forth at §§ 30.1 through 30.6, differ slightly from those in the interim rule dated October 15, 1998 (63 FR 55486). On September 30, 1999, the OCC published its Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Broker-Dealers (64 FR 52638) (Supplemental Guidelines). The Supplemental Guidelines added a new appendix C to part 30 and made conforming changes to §§ 30.2 and 30.3(a) to incorporate appropriate references to appendix C to part 30. After adoption of this final rule, §§ 30.2 and 30.3(a) will continue to read as amended by the Supplemental Guidelines (that is, these sections will contain references to appendix C to part 30). Otherwise, the OCC adopts the interim rule as it was published.

Effective Date

The Agencies find good cause for issuing this final rule to be effective immediately. *Cf.* 5 U.S.C. 553(d) (good cause exception to the requirement in the Administrative Procedure Act for a 30 day delayed effective date for a final rule); 12 U.S.C. 4802(b)(1) (good cause exception to the requirement in the Riegle Community Development and Regulatory Improvement Act that the Federal banking agencies make rules effective on the first day of a calender quarter which begins on or after the date on which the regulations are published in final form). The Agencies are finalizing, with one technical change, already effective interim rules. The interim rule made only conforming amendments to the Agencies' current rules of procedure to refer to the Year 2000 Guidelines. This final rule imposes no new substantive requirements on insured depository institutions. Therefore, each of the Agencies finds good cause to dispense with the delayed effective date requirements.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603. In issuing the interim rule, the Agencies concluded, for good cause, that they are not required to publish a notice of proposed rulemaking. Accordingly, they issued the interim rule without prior notice and comment to be effective immediately. Since the RFA does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking, the Agencies also conclude that the RFA does not require a regulatory flexibility analysis of this final rule.

Nevertheless, since the final rule imposes no new requirements on insured depository institutions and makes only conforming amendments to the Agencies' current rules of procedure, the Agencies find that the final rule does not have a significant effect on a substantial number of small entities or create any additional burden on small entities under the RFA.

Paperwork Reduction Act

The Agencies have determined that the final rule does not involve a collection of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12866

The OCC and OTS have determined that the final rule is not a significant regulatory action under Executive Order 12866.

OCC and OTS: Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMA), Public Law 104–4, does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 2 U.S.C. 1532. In issuing the interim rule, the Agencies concluded, for good cause, that they are not required to publish a notice of proposed rulemaking. Accordingly, the OCC and OTS conclude that the UMA does not require an unfunded mandates analysis of this final rule.

Nevertheless, since this final rule imposes no new requirements on insured depository institutions and makes only conforming amendments to the Agencies' current rules of procedure, the OCC and OTS find that this final rule will not result in expenditure 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.

List of Subjects

12 CFR Part 30

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 570

Accounting, Administrative practice and procedure, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Savings associations, Safety and soundness.

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 part 30 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 30—SAFETY AND SOUNDNESS STANDARDS

Accordingly, the interim rule amending 12 CFR part 30, which was published at 63 FR 55486 on October 15, 1998, was superseded by an interim rule published at 64 FR 52638 on September 30, 1999.

Dated: October 12, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

For the reasons set out in the joint preamble, the Board amends part 263 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

Accordingly, the interim rule amending 12 CFR part 263, which was published at 63 FR 55486 on October 15, 1998, is adopted as a final rule without change.

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

Dated: October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

For the reasons set out in the joint preamble, the FDIC amends part 364 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

Accordingly, the interim rule amending 12 CFR part 364, which was published at 63 FR 55486 on October 15, 1998, is adopted as a final rule without change.

By Order of the Board of Directors.

Dated at Washington, DC, this 8th Day of November, 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 interim rule amending 12 CFR part 570, which was published at 63 FR 55486 on October 15, 1998, is adopted as a final rule with the following change:

PART 570—SUBMISSION AND REVIEW OF SAFETY AND SOUNDNESS COMPLIANCE PLANS AND ISSUANCE OF ORDERS TO CORRECT SAFETY AND SOUNDNESS DEFICIENCIES

1. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1831p–1.

2. Section 570.1(c) is revised to read as follows:

§ 570.1 Authority, purpose, scope and preservation of existing authority.

* * * * *

(c) *Scope.* This part and the Interagency Guidelines Establishing Safety and Soundness Standards as set forth at Appendix A to this part and the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness as set forth at Appendix B to this part implement the provisions of section 39 of the FDI Act as they apply to savings associations.

