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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV99–916–3 FR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the rules and regulations of the marketing orders (orders) for fresh nectarines and peaches grown in California pertaining to reporting requirements. The orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). Under the orders, authority is provided for the committees to require handlers to file reports on the destinations of their shipments of fresh nectarines and peaches. This rule will require handlers to file such destination reports. Additional and timely information will thus be available to the committees and industry, facilitating improved decision making and program administration with regard to marketing research and development, and promotional activities.

EFFECTIVE DATE: This final rule becomes effective March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the orders' rules and regulations pertaining to reporting requirements under the orders. This rule establishes procedures in the orders' rules and regulations for handlers to file reports on the destinations of their shipments of fresh nectarines and peaches. Under the orders the term ''handler'' is synonymous with the term ''shipper.'' This rule was unanimously recommended by the committees at their meetings on December 2, 1998.

In §§ 916.60 and 917.50 of the orders, authority is provided for the committees to require handlers to file reports with the committees. The information authorized includes, but is not limited to: (1) The name of the shipper and the shipping point; (2) The car or truck license number (or name of the trucker), and identification of the carrier; (3) The date and time of departure; (4) The number and type of containers in the shipment; (5) The quantities shipped, showing separately the variety, grade, and size of the fruit; (6) The destination; and (7) The identification of the inspection certificate or waiver pursuant to which the fruit was handled. Handlers have not been required to report the destinations of their shipments of fresh nectarines and peaches.

The Nectarine Administrative Committee's (NAC) and the Peach Commodity Committee's (PCC) discussions on destination reports were prompted by recommendations of two subcommittees which met prior to the December 2, 1998, committee meetings. At a Domestic Promotion Subcommittee meeting, the merits of destination reports were discussed, among other issues. The subcommittee unanimously recommended adding a requirement to the orders' rules and regulations for destination reports. The subcommittee believed that having information about markets to which nectarines and peaches are shipped will be a valuable marketing tool. The members believed that such information will allow the subcommittee to target markets more effectively for promotion, and permit a more effective analysis of the effectiveness of industry funded media and promotional campaigns. At an International Programs Subcommittee meeting, the merits of destination

reports also were discussed. The members of this subcommittee also believed that such reports will provide invaluable information to assist the NAC and PCC in targeting their promotional activities in the most-promising markets for these two fruits.

The NAC and PCC discussed the subcommittees' recommendations and the merits of destination reporting. Both the NAC and PCC agreed that the establishment of such a report requiring each handler to list the destination of his/her shipments of nectarines and peaches in both domestic and international markets will provide invaluable information and greatly benefit the industries.

With destination information from handlers, the committees will be able to make better-informed decisions about marketing research and development projects conducted, and gauge the success of such activities knowing the volume of fruit shipped to various markets. With this information, the committees will also be able to direct their marketing research and development activities and funds to the most-promising markets, and tailor the activities to meet the needs of the particular markets, focus on the more successful promotional activities, and target markets based on consumption.

Current market analysis tools, such as consumer and retail surveys, provide useful information based on a small group of respondents, but specific shipment and destination information will enable the committees to direct their activities to the most successful markets, and perform a more thorough analysis of the benefits of their promotional activities.

Without exact destination information, the committees do not know precisely the quantities of nectarines and peaches shipped to various markets, and, therefore, may be spending funds on promotional activities not appropriate for the particular market. Experience has shown that certain types of promotion are appropriate for developing markets and other activities are more appropriate when trying to expand markets. With the ability to determine the markets to which nectarines and peaches are not shipped, the committees will have the ability to direct their marketing research and promotion funds to open those markets for future shipments. In addition, such information will permit the committees to constructively evaluate the effectiveness of their marketing promotion and research programs by helping them get a better handle on promotions that have been working and those that have not, and determine the reason(s) for any lack of success. The industries have long recognized the importance of this information in making their promotion activities more effective and in helping to sell more nectarines and peaches. They have tried voluntary reporting, but this has not worked.

The shipping season for nectarines begins April 1 and ends on October 31 of each year, and the shipping season for peaches begins on April 1 and ends on November 23 of each year. The destination report will be required from all handlers by the fifteenth of the month following the month in which the shipments were made. Handlers will be required to report the number of packages of peaches and nectarines shipped to each destination, and indicate whether the fruit were white-fleshed or yellow-fleshed, and whether the fruit were ''CA Utility'' quality. Destination information for domestic market shipments will include the city and state, and zip code, if known. Destination information for international market shipments will include the country to which shipped.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

Based upon committees' staff data, it is estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. If the average handler price received were $9.00 per box or box equivalent of nectarines or peaches, a handler would have to ship at least 555,000 boxes to have annual receipts of $5,000,000. Less than 20 handlers ship more than 555,000 boxes of nectarines and/or peaches. Small handlers would, therefore, represent approximately 94 percent of the handlers within the industry. In addition, there are approximately 400 producers who could be defined as other than small entities. If the average producer price received were $6.00 per box or box equivalent for nectarines and $5.65 per box or box equivalent for peaches, producers would have to produce approximately 84,000 boxes or box equivalents of nectarines and approximately 89,000 boxes or box equivalents of peaches to have annual receipts of $500,000. More than 1,400 producers produce less than 84,000 boxes of nectarines or 89,000 boxes of peaches. Therefore, small producer entities would represent approximately 78 percent of the producers within the industry. For these reasons, a majority of the handlers and producers may be classified as small entities.

This final rule revises §§ 916.160 and 917.178 of the orders' administrative rules and regulations to require handlers to file destination reports on a monthly basis during the shipping season by adding a new paragraph (c) to each section. The information obtained from such reports will improve decision making and program administration with regard to marketing research and development activities undertaken to expand shipments of fresh nectarines and peaches domestically and in foreign markets.

Two comments were received as a result of a proposed rule published in the **Federal Register** on June 7, 1999 (64 FR 30252). The commenters raised issues concerning both the initial regulatory impact analysis and the information collection requirements, as proposed. These comments are discussed more fully later in this document.

Requiring handlers to file this report on a monthly basis will impose an additional reporting burden on both small and large handlers. The report is estimated to take three-quarters of an hour to complete. It is further estimated that handlers will file an average of four destination reports per year, creating an estimated total annual burden of three hours per handler. The total industry annual burden is, therefore, estimated at approximately 900 hours per year for nectarine and peach shipments each.