* * * * *

Dated: October 15, 1999.

Ellen Seidman,

Director.

[FR Doc. 99–30285 Filed 11–26–99; 8:45 am]

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Federal Register

Vol. 64, No. 228

Monday, November 29, 1999

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The United States Government Manual	**523–5227**
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Electronic and on-line services (voice)	**523–4534**
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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

58755–59106 1
59107–59602 2
59603–60082 3
60083–60332 4
60333–60646 5
60647–61014 8
61015–61198 9
61199–61472 10
61473–61768 12
61769–62088 15
62089–62560 16
62561–62970 17
62971–63170 18
63171–63560 19
63561–65652 22
65653–66094 23
66095–66354 24
66355–66540 26
66541–66708 29

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7245 59103
7246 60083
7247 60085
7248 61473
7249 62561
7250 62563
7251 66081
7252 66083
7253 66085
7254 66087
7255 66093

Executive Orders:
12170 (See Notice of November 5, 1999) 61471
12938 (See Notice of November 10, 1999) 61767
12958 (Amended by EO 13142) 66089
13067 (See Notice of October 29, 1999) 59105
13096 (See Proc. 7247) 60085
13101 (See Proc. 7250) 62563
13141 63169
13142 66089

Administrative Orders:
Memorandums:
October 27, 1999 60647
Notices:
October 29, 1999 59105
November 5, 1999 61471
November 10, 1999 61767
Presidential Determinations:
No. 99–13 of February 4, 1999 (See Presidential Determination No. 2000–5 of October 29, 1999) 60651
No. 2000–2 of October 21, 1999 58755
No. 2000–3 of October 25, 1999 58757
No. 2000–4 of October 27, 1999 60649
No. 2000–5 of October 29, 1999 60651
No. 2000–7 of November 10, 1999 65653

5 CFR

532 ..... 60087, 61769

Proposed Rules:
532 61793
1201 58798
2430 66589

7 CFR

210 61770
220 61770
226 61770
246 61015
301 ..... 60088, 60333, 63171
319 59603
354 62089
759 62565
760 66095
761 ..... 62565, 62566
762 62566
905 ..... 58759, 63160
928 59604
944 58759
959 66411
981 ..... 58763, 59107
1001 61776
1002 61776
1004 61776
1005 61776
1006 61776
1007 61776
1012 61776
1013 61776
1030 61776
1032 61776
1033 61776
1036 61776
1040 61776
1044 61776
1046 61776
1049 61776
1050 61776
1064 61776
1065 61776
1068 61776
1076 61776
1079 61776
1106 61776
1124 61776
1126 ..... 61199, 61776
1131 ..... 61201, 61776
1134 61776
1135 61776
1137 ..... 61199, 61776
1138 ..... 61201, 61776
1139 61776
1439 58766
1477 58766
1922 62566
1941 62566
1943 62566
1945 62566
1951 ..... 62566, 62971
1955 62566
1965 62566

Proposed Rules:
278 59665
770 59131
785 61034
923 60733
1217 59669

1280 ... 65665
1823 ... 59131
1946 ... 61034
1951 ... 61221
1956 ... 59131

9 CFR

52 ... 62569
77 ... 58769
130 ... 61689
304 ... 66541
305 ... 66541
310 ... 66547
327 ... 66541
335 ... 66541
381 ... 66541, 66547
500 ... 66541

Proposed Rules:

130 ... 61689
391 ... 61223

10 CFR

Proposed Rules:

2 ... 59669, 59671
20 ... 65665
50 ... 59671
72 ... 59677
73 ... 59684
150 ... 66115
430 ... 61794, 66306
905 ... 62604

11 CFR

100 ... 59113
110 ... 59606
114 ... 59113
9003 ... 61475
9004 ... 59606, 61475
9007 ... 61777
9008 ... 61475
9032 ... 61475
9033 ... 61475
9034 ... 59606, 61475, 61777
9035 ... 61475, 61777
9036 ... 59607, 61475
9038 ... 61777

Proposed Rules:

100 ... 60360
102 ... 60360
103 ... 60360
104 ... 60360
106 ... 60360
107 ... 60360
109 ... 60360
110 ... 60360
114 ... 60360
116 ... 60360

12 CFR

1 ... 60092
5 ... 60092
7 ... 60092
30 ... 66700, 66706
201 ... 66553
208 ... 66700
211 ... 58780
226 ... 60335
229 ... 59607
263 ... 66706
308 ... 62096
330 ... 62096
343 ... 62103
364 ... 66700, 66706
570 ... 66700, 66706
707 ... 66355
711 ... 66356
712 ... 66360
905 ... 61016
1805 ... 59076

Proposed Rules:

226 ... 60368
611 ... 60370
650 ... 61740
721 ... 66413
917 ... 66115
925 ... 66115
930 ... 66115
940 ... 66115
950 ... 66115
954 ... 66115
955 ... 66115
958 ... 66115
965 ... 66115
966 ... 66115
980 ... 66115
1102 ... 58800

13 CFR

Proposed Rules:

120 ... 60735

14 CFR

21 ... 65655
34 ... 60335
39 ... 59113, 59115, 59116, 59117, 59613, 59614, 60100, 60102, 60336, 61475, 61477, 61478, 61480, 61482, 61484, 61485, 61487, 61491, 61493, 61495, 61782, 61784, 62105, 62106, 62108, 62109, 62570, 62973, 62975, 63171, 63174, 63176, 631778, 63180, 63182, 63184, 63187, 63190, 63561, 63568, 63576, 63584, 63591, 63599, 63607, 63615, 63622, 63630, 63638, 63645, 63653, 63661, 63668, 66554
71 ... 59615, 60337, 60653, 60654, 61785, 63192, 63676, 63677, 63678, 63679, 63680, 65656, 66361, 66365, 66366, 66369, 66370, 66565
73 ... 60339
91 ... 66096
95 ... 66097, 66100
97 ... 61017, 61018, 63192, 63194
139 ... 60068

Proposed Rules:

Ch. I ... 66590
39 ... 59137, 59685, 60134, 60136, 60138, 60383, 60386, 60742, 60743, 60745, 60748, 60750, 61039, 61042, 61044, 61533, 61540, 61547, 61554, 61794, 61796, 61798, 61801, 62129, 62131, 62613, 62615, 62988, 62990, 62991, 62993, 62995, 63753, 63755, 63757, 63760, 63762, 63764, 65666, 66116, 66118, 66119, 66121, 66415, 66417, 66418, 66419, 66422, 66424, 66426
71 ... 59687, 59688, 59689, 59690, 60388, 61225, 61689, 61690, 61803, 61804, 63261, 63765, 63767, 65668, 66123, 66528
91 ... 63140
93 ... 62133
121 ... 63140
125 ... 63140

15 CFR

285 ... 59616
738 ... 60339
740 ... 60339
746 ... 60339
774 ... 66372
801 ... 59119
922 ... 66566

Proposed Rules:

287 ... 59691
922 ... 63262

16 CFR

312 ... 59888
1000 ... 66579
1616 ... 61021

Proposed Rules:

310 ... 66124

17 CFR

5 ... 66373
200 ... 61382, 61408
210 ... 61962
228 ... 61962
229 ... 61408, 61962
230 ... 61382, 61408, 61497, 61962, 62540
232 ... 61408
239 ... 61382, 61408, 61962
240 ... 61382, 61408, 61962, 62540
249 ... 61382, 61962
260 ... 61382, 61962
270 ... 62540
271 ... 59877

Proposed Rules:

1 ... 59694, 66428, 66432
5 ... 66432
31 ... 66432
34 ... 65669
35 ... 65669
230 ... 62548
239 ... 59826
240 ... 59826, 62548
270 ... 59826
274 ... 59826
275 ... 61226
279 ... 61226

18 CFR

11 ... 62572
385 ... 62580

Proposed Rules:

35 ... 60390
141 ... 60140
385 ... 60140

19 CFR

10 ... 61204

Proposed Rules:

12 ... 62618
24 ... 62619
101 ... 61232
141 ... 62135

20 CFR

220 ... 62976
375 ... 66381

Proposed Rules:

219 ... 66433
220 ... 62996
322 ... 62135
718 ... 62997
722 ... 62997
725 ... 62997
726 ... 62997
727 ... 62997

21 CFR

5 ... 59617
74 ... 62582
175 ... 60104
178 ... 62583, 65657, 66103
207 ... 63195
225 ... 63195
310 ... 62110
510 ... 63195
514 ... 63195
515 ... 63195
520 ... 66104, 66382, 66382
558 ... 63195
801 ... 59618
805 ... 66105
884 ... 62977