Although this action creates an additional burden on handlers of fresh nectarines and peaches, the benefits of

collecting additional and timely information regarding destinations are anticipated to outweigh the estimated increased reporting burden. The committees will have detailed information about markets to which fruit is sent; and, therefore, will be able to make better-informed decisions about marketing research and promotion fund expenditures and activities undertaken. Such reports and forms will be filed by all handlers, regardless of size; and thus, the increased burden will be equitably distributed to all handlers. Finally, as with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0072 for documents required under the nectarine marketing order, and OMB No. 0581–0080 for documents required under the peach marketing order. The estimated burden has been revised based upon a comment received. The revised estimated total annual burden for nectarine and peach handlers is reduced from 1,200 hours to 900 hours. As previously stated, this comment is discussed more fully later in the document. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

An alternative to this action would be to continue operations without required destination reporting. Most committee members agreed that the value of having destination information outweighed the burden on handlers of filing such reports in terms of targeting marketing and promotion funds and activities. In recent years, the committees have decided to keep their marketing and promotion expenses relatively constant. Because of this, the committee members felt that greater emphasis should be placed on using the funds to their greatest advantage.

All committee members agreed that continuing to spend promotion funds, without the information to be provided by destination reports, was not in the best interest of the industries. Further, as the percentage of promotion funds either decreases or remains constant in relationship to total committee funds, and as shipments of nectarines and peaches increase over time, detailed information on the destinations of nectarine and peach shipments will be valuable in targeting promising markets. The committee members also noted that voluntary destination reports have been requested in the past, but very few handlers provided the information. The committees, therefore, voted unanimously at all the meetings to require destination reports from nectarine and peach handlers.

During the deliberations, some committee members indicated their concern that destination information will not be kept confidential by committee staff. The Act states, in part, in § 608d(2), that ''all information furnished to or acquired by the Secretary of Agriculture pursuant to this section, as well as information for marketing order programs that is categorized as trade secrets and commercial or financial information * * *, shall be kept confidential by all officers and employees of the Department of Agriculture.'' In addition, §§ 916.60(d) and 917.50(d) of the orders also require committee employees to maintain confidentiality of all reports and records submitted by handlers. Therefore, each handler is generally protected against disclosure of any confidential information the handler furnishes to the committees. Further, under the Act, persons found guilty of revealing confidential information could be subject to a fine, imprisonment, or both, or could be removed from office.

The committee meetings were widely publicized throughout the tree fruit industry and all interested persons were invited to express their views and participate in committee deliberations on all issues. Like all committee meetings, the December 2, 1998, meetings were public meetings, and all entities, large and small, were able to express their views on this issue. The subcommittee meetings were also public meetings at which large and small entities were invited to express their views and participate in all deliberations. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on June 7, 1999 (64 FR 30252). The proposal also announced AMS's intent to request a revision to the currently approved information collection requirements issued under the orders. Copies of the proposal were also mailed to handlers on June 9, 1999, by the California Tree Fruit Agreement staff, who conduct day-to-day business operations for the committees. Finally, the proposed rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period, ending August 6, 1999, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. One commenter, a handler, made two points concerning the proposed rule. First, the commenter was of the view that the proposed information to be collected was not necessary to ensure the high quality of nectarines and peaches and adequate returns to producers. This commenter went on to state that the marketing orders have never been concerned with the returns to the producer, only moving the crop at whatever price necessary to move it, in addition to collecting the mandatory assessment. The Department disagrees with the commenter's views. The marketing orders were issued consistent with the provisions of the Act. The regulations issued in this rulemaking are authorized under the orders and their purpose is to provide additional and timely information to the committees and the industries, thereby facilitating improved decision making and program administration with regard to marketing research and development, and promotional activities. Accordingly, the Department believes that the information required by the regulations is needed to accomplish their stated objectives.

With regard to the commenter's second point, the commenter stated that the number of producers that are small entities should be based on an average of boxes shipped over 3–5 years. The regulatory flexibility analysis discusses and sets forth the identification and estimates of small entities under criteria established by the Small Business Administration. The information is based on the most current and accurate information available, and, as such, the Department believes is best suited to accomplish the objectives of the Regulatory Flexibility Act and this program. The commenter went on to state that there should be a minimum of perhaps 50,000 shipped boxes before a destination report should be required of producers who are also handlers. While minimum exemptions are and have been used as an alternative in a variety of regulatory schemes, they may not be appropriate in all programs. For example, with regard to this program, a second commenter noted that given the structure of the industries, it was important that all handlers report their destinations and that the report be compiled collectively to measure trends and to analyze marketing effectiveness. Accordingly, given the purpose and nature of these regulations, the

Department does not believe that a minimum exemption is appropriate. Further, based upon information in another comment received concerning the proposed rule, the committees have revised the detail in the forms to be used to further minimize the burden.

The second commenter, the manager of the California Tree Fruit Agreement, the body which manages the PCC and NAC, supported the proposed rule, stating that destination reports will help in providing information for the committees to make long-term decisions designed to improve the marketing of nectarines and peaches grown in California. This commenter noted, as well, the importance of requiring all handlers to file destination reports. This commenter also discussed requirements for similar information in other programs, the confidentiality of the information submitted, and the need to finalize this action as soon as possible.

The comment went on to state that the NAC and the PCC have revised the destination reports since the proposed rule was issued to make it more simple for handlers to complete. For example, requested information concerning grade and size has been removed, and zip code information would be required only if known by the handler. Reporting ''CA Utility'' quality fruit also would be required. It was suggested that the computer technology that is being used in the industries may also assist handlers in completing the destination report in less time that it would take to complete the report by hand.

The Department has revised its estimate of the time it would take to complete the destination report from one hour to three-quarters of an hour. The revised estimated total annual burden to nectarine and peach handlers is reduced from 1,200 hours to 900 hours.

Accordingly, appropriate changes have been made to the rule as proposed, based on this second comment. Finally, this rule will be effective for the beginning of the 2000 shipping season.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. In § 916.160, paragraph (c) is added to read as follows:

§ 916.160 Reporting procedure.

* * * * *

(c) *Destination report.* Each shipper who ships nectarines shall furnish to the manager of the Nectarine Administrative Committee a report of the number of packages of nectarines shipped to each destination, and whether the nectarines were yellow-fleshed or white-fleshed, and whether the nectarines were ''CA Utility'' quality. The destination is defined as nectarine shipments to any domestic or international market. Destination information for domestic market shipments shall include city and state, and zip code, if known. Destination information for international market shipments shall include the country to which shipped. This report shall be submitted by the fifteenth of each month following the month in which nectarine shipments were made.