Proposed Rules:

20 ... 60143
101 ... 62746
120 ... 65669
600 ... 61045
606 ... 61045
607 ... 61045
610 ... 61045
630 ... 61045
640 ... 61045
660 ... 61045
801 ... 59695

24 CFR

570 ... 63680
903 ... 66106
982 ... 59620
990 ... 61516

Proposed Rules:

5 ... 66530
200 ... 66530

25 CFR

Proposed Rules:

504 ... 61234

26 CFR

1 ... 58782, 59139, 60342, 61205, 61498, 61502
301 ... 58782, 61498, 61502, 66580
602 ... 61498

Proposed Rules:

1 ... 59139, 60395, 61236, 63768, 66591
26 ... 62997
301 ... 63768, 66591

27 CFR

Proposed Rules:

9 ... 66433

28 CFR

0 ... 58782
2 ... 59622
16 ... 61786
27 ... 58782
50 ... 59122

Proposed Rules:

16 ... 60753

29 CFR

37 ... 61692
1917 ... 61504

1918 ... 61504
4003 ... 65658
4007 ... 65658, 66383
4011 ... 65658
4041 ... 65658
4041A ... 65658
4043 ... 65658
4044 ... 61787
4050 ... 65658
Proposed Rules:
1401 ... 59697
1910 ... 65768
1926 ... 66595
1952 ... 62138
2590 ... 62054
2700 ... 61236

30 CFR
914 ... 63681
915 ... 66385
920 ... 63684
934 ... 60654
935 ... 63688
948 ... 61506, 61507
Proposed Rules:
70 ... 65671
71 ... 65671
90 ... 65671
938 ... 66595, 66598
946 ... 61805

31 CFR
1 ... 62585, 62586
18 ... 62112
538 ... 58789
550 ... 58789
560 ... 58789
Proposed Rules:
1 ... 62620

32 CFR
199 ... 60671
2001 ... 62113
Proposed Rules:
199 ... 66126
767 ... 63263

33 CFR
100 ... 59623, 66106
117 ... 59123, 59624, 60672, 60673, 60674, 61206, 61207, 61518, 61519, 61520, 61521, 62113, 66107
165 ... 61051, 61209, 62586, 66585
Proposed Rules:
Ch. I ... 63266
110 ... 60399
117 ... 61561
147 ... 66434
165 ... 63267
175 ... 63773

34 CFR
668 ... 58974, 59016, 59060
682 ... 58938, 59016
685 ... 58938, 59016
Proposed Rules:
611 ... 60632

36 CFR
211 ... 60675
Proposed Rules:
5 ... 61563
13 ... 61563
51 ... 63775
251 ... 66342
1190 ... 62248, 62622
1191 ... 62248, 62622

37 CFR
201 ... 66391
202 ... 62977
Proposed Rules:
1 ... 59701
201 ... 59140, 66139

39 CFR
20 ... 60106
Proposed Rules:
111 ... 66143
3001 ... 66436

40 CFR
9 ... 66392
49 ... 65660
51 ... 58792
52 ... 59625, 59629, 59633, 59635, 59638, 59642, 59644, 60109, 60343, 60346, 60678, 60681, 60683, 60687, 60688, 61213, 61217, 61522, 61523, 63206, 63690, 63693, 65660, 66393
62 ... 59648, 60689, 62114, 62117, 62978
63 ... 59650, 63209, 63695, 63702
68 ... 59650
131 ... 61182
180 ... 59652, 60112, 61788, 62588, 62982, 63709, 63711, 63714, 66108
257 ... 66392
261 ... 63209
266 ... 63209
300 ... 60121, 61526, 63720
Proposed Rules:
49 ... 65673
50 ... 63002
51 ... 62144
52 ... 59703, 59704, 59705, 59706, 60400, 60401, 60759, 61046, 61051, 61239, 61572, 63002, 63268, 63271, 65673, 66143, 66441
55 ... 63271
62 ... 59718, 62144, 62145
63 ... 59719, 63779
68 ... 59719
81 ... 60478
82 ... 59141
86 ... 60401
141 ... 59245
142 ... 59245
152 ... 62145
156 ... 62145
180 ... 58792
261 ... 63382
266 ... 63464
300 ... 61051
372 ... 61807
721 ... 63275