PART 917—PEACHES GROWN IN CALIFORNIA

3. In § 917.178, paragraph (c) is added to read as follows:

§ 917.178 Peaches.

* * * * *

(c) *Destination report.* Each shipper who ships peaches shall furnish to the manager of the Control Committee a report of the number of packages of peaches shipped to each destination, and whether the peaches shipped were yellow-fleshed or white-fleshed, and whether the peaches were ''CA Utility'' quality. The destination is defined as peach shipments to any domestic or international market. Destination information for domestic market shipments shall include the city and state, and zip code, if known. Destination information for international market shipments shall include the country to which shipped. This report shall be submitted by the fifteenth of each month following the month in which peach shipments were made.

Dated: February 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2978 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–00–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2000–2001 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year, which begins on June 1, 2000. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,211,207 pounds and 65 percent, respectively, and for Class 3 (Native) spearmint oil of 1,033,648 pounds and 50 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing

Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 2000–2001 marketing year, which begins on June 1, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the authority in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 2000–2001 marketing year at its October 6, 1999, meeting. With 7 members in favor and 1 member opposed, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,211,207 pounds and 65 percent, respectively. The member in opposition favored the establishment of a lower salable quantity and allotment percentage. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,033,648 pounds and 50 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year, which begins on June 1, 2000. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order currently accounts for approximately 63 percent of the annual U.S. production of Scotch spearmint oil and approximately 93 percent of the annual U.S. production of Native spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 72 percent was produced in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. The Far West's market share as a percent of total world sales fell to a low of about 38 percent during the 1994–95 season. Beginning with the 1996–97 marketing year, the Committee has employed a marketing strategy for Scotch spearmint oil that is intended to foster market stability and that would retain and expand market share. Using this approach, the Far West's market share has increased to approximately 43 percent of total world sales. The Committee's current recommendation for Scotch spearmint oil could maintain market stability by avoiding extreme fluctuations in supplies and prices, and would help the industry remain competitive on an international level by hopefully regaining more of the Far West's historical share of the global market.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have generally stabilized between $10.50 and $11.50 per pound. During the past year, however, the price of Native spearmint oil has decreased about $2.00 per pound despite the Committee's efforts to balance available supplies with the demand for the oil. Based on comments made at the Committee's meeting, factors contributing to the low price could include the relatively poor returns being realized from other essential oils, as well as the overall weak farm situation.

With approximately 90 percent of the U.S. production located in the Far West, and with nearly 80 percent of total world sales originating in the Far West, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand.

The salable quantity and allotment percentage for each class of spearmint oil for the 2000–2001 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June l, 2000—869,206 pounds. This figure is derived by subtracting the estimated 1999–2000 marketing year trade demand of 887,500 pounds from the revised 1999–2000 marketing year total available supply of 1,756,706 pounds.

(B) Estimated global sales for the 1999–2000 marketing year—2,082,500 pounds. This figure is based on preliminary information the Committee has compiled.

(C) Estimated Far West sales for the 1999–2000 marketing year—900,000 pounds.

(D) Approximate Far West percentage of estimated total world sales in 1999–2000—43 percent. This is down from the 1980 level of approximately 72 percent, but up from the low of approximately 38 percent during the 1994/95 marketing year.

(E) Total estimated allotment base for the 2000–2001 marketing year—1,863,396 pounds. This figure represents a one percent increase over the revised 1999–2000 allotment base.

(F) Recommended 2000–2001 allotment percentage—65 percent. This figure is based upon recommendations made at the October 6, 1999, meeting, as well as at the five Scotch spearmint oil production area meetings held during September 1999.

(G) The Committee's computed 2000–2001 salable quantity—1,211,207 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2000–2001 marketing year—2,080,413 pounds. This figure is derived by adding the computed salable quantity to the estimated June 1, 2000, carry-in volume, and represents the total amount of Scotch spearmint oil that could be available to the market during the 2000–2001 marketing year.

(I) Estimated trade demand for Far West Scotch spearmint oil during the 2000–2001 marketing year—887,500 pounds. This figure is based upon estimates provided to the Committee by buyers of spearmint oil.

(J) Estimated carry-out on May 31, 2001—1,192,913 pounds. This figure is the difference between the 2000–2001 estimated trade demand and the 2000–2001 estimated available supply.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2000—64,602 pounds. This figure is the difference between the estimated 1999–2000 marketing year trade demand of 1,168,474 pounds and the revised 1999–2000 marketing year total available supply of 1,233,076 pounds.

(B) Estimated trade demand (domestic and export) for the 2000–2001 marketing year—1,170,974 pounds. This figure is based on the average of the estimates provided at the four production area meetings held in September 1999.

(C) Salable quantity required from the year 2000 production—1,106,372 pounds. This figure is the difference between the estimated 2000–2001 marketing year trade demand and the estimated carry-in on June 1, 2000.

(D) Total estimated allotment base for the 2000–2001 marketing year—2,067,296 pounds. This figure represents a one percent increase over the revised 1999–2000 allotment base.

(E) Computed allotment percentage—53.5 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—50 percent. This is the Committee's recommendation based on the computed allotment percentage and takes into account the recent sharp decline in the Native spearmint oil price.

(G) The Committee's recommended salable quantity—1,033,648 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

The salable quantity is the total quantity of each class of spearmint oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch spearmint oil salable quantity of 1,211,207 pounds and allotment percentage of 65 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Committee's recommended Native spearmint oil salable quantity of 1,106,372 pounds and allotment percentage of 50 percent are based on the anticipated supply and trade demand during the 2000–2001 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2000–2001 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this final rule, the Committee's marketing policy statement for the 2000–2001 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 2000–2001 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages allows for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the order, and approximately 119 producers of Class 1 (Scotch) spearmint oil and approximately 105 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates

that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms fall into the SBA category of large businesses.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year. The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51, and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have generally stabilized between $10.50 and $11.50 per pound. During the past year, however, the price of Native spearmint oil has decreased about $2.00 per pound despite the Committee's efforts to balance available supplies with the demand for the oil. Based on comments made at the Committee's meeting, factors contributing to the low price could include the relatively poor returns being realized from other essential oils as well as the overall weak farm situation.

With approximately 90 percent of the U.S. production located in the Far West, and with nearly 80 percent of total world sales originating in the Far West, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand.