41 CFR
101 ... 59591
101-11 ... 60348
101-43 ... 62146
102 ... 59591
102-36 ... 62146

42 CFR
52b ... 63721
61 ... 61218
409 ... 60122
410 ... 59379
411 ... 59379, 60122
413 ... 60122
414 ... 59379
415 ... 59379
420 ... 66396
460 ... 66234
462 ... 66234
466 ... 66234
473 ... 66234
476 ... 66234
485 ... 59379
489 ... 60122
1001 ... 63504, 63518
Proposed Rules:
431 ... 60882
433 ... 60882
435 ... 60882
457 ... 60882

43 CFR
414 ... 58986
Proposed Rules:
1300 ... 61810

44 CFR
64 ... 62594, 62596, 62598
65 ... 60706, 60709
67 ... 60711
Proposed Rules:
67 ... 60759

45 CFR
Proposed Rules:
160 ... 59918
161 ... 59918
162 ... 59918
163 ... 59918
164 ... 59918
303 ... 62054
612 ... 66146
613 ... 66146
2505 ... 66402

46 CFR
10 ... 63213
15 ... 63213
Proposed Rules:
2 ... 62018
30 ... 62018
31 ... 62018
52 ... 62018
61 ... 62018
71 ... 62018
90 ... 62018
91 ... 62018
98 ... 62018
107 ... 62018
110 ... 62018
114 ... 62018
115 ... 62018
125 ... 62018
126 ... 62018
132 ... 62018
133 ... 62018
134 ... 62018
167 ... 62018
169 ... 62018
175 ... 62018
176 ... 62018
188 ... 62018
189 ... 62018
195 ... 62018
199 ... 62018

47 CFR
Ch. 1 ... 61527
0 ... 60122, 60715, 61022
1 ... 59656, 60122, 60715, 62119, 63235
2 ... 60123, 66405
6 ... 63235
7 ... 63235
20 ... 59656, 60126
21 ... 60715, 63727
25 ... 61791
27 ... 60715
52 ... 62983
54 ... 60349, 62120
61 ... 60122
68 ... 60715
69 ... 60122, 60349
73 ... 59124, 59655, 60131, 62123, 63258, 63745
74 ... 63727
76 ... 60131
90 ... 59148, 60123, 60715, 66405
95 ... 59656
101 ... 59663, 63727
Proposed Rules:
Ch. I ... 63277
1 ... 59719
15 ... 62159
18 ... 62159
20 ... 59719
43 ... 59719
61 ... 66442
73 ... 59147, 59148, 59728, 60149, 60150, 60151, 61054, 61239, 63783
90 ... 59148, 60151

48 CFR
201 ... 58908, 63380
203 ... 62984
204 ... 61028
208 ... 61030
209 ... 61028, 62984
213 ... 58908, 63380
215 ... 61031
219 ... 62986, 62987
225 ... 61028, 62984
226 ... 62987
242 ... 61028
247 ... 61028
249 ... 62984
251 ... 61030
1845 ... 62600
1852 ... 62600
Proposed Rules:
203 ... 63002
211 ... 61056
226 ... 63003

49 CFR
171 ... 61219
172 ... 61219
209 ... 62828
230 ... 62828
240 ... 60966
601 ... 61033
Proposed Rules:
Ch. I ... 63279

Ch. II 59046
178 62161
209 59046
552 60556
567 66447
568 66447
571 ....60556, 61810, 62622
585 60556
595 60556
1039 66156
1105 66157
1180 66157

50 CFR

17 ....58910, 63745
20 61532
222 60727
600 60731
622 ....59126, 60132
635 ....58793, 66114
640 59126
648 ....60359, 61220, 66586, 66587
660 ....59129, 62127, 63259
679 ....61966, 63259, 66587

Proposed Rules:

16 59149
17 ....58934, 59729, 62627, 62641, 63004, 66600
25 62163
26 62163
29 62163
216 63783
223 66601
224 ....62627, 66601
622 ....59152, 59153, 60151, 60402, 66449
648 59156
654 59153
660 ....60402, 66158
679 ....58796, 59730, 60157

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 29, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in—
- Michigan et al.; published 10-29-99

AGRICULTURE DEPARTMENT

Acquisition regulations:
- Contracting by negotiation; part 415 reorganization; published 9-30-99

CONSUMER PRODUCT SAFETY COMMISSION

Organization, functions, and authority delegations:
- Directorate for Epidemiology and Directorate for Health Sciences; published 11-29-99