Alternatives to this rule included not regulating the handling of spearmint oil during the 2000–2001 marketing year, and recommending either higher or lower levels for the salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of over a million pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended goals of market and price stability, with market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0065. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Like all Committee meetings, the October 6, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons were also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule was published in the **Federal Register** (64 FR 238) on December 13, 1999. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. A copy of the proposed rule was faxed and mailed to the Committee office, which in turn notified Committee members and spearmint oil producers and handlers of the proposed action. In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. A copy of the proposal was also

made available on the Internet by the U.S. Government Printing Office. No comments were received. Accordingly, no changes are made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.219 is added to read as follows:

[Note: This section will not appear in the Code of Federal Regulations.]

§ 985.219 Salable quantities and allotment percentages—2000–2001 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2000, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,211,207 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,033,648 pounds and an allotment percentage of 50 percent.

Dated: February 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2979 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 1

[Docket No. 98–043–2]

Field Study; Definition

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare regulations by clarifying the definition of the term *field study.* We will clarify that a field study cannot involve an invasive procedure, harm the animals under study, or materially alter the behavior of the animals under study. As worded prior to this final rule, the definition of *field study* could be interpreted to mean that a field study may include one of these situations. This action will help ensure the proper use and care of animals used in field studies.

EFFECTIVE DATE: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1228; (301) 734–7586.

SUPPLEMENTARY INFORMATION: The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers.

The regulations established under the Act are contained in title 9 of the Code of Federal Regulations, chapter I, subchapter A, parts 1, 2, and 3. Part 1 defines various terms used in parts 2 and 3.

As defined in § 1.1 of the regulations prior to this final rule, *field study* meant any study that is ''conducted on free-living wild animals in their natural habitat, which does not involve an invasive procedure, and which does not harm or materially alter the behavior of the animals under study.''

We have always intended that field studies not include any invasive procedures, harm the animals under study, or materially alter the behavior of the animals under study. However, we were concerned that the definition, as worded above, could be interpreted to mean that a field study could include any one of these situations.

On July 31, 1998, we published in the **Federal Register** (63 FR 40844–40845, Docket No. 98–043–1) a proposal to amend the definition of *field study* in § 1.1 of the regulations by defining *field study* as any study conducted on free-living wild animals in their natural habitat. We also proposed to add the provision that the term *field study* excludes any study that involves an invasive procedure *or* has the potential to harm or materially alter the behavior of the animals under study. This proposed action was based on the need to ensure that studies conducted in free-living wild animals in their natural habitat are correctly classified as field studies based on the definition of *field study.*

We solicited comments concerning our proposal for 60 days ending September 29, 1998. We received seven comments. They were from universities; animal welfare organizations; an association representing birds; an association representing fish, reptiles, and amphibians; and an association representing zoos and aquariums. Two commenters supported the proposal as written. However, one of these commenters and the remaining commenters had concerns that are discussed below.

One commenter stated that the previous definition of *field study* was perfectly clear and unambiguous and did not need to be amended. In addition, two commenters stated that the proposed change in the definition of *field study* would exclude all projects that involve invasive procedures. One commenter requested that we delay the change of the definition. Two commenters stated that any study has the potential to harm or materially alter the behavior of the animals under study; therefore, no study could be classified as a field study.

We do not believe that the previous definition was clear to everyone. For instance, two commenters stated that the proposed change in the definition of *field study* would exclude all projects that involve invasive procedures. However, the previous definition of *field study* always excluded studies that involved invasive procedures, harmed the animals under study, or materially altered the behavior of the animals under study. In addition, in the past, some entities interpreted the definition to mean that a *field study* may include any one of these situations as long as it did not include all of them. In our proposed definition of *field study,* we clarified that a study that includes any one of the situations could not be considered a field study.

As to the use of the word potential, we agree that it is unnecessary; therefore, we are removing the word

potential from the definition of *field study* in this final rule.

One commenter stated that the definition is internally inconsistent. The commenter stated that if a field study is *any* study conducted on free-living wild animals in their natural habitat (emphasis added), then the second part of our definition, which excludes a subset of those studies (those that involve invasive procedures or have the potential to harm or materially alter the behavior of an animal), does not make sense.

This is a question of sentence structure, which we have addressed in this final rule by changing the word ''any'' in the first sentence to ''an'' and beginning the second sentence with ''However,''. We believe that this change solves the sentence structure problem.

One commenter stated that the words ''harm,'' ''invasive,'' and ''materially alter'' should be defined or else the determination of whether a study should be classified as a field study will be left to the discretion of the Institutional Animal Care and Use Committee (IACUC) at different facilities. One commenter stated that the Animal and Plant Health Inspection Service (APHIS) should provide definitions for invasive or noninvasive, and one commenter stated that APHIS should provide guidelines or regulations for defining invasive procedure and standard animal husbandry procedures. In addition, one commenter stated that APHIS should issue guidelines or a policy to state what the Agency classifies as a field study.

We do not believe that the terms ''harm,'' ''invasive,'' and ''materially alter'' need to be defined. However, we are considering the development of a policy statement that would provide examples of what APHIS considers invasive or noninvasive procedures. We do not believe that guidelines or regulations for defining standard animal husbandry procedures are necessary. Standard animal husbandry procedures are procedures that are necessary for the health and maintenance of animals on a premises.

One commenter stated that the proposed definition of field study obscures rather than clarifies the intent of field studies. This commenter stated that restriction of the term *field study* to exclude invasive procedures does not clarify the definition. This commenter stated that field studies have no inherent implication of invasiveness and should retain the common and professional meaning of ''the study of organisms in the field,'' and after classification as a field study, the study should then be qualified as invasive or noninvasive.

The term *field study* has always excluded any study that involved an invasive procedure; therefore, we have not altered the intent of the definition. In order to be absolutely clear as to what constitutes a field study, the definition of *field study* had to provide the situations that would exclude a study from being considered a field study under the AWA regulations.

One commenter requested clarification that our proposal would not make changes in the administration of the AWA regulations by APHIS and IACUC's and that it would not prohibit or restrict field studies or impose additional requirements on researchers.

We only clarified the definition of field study by removing the word ''and'' and any ambiguity created by the word ''and.'' We did not make substantive changes, prohibit or restrict field studies, or impose additional requirements on researchers.

One commenter stated that the composition of the members of the IACUC can vary greatly and the expertise of the membership may not represent all disciplines that are subject to review. This commenter further stated that the IACUC may not have members experienced in the activities commonly conducted in field studies or experience in performing certain procedures under field conditions. Another commenter stated that most IACUC's do not include field researchers who are able to appreciate the unique conditions of field research. One commenter stated that a growing number of investigators, institutions, and granting agencies require any research use of animals in the field or laboratory to be reviewed by their IACUC, and self-determination by the investigator does not protect him or her or the institution, nor does it provide for consistent peer-reviewed determination of invasive procedures.

Comments regarding the membership and function of IACUC's are beyond the scope of this rule; however, in accordance with § 2.31(a) of the regulations, the Chief Executive Officer of the research facility is responsible for appointing the members of the IACUC. Members of the IACUC are required to have the experience and expertise to assess the research facility's animal programs, facilities, and procedures, including the review of all proposed and ongoing research projects.

The principal investigator is responsible for determining whether a study is a field study. If the principal investigator reviews a field study protocol and has questions regarding whether a procedure is invasive or noninvasive, the investigator can consult with the IACUC of the facility. In addition, in accordance with the regulations in § 2.31(c)(1), at least once every 6 months the IACUC must review the research facility's program for the humane care and use of animals by using the AWA regulations as a basis for evaluation. Therefore, if a study is misclassified as a field study, the IACUC will have the opportunity to take action to reclassify the study.

One commenter stated that there are studies that involve implantation of transponders or radiotransmitters and procedures, such as marking the animals with minor clipping or branding, that could technically be considered invasive procedures and are not conducted under sterile conditions. The commenter further stated that trauma to subjects is minimized by reducing the handling time.

An invasive procedure is typically one in which the living animal is entered by either perforation or incision in a manner that could cause more than short-lived pain or distress and may materially alter the behavior of the animal for more than a short period of time. For instance, opening the body cavity of an animal would be considered invasive and could cause the animal to materially alter its behavior until completely healed from the surgery. However, implantations of microchips and transponders may not be invasive depending on the site and method of implantation.

One commenter asked if a facility that is currently licensed as an exhibitor under the AWA would have to register as a research facility if an employee is approved to initiate a noninvasive research project in the field. The commenter stated that it was unclear when a research project is considered a regulated research project.

If the research project meets the definition of *field study,* the research project would not fall under the AWA regulations. However, if the research project does not meet the definition of *field study* (*i.e.,* includes an invasive procedure, harms, or materially alters the behavior of the animals) the research project would need to be regulated under the AWA, and the facility would need to be registered as a research facility.

One commenter stated that he could not locate the statutory authority given to the U.S. Department of Agriculture (USDA) over animal care in the wild, whether or not the animals are involved in research. The commenter stated that the AWA assigns APHIS authority over specific warm-blooded animals on

public display or intended for use in research facilities (7 U.S.C. 2131). The commenter added that it is not clear how USDA has authority if the noninvasive research does not involve animals or activities that are in interstate or foreign commerce or does not substantially affect such commerce or its free flow as provided in the AWA (7 U.S.C. 2131).

The purpose of defining the term *field study* in our regulations is to exclude from the regulations those activities that meet the definition. Thus, if a study is conducted on free-living wild animals in their natural habitat and the study does not involve an invasive procedure, does not harm the animals under study, and does not materially alter the behavior of the animals under study, then that activity is not regulated.

The AWA defines *animal* as any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or such other warm-blooded animal as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet. This definition does not exclude animals in the wild. If a research facility conducts a study on animals in the wild that does not meet the criteria for a field study, then that activity would be regulated. The AWA defines *research facility* as any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments and that: (1) Purchases or transports live animals in commerce; or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments. * * *''

One commenter stated that researchers appear to be circumventing the AWA by claiming that trap tests performed on wildlife are field studies. Trapping, including the testing of traps, is not regulated by the AWA.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

This final rule will clarify that a *field study* cannot include an invasive procedure, harm the animals under study, or materially alter the behavior of the animals under study.

We have always intended that field studies not include any invasive procedures, harm the animals under study, or materially alter the behavior of the animals under study. This rule makes no substantive changes to the definition. By clarifying the definition of *field study,* this final rule will help ensure that studies that should be covered under the Animal Welfare regulations are covered.

The only entities that will be affected by this rule will be entities that perform studies conducted on free-living wild animals in their natural habitat. We estimate that at least 50 entities may be affected by this final rule. These entities may be considered small and large entities by Small Business Administration standards, but this final rule will only affect a small portion of the entities' activities. As we are not proposing a substantive change in the definition, the effect on these entities will not be significant.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we are amending 9 CFR part 1 as follows:

PART 1—DEFINITION OF TERMS

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

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

2. In § 1.1, the definition of *field study* is revised to read as follows:

§ 1.1 Definitions.

* * * * *

Field study means a study conducted on free-living wild animals in their natural habitat. However, this term excludes any study that involves an invasive procedure, harms, or materially alters the behavior of an animal under study.

* * * * *

Done in Washington, DC, this 3rd day of February 2000.

Richard L. Dunkle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–2922 Filed 2–8–00; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 708

RIN 1901–AA78

Criteria and Procedures for DOE Contractor Employee Protection Program

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) adopts, with minor changes, an interim final rule published on March 15, 1999, to amend the DOE contractor employee protection program (''whistleblower'') regulations.

EFFECTIVE DATE: This final rule is effective on March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, or Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585–0107; telephone: 202–426–1449; e-mail: roger.klurfeld@hq.doe.gov, thomas.mann@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 15, 1999, DOE published an interim final rule in the **Federal Register** (64 FR 12862) that comprehensively revised the regulations for the DOE contractor employee protection program, which are codified

at 10 CFR part 708. DOE became aware during the comment period on the interim final rule that three provisions in the original Part 708 had been inadvertently omitted from the interim final rule. DOE published an amendment to the interim final rule on July 12, 1999 (64 FR 37396) to correct the omission.

DOE provided a 60-day public comment period for the interim final rule published on March 15, 1999. DOE did not invite public comments on the July 12, 1999, amendment to the interim final rule because those changes were procedural and DOE determined that no purpose would be served by inviting comments.

Section 3164 of the National Defense Authorization Act for Fiscal Year 2000 directs DOE to establish a whistleblower protection program for covered individuals (DOE and DOE contractor employees engaged in the defense activities of the Department) who disclose to certain Governmental (including certain Congressional) personnel ''classified or other information'' that they reasonably believe provides evidence of violations of law, gross mismanagement, a gross waste of funds or abuse of authority, or a false statement to Congress on an issue of material fact. DOE is aware of the new statutory requirement, and we are working separately on the implementation of the program mandated in section 3164. We are evaluating its effect, if any, on the DOE contractor employee protection program regulations.

II. Summary and Response to Comments on the Interim Final Rule

DOE received written comments from five interested organizations and individuals on the interim final amendments to the DOE contractor employee protection program regulations. This section of the Supplementary Information summarizes the issues raised in the comments and gives DOE's response, as follows:

Comment: Three different commenters expressed concern about the definition of the term ''contractor'' in § 708.2, which was changed in the interim final rule to extend protection to certain employees who do not work at DOE sites. Under the old rule, an employee eligible for protection under this rule must have been employed by a contractor performing work on sites that DOE owns or leases. The new language covers employees of contractors performing work ''directly related to activities'' at DOE-owned or DOE-leased sites, even if the contractor is located, or the work is performed, off-site. Two of the comments express the concern that the phrase directly related to activities does not draw a bright line between those employees who will now be protected by these regulations and those who will not, and that the definition of contractor will be difficult to apply. The third comment challenges the decision to expand the scope of coverage, arguing that off-site coverage will be ''difficult to manage,'' will drive away potential bidders for DOE contracts, thus raising the costs of procurement, and is unnecessary because ''other laws adequately protect employees of commercial entities.''

Response: We have decided that this language should remain unchanged from the interim final rule. As with any rule, determining who is and who is not covered by Part 708 will sometimes require interpretation. Even the previous formulation, though it appeared to present more of a bright line distinction, was subject to interpretation. *See C. Lawrence Cornett,* 26 CCH Fed. Energy Guidelines ¶87,504 (1996); *META, Inc.,* 26 CCH Fed. Energy Guidelines ¶87,501 (1996) (these cases are also available on the Office of Hearings and Appeals Internet web site, http://www.oha.doe.gov). More important, the definition of contractor in the interim final rule will cover the employees we intend to protect, *i.e.* those performing work that promotes the mission of the Department of Energy. Clearly, some interpretation through case law will be needed as we face some particular factual circumstances, but we believe that the rule is adequately clear as it applies to most cases.

To furnish additional guidance to the DOE contractor community, without considering any specific case, examples of contractor employees we intend to cover by this rule include contractor employees engaged in defense-related industrial activities that are central to the DOE's mission, such as workers processing or transporting nuclear materials, or workers involved in the preparation of environmental assessments of proposed actions involving radioactive waste or mixed waste, wherever they work, on-site or off-site. By contrast, part 708 is not intended to cover contractor employees delivering office supplies or servicing vending machines, regardless of where they are located, because their work is ancillary to, rather than central to DOE's mission. In addition, this rule is meant to cover employees who work on the Department's mission under the terms of a procurement ''contract,'' but not employees who work under the terms of a ''grant'' or a ''cooperative agreement,'' as those terms are defined in the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*, or under the terms of a ''cooperative research and development agreement'' (CRADA), as that term is defined by the Stevenson-Wydler Technology Innovation Act, 15 U.S.C. 3710a(d)(1).

Comment: One commenter maintains that DOE has created a ''camouflaged loophole'' by the interim final rule's use of the word ''retaliation,'' instead of ''discrimination,'' to define actions prohibited by contractors against employees who engaged in conduct protected by part 708. According to this commenter, retaliation ''is a legal term of art requiring animus or hostility,'' so that a claim of retaliation can be defeated by a showing that the contractor officials had no ''hard feelings'' against a whistleblower.

Response: A reading of the definition of retaliation in § 708.2 shows that this commenter has misinterpreted the significance of the interim final rule's use of a different generic term to describe the types of conduct prohibited by this rule. The term was changed as part of DOE's effort to rewrite Part 708 in ''plain language.'' The kinds of conduct prohibited by the definition of retaliation in the interim final rule are the same as those previously prohibited in the definition of discrimination under the old rule. Moreover, the term retaliation more precisely describes the nature of the conduct prohibited under Part 708, and avoids possible confusion with ''discrimination'' as that term is used in Title VII of the Civil Rights Act of 1964 and other Federal anti-discrimination statutes, as EEO violations are not covered by the DOE contractor employee protection program.

Court decisions under the Whistleblower Protection Act of 1989, Pub. L. 101–12, 103 Stat. 16 (1989) (codified as amended in scattered sections of 5 U.S.C.), do consider ''the existence and strength of any motive to retaliate on the part of the agency officials who were involved in the decision'' to take action against a Federal employee covered by that whistleblower protection program as one of several factors to determine whether an employer has met its burden of proving by clear and convincing evidence that it would have taken the same action absent the protected conduct. *Cadell* v. *Dep't of Justice,* 66 M.S.P.R. 347, 351 (1995), aff'd 96 F.3d 1367, 1370 (Fed. Cir. 1996); *Sanders* v. *Dep't of the Army,* 64 M.S.P.R. 136 (1994), aff'd 50 F.3d 22 (Fed. Cir. 1995). Evidence of an employer's motive is therefore relevant in a whistleblower

case, but contrary to the commenter's assertion, evidence of a benign motive in and of itself will not meet the contractor's burden under Part 708.

Comment: Also concerning the definition of retaliation in ? 708.2, this same commenter asserted that the use of the phrase ''action with respect to the employee's compensation, terms, conditions or privileges of employment'' in that provision does not include common forms of harassment such as retaliatory investigations, removal of support staff, removal from a case or assignment, or tampering with (denying, suspending or revoking) a security clearance. The commenter also asserts that the rule should be changed to explicitly cover psychiatric examinations, and security clearances, as well as ''any other significant change in duties, responsibilities or working conditions.''

Response: The other types of adverse actions mentioned in the comment are generally meant to be covered by the broad definition of retaliation used in § 708.2. The definition enumerates examples of prohibited employment practices, but the list does not purport to be exclusive. For example, OHA decisions have recognized that the removal of the complainant from one job assignment and his reassignment to another job constituted retaliation, even though removal from an assignment is not specifically mentioned in § 708.2. *Ronald Sorri,* 23 CCH Fed. Energy Guidelines ¶87,503 at 89,010 (1993). It is not necessary to rewrite the definition of retaliation in order to give DOE the necessary flexibility to carry out the policy objectives of Part 708.

Actions taken regarding ''security clearances,'' *i.e.,* resolving questions about the eligibility of an individual for DOE access authorization, are governed by another regulation, 10 CFR part 710, subpart A. The preamble to the interim final rule explains that the resolution of national security concerns about an employee's eligibility for a DOE security clearance under part 710 takes precedence over individual retaliation claims under part 708. See 64 FR 12862 at 12867. However, the preamble recognizes that retaliation ''could include actions by a contractor that cause the questioning, suspension, or termination of a security clearance,'' and that ''with respect to consequences beyond the eligibility determination, Part 708 may apply.'' With regard to psychiatric examinations, psychiatric evaluations can be a proper tool to resolve questions of an individual's eligibility for a security clearance under § 710.8(h).

Comment: The same commenter also contends that ''the audience for protected activity is too limited'' under § 708.5. According to this commenter, the interim final rule ''only protects communications directly to recipients such as an official at the Department of Energy, a member of Congress and other governmental agencies with oversight responsibility at a DOE facility.'' The comment urges that the language of the rule and the preamble should specify that it will be interpreted consistently with the case law for employee protection statutes administered by the Department of Labor, such as amendments to the Energy Reorganization Act of 1992 (ERA), codified in 42 U.S.C. 5851, the provision that protects employees of Nuclear Regulatory Commission (NRC) licensees. The commenter claims that Department of Labor and the Federal courts have consistently interpreted those statutes to mean that employees are also protected for disclosures to the media and citizen associations, which are ''frequently the breeding ground for investigations and/or enforcement actions by the relevant regulatory agency.''

Response: As first proposed in 1990, part 708 only would have covered disclosures to DOE (55 FR 9326). Comments were received that advocated expanding the coverage to encompass disclosures to citizen groups, the media, state and Federal regulatory officials, and members of Congress. The final 1992 version of part 708 extended the coverage beyond DOE, to include in-house disclosures to the complainant's employer, higher tier contractors, and to Congress, but went no further (57 FR 7535). In explaining why we chose to limit coverage to those parties, DOE noted that a fundamental purpose of this rule is to encourage DOE contractor employees to feel free to disclose to the DOE information about health and safety problems or mismanagement at DOE facilities so that DOE can take corrective action. The Department reasoned that disclosures to other parties would not foster that objective. Additionally, DOE believed that ''extension of this rule to employees making disclosures to other parties could unduly complicate these procedures with evidentiary problems respecting whether a disclosure had actually been made.'' (57 FR 7535). We believe that reasoning is still sound. Nevertheless, the interim final rule expanded the coverage to include disclosures made to other government officials, such as those from other Federal or state agencies who have responsibility for oversight of activities on DOE-owned or -leased sites. This reflects the fact that some DOE sites are now subject to regulatory oversight by other agencies. But there is still no compelling reason to expand the coverage of this rule to include disclosures to citizen groups or the media. The Federal courts have granted protection under 42 U.S.C. 5851 to employees who made disclosures to parties other than their employers or to the Federal government to a very limited extent. *See Stone & Webster Engineering Corp.* v. *Herman,* 115 F.3d 1568 (11th Cir., 1997). In *Stone & Webster,* the U.S. Court of Appeals affirmed the Secretary of Labor's determination that a nuclear power plant worker was acting in furtherance of safety compliance when, after speaking to his employer about his safety concerns, he spoke to his co-workers about those same concerns, and thus communication to those workers was protected by the ERA. According to the holding in that case, which does not control proceedings under part 708, disclosures to outside parties must be closely related to the ''regular channels'' of protected activity in order to be protected under 42 U.S.C. 5851.

Comment: In the same vein, this commenter contends that the scope of protected activity in § 708.5(a) is unclear because ''it is possible that employee would be denied relief merely for doing his/her job.'' The commenter argues that this result ''would cancel protection for employees whose jobs require them to take risks of whistleblowers—auditors, inspectors and investigators who make a record of violations that are too politically hot to handle. . . .'' The commenter conjectures that the protection of the rule is only available to employees who make protected disclosures ''after hours,'' outside of their regular duty assignments.

Response: The rule clearly protects employees such as safety and quality inspectors whose job it is to make disclosures about violations of rules and dangers to employees and public health and safety. The commenter has misinterpreted the plain language of § 708.5(a), which contains nothing that would exclude disclosures that are routinely made in the course of an employee's work assignment.

Comment: The same commenter expressed concern over the requirement of § 708.5(a)(1) that an employee's disclosure must concern a ''substantial'' violation of law in order to be protected. This commenter correctly notes that both the Federal whistleblower protection statutes and the case law

have used an objective standard to determine whether activities are protected. According to this commenter, the insertion of this term 'introduces an unprecedented, subjective wild-card'' that would present an unduly burdensome test for a worker seeking whistleblower protection.

Response: The imposition of this requirement in § 708.5(a)(1) would not result in the adoption of a subjective test that a whistleblower would have to pass to qualify for protection. As noted in the preamble to the interim final rule, ''substantial violation of law'' is the same standard that is used in the Section 6006 of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103–355, codified in 41 U.S.C. 265, and implemented by the regulation found at 48 CFR part 3, Subpart 3.9, ''Whistleblower Protection for Contractor Employees.'' The interim final rule emulated the standard in the FASA because it represents a balanced approach designed to ensure that minor, insubstantial issues do not waste limited resources, so whistleblower protection is available to those workers who legitimately need it.

Comment: The same commenter expressed concern about the phrase ''in good faith'' that appears in §§ 708.5(a) and 708.6(a), claiming it could impose a ''motives test'' that ''allows an employee's intentions to be put on trial as a precondition to using the rule.'' This commenter correctly notes that the inclusion of a good faith test in those provisions is inconsistent with the Whistleblower Protection Act, which uses the standard that the employee must ''reasonably believe'' the matters they are disclosing are among the types of concerns enumerated in the Act.

Response: The commenter's views on the ''good faith'' test have considerable merit. DOE did not intend to place the employee's state of mind into issue. We think the ''reasonable belief'' standard is sufficient, in and of itself. None of the other federal whistleblower protection statutes contains a similar ''good faith'' requirement. Accordingly, the final rule omits this phrase in order to conform to the current state of the Federal law on whistleblower protection.

Comment: The same commenter noted that under § 708.13, employees are now required to ''exhaust all applicable grievance-arbitration procedures'' before being eligible to file a whistleblower complaint with DOE under part 708. According to the commenter, this disadvantages employees because ''grievance systems cannot order mandatory relief and are run by the same institution that will be an adverse party in any future litigation.'' The commenter fears that this ''forces the whistleblower to preview his or her case to the defendant, before even filing it with the DOE,'' and that the employer will have an advance opportunity to ''perfect pretexts or defenses,'' ''destroy evidence'' and learn the identity of witnesses to ''pressure'' them. The commenter states that it ''regularly advises employees to bypass any system of protection that requires them first to tell their side of the dispute to the defendant.''

Response: The requirement to exhaust all applicable grievance-arbitration procedures reflects DOE's commitment to solving problems at the earliest possible stage. We want the employee and the contractor to share information about alleged reprisals for protected conduct as quickly as possible, so that little problems do not escalate into big ones. We hope that by dealing with the concerns sooner rather than later and by using existing grievance-arbitration procedures, the parties will resolve the problem and the employee will not need to file a complaint under part 708. That is why the new rule requires employees to use grievance-arbitration processes before filing a complaint under part 708. DOE has worked to change the culture across the Department's nationwide complex to sensitize its contractors against reprisal, and we believe this effort has been reasonably successful. We know of few recent cases involving the circumstances alluded to by the commenter.

In addition, under the National Labor Relations Act, a recognized labor organization serves as the exclusive representative for collective bargaining purposes of the employees in the recognized bargaining unit. Successful collective bargaining results in a collective bargaining agreement between the labor organization and the employer concerning the terms and conditions of employment of the employees in the bargaining unit. The collective bargaining agreement usually includes the establishment of an employee grievance arbitration procedure and describes how it will operate. A grievance arbitration procedure represents a continuation of the collective bargaining process, which the National Labor Relations Act protects. An employer, even an employer who has allegedly retaliated against a whistleblower, ignores the bargained-for grievance procedure at its peril. The National Labor Relations Board, which is responsible for the enforcement of the provisions of the National Labor Relations Act, does not permit an employer to bypass dealing with the union in such a manner. Thus, the provisions of § 708.13 requiring exhaustion of all applicable grievance arbitration procedures prior to filing a complaint with DOE under part 708 is a recognition of the importance of the collective bargaining process in maintaining effective labor-management relations at DOE's facilities.

Comment: The same commenter noted its approval of § 708.20, which encourages the parties to use mediation as an alternative dispute resolution tool, but contends that the rule should also require mandatory arbitration if mediation does not work.

Response: We decline to adopt this suggestion. If allegations of reprisal cannot be resolved informally by mediation, the OHA hearing should be the next step in the process.

Comment: The same commenter has reiterated the argument it raised twice before (in response to the 1996 Notice of Inquiry and again in response to the 1998 Notice of Proposed Rulemaking) that discovery must be mandatory, instead of being subject to the discretion of the hearing officer. Discovery is authorized in § 708.28(b) of the interim final rule, which states that the hearing officer ''may order discovery at the request of a party.''

Response: OHA hearing officers generally leave discovery to the parties to work out between themselves. It is usually unnecessary for the hearing officer to become involved in the process. However, to make certain the discovery process cannot be abused in the ways described in the comment, it is important for the hearing officer to have the authority to rule on contested discovery issues if they arise. We therefore decline to adopt the commenter's suggestion.

Comment: Another comment maintains that the scope of relief permitted under part 708 is ''unclear'' because § 708.36(a) does not specifically authorize ''personal and/or institutional discipline for violating anti-retaliation provisions.'' This commenter maintains that without the power to punish ''bureaucratic bullies'' who commit acts of retaliation, the rule cannot deter harassment.

Response: As noted in the preamble to the interim final rule, 64 FR 12867, the restitutionary remedies authorized under § 708.36 are intended to correct unwarranted employment actions, by restoring employees to the position they would have occupied but for the retaliation. They are not designed to punish the persons who are found to have committed acts of retaliation. Other remedies are available in different forums for employees who are seeking more than the abatement of the

retaliatory practices and basic restitution. We therefore decline to adopt the approach suggested by the commenter.

Comment: One comment seeks clarification that the decision of an arbitrator will not be disturbed in cases in which a claim of retaliation, already the subject of arbitration, is also eligible for review under this rule. The interim final rule addresses this concern in § 708.4(c)(3), which provides that an employee may not file a complaint under these regulations if it is based on the same facts for which the employee has chosen to pursue a remedy through final and binding grievance-arbitration procedures or other state or other applicable law, except as provided by § 708.15(a).

Response: Section 708.15(a)(3) answers this question. An employee may file a complaint under part 708 after submitting the same facts to arbitration after he or she has ''exhausted grievance-arbitration procedures pursuant to § 708.13, and issues related to alleged retaliation for conduct protected under § 708.5 remain.'' Whether retaliation issues remain is a question that depends on the facts in each case.

Comment: This comment also requests clarification of the kinds of claims precluded, in § 708.4(e), from coverage under these regulations because they deal with ''terms or conditions of employment'' within the meaning of the National Labor Relations Act.

Response: As noted in the preamble to the interim final rule, 64 FR 12868, ''terms and conditions of employment'' are subject to review under part 708 when the complaint alleges that they have been changed in retaliation for a protected disclosure. Part 708 is not otherwise intended to intrude into the domain traditionally covered by the National Labor Relations Act.

Comment: The same comment points out a perceived discrepancy between paragraphs (a) and (b) of § 708.15. Paragraph (a) provides that a complaint may not be filed if a remedy under the same facts was sought ''under State or other applicable law, including final and binding grievance-arbitration procedures, unless'' one of the exceptions from the binding election of remedies described in the ensuing subsections of § 708.15 is met. Paragraph (b) states, ''Pursuing a remedy other than final and binding grievance-arbitration procedures does not prevent you from filing a complaint under this part.'' The comment asks whether remedies listed in paragraph (a), other than the grievance-arbitration procedures, i.e., remedies under ''State or other applicable law,'' also fall within the exception under paragraph (b).

Response: The comment reads paragraph (b) to mean that as long as an employee does not pursue final and binding grievance-arbitration procedures, a remedy sought under State and other applicable law does not bar a complaint under these regulations. This is not what we intended. Rather, paragraph (b) means that seeking a remedy through an informal procedure that is non-binding and non-final, such as a contractor's internal employee concerns program, will not bar the filing of complaints under part 708. Paragraph (b) thus describes one of the limited conditions under which an employee who has first sought another remedy will still have recourse to part 708. Paragraph (c) of § 708.15 makes it clear that electing to pursue a formal legal remedy ''under State or other applicable law'' does bar a complaint under part 708.

Comment: Finally, the same comment perceives