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- California; published 9-30-99
- Connecticut; published 9-28-99
- District of Columbia; published 9-30-99
- Minnesota; published 10-29-99
- New Hampshire; published 9-29-99

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Minnesota; published 10-29-99
- Tennessee; published 9-30-99

FEDERAL DEPOSIT INSURANCE CORPORATION

Federal Deposit Insurance Act:
- Safety and soundness standards; published 11-29-99
- Year 2000 Guidelines; published 11-29-99

FEDERAL RESERVE SYSTEM

Federal Deposit Insurance Act:
- Safety and soundness standards; published 11-29-99
- Year 2000 Guidelines; published 11-29-99

POSTAL RATE COMMISSION

Freedom of Information Act; implementation; published 10-29-99

Privacy Act; implementation; published 10-28-99

TRANSPORTATION DEPARTMENT

Coast Guard

Vessel documentation and measurement:
- Standard measurement system exemption from gross tonnage; published 8-31-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- AlliedSignal, Inc.; published 9-29-99
- Transport category airplanes—
  - Mode ≥C≥ transponders with single Gillham code altitude input; published 11-12-99

TREASURY DEPARTMENT

Comptroller of the Currency

Federal Deposit Insurance Act:
- Safety and soundness standards; published 11-29-99
- Year 2000 Guidelines; published 11-29-99

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:
- Elective entity classification; treatment of changes; published 11-29-99

TREASURY DEPARTMENT

Thrift Supervision Office

Federal Deposit Insurance Act:
- Safety and soundness standards; published 11-29-99
- Year 2000 Guidelines; published 11-29-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:
- Women, infants, and children; special supplemental nutrition program—
  - Local agency expenditure reports; comments due by 12-9-99; published 11-9-99

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Inspection services; fee increase; comments due by 12-10-99; published 11-10-99

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans with Disabilities Act; implementation:
- Accessibility guidelines—
  - Recreation facilities; comments due by 12-8-99; published 8-3-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Environmental statements; notice of intent:
- Western Pacific Region; Exclusive Economic Zone; pelagics fisheries; comments due by 12-6-99; published 10-6-99

Fishery conservation and management:
- West Coast States and Western Pacific fisheries—
  - West coast salmon; comments due by 12-6-99; published 11-19-99
  - Western Pacific Region pelagic species; environmental impact statement; comments due by 12-6-99; published 10-20-99
  - Western Pacific Region pelagics; comments due by 12-6-99; published 11-5-99

EDUCATION DEPARTMENT

Elementary and secondary education:
- Safe and Drug-Free Schools and Communities Act Native Hawaiian Program; comments due by 12-6-99; published 10-6-99

Postsecondary education:
- Teacher Quality Enhancement Grants Program; comments due by 12-6-99; published 11-5-99

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):
- Rate schedules filing—
  - Electric rate schedule sheets; designation procedures; comments due by 12-6-99; published 11-5-99

Practice and procedure:
- FERC Form Nos. 423, 714, and 715; electronic filing; comments due by 12-6-99; published 11-4-99

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Arizona; comments due by 12-8-99; published 11-8-99
- California; comments due by 12-8-99; published 11-9-99
- Michigan; comments due by 12-9-99; published 11-9-99
- North Carolina; comments due by 12-10-99; published 11-10-99
- Oklahoma; comments due by 12-8-99; published 11-8-99
- Tennessee; comments due by 12-6-99; published 11-5-99

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 12-9-99; published 11-9-99

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Florida; comments due by 12-6-99; published 10-27-99
- Illinois; comments due by 12-6-99; published 10-27-99
- Iowa; comments due by 12-6-99; published 10-27-99
- Montana; comments due by 12-6-99; published 10-27-99
- South Dakota; comments due by 12-6-99; published 10-27-99
- Texas; comments due by 12-6-99; published 10-27-99

Regulatory Flexibility Act; review of regulations; comments due by 12-10-99; published 10-14-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Child support enforcement program:

Incentive payments and audit penalties; comments due by 12-7-99; published 10-8-99

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation—

State self-assessment review and report; comments due by 12-7-99; published 10-8-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Flexibility in payment methods for services of hospitals, nursing facilities, and intermediate care facilities for mentally retarded; comments due by 12-6-99; published 10-6-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Vicuna populations in South America; comments due by 12-7-99; published 9-8-99

National Wildlife Refuge System:

Land usage; compatibility policy; comments due by 12-8-99; published 11-16-99

JUSTICE DEPARTMENT

Privacy Act; implementation; comments due by 12-8-99; published 11-8-99

LABOR DEPARTMENT

Employment Standards Administration

Federal Coal Mine Health and Safety Act of 1969, as amended:

Black Lung Benefits Act—

Individual claims by former coal miners and dependents processing and adjudication; regulations clarification and simplification; comments due by 12-7-99; published 10-8-99

MINE SAFETY AND HEALTH FEDERAL REVIEW COMMISSION

Federal Mine Safety and Health Review Commission

Procedural rules; comments due by 12-10-99; published 11-10-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Central Contractor Registration; comments due by 12-6-99; published 10-6-99

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list additions; comments due by 12-6-99; published 9-22-99

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; comments due by 12-6-99; published 11-4-99

POSTAL SERVICE

Domestic Mail Manual:

Nonautomation mail processing instructions and letter tray label revisions; comments due by 12-9-99; published 10-25-99

International Mail Manual:

Priority Mail Global Guaranteed; enhanced expedited service from selected U.S. locations to selected European countries; comments due by 12-6-99; published 11-4-99

SMALL BUSINESS ADMINISTRATION

Business loans:

Certified development companies; areas of operations; comments due by 12-8-99; published 11-8-99

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

New York Harbor, NY; safety zone; comments due by 12-6-99; published 10-6-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Aerospatiale; comments due by 12-9-99; published 11-9-99

Airbus; comments due by 12-6-99; published 11-4-99

Bombardier; comments due by 12-9-99; published 11-9-99

British Aerospace; comments due by 12-8-99; published 11-8-99

CFM International; comments due by 12-6-99; published 10-7-99

Eurocopter Deutschland GmbH; comments due by 12-7-99; published 10-8-99

Fairchild; comments due by 12-6-99; published 10-6-99

Fokker; comments due by 12-8-99; published 11-8-99

General Electric Co.; comments due by 12-6-99; published 10-7-99

International Aero Engines AG; comments due by 12-6-99; published 10-7-99

Pratt & Whitney; comments due by 12-6-99; published 10-7-99

Class E airspace; comments due by 12-6-99; published 10-19-99

Commercial space transportation:

Licensed reentry activities; financial responsibility requirements; comments due by 12-6-99; published 10-6-99

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Buy America requirements:

Microcomputers; permanent waiver; comments due by 12-7-99; published 10-8-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 441/P.L. 106–95

Nursing Relief for Disadvantaged Areas Act of 1999 (Nov. 12, 1999; 113 Stat. 1312)

H.R. 609/P.L. 106–96

To amend the Export Apple and Pear Act to limit the applicability of the Act to apples. (Nov. 12, 1999; 113 Stat. 1321)

H.R. 915/P.L. 106–97

To authorize a cost of living adjustment in the pay of administrative law judges. (Nov. 12, 1999; 113 Stat. 1322)

H.R. 974/P.L. 106–98

District of Columbia College Access Act of 1999 (Nov. 12, 1999; 113 Stat. 1323)

H.R. 2303/P.L. 106–99

History of the House Awareness and Preservation Act (Nov. 12, 1999; 113 Stat. 1330)

H.R. 3122/P.L. 106–100

To permit the enrollment in the House of Representatives Child Care Center of children of Federal employees who are not employees of the legislative branch. (Nov. 12, 1999; 113 Stat. 1332)

H.J. Res. 54/P.L. 106–101

Granting the consent of Congress to the Missouri-Nebraska Boundary Compact. (Nov. 12, 1999; 113 Stat. 1333)

S. 900/P.L. 106–102

Gramm-Leach-Bliley Act (Nov. 12, 1999; 113 Stat. 1338)

H.R. 348/P.L. 106–103

To authorize the construction of a monument to honor those who have served the Nation's civil defense and emergency management programs. (Nov. 13, 1999; 113 Stat. 1482)

H.R. 3061/P.L. 106–104

To amend the Immigration and Nationality Act to extend for an additional 2 years the period for admission of an alien as a nonimmigrant under section 101(a)(15)(S) of such Act, and to authorize appropriations for the refugee assistance program under chapter 2 of title IV of the Immigration and Nationality Act. (Nov. 13, 1999; 113 Stat. 1483)

Last List November 15, 1999

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–038–00003–2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869–038–00098–9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[8] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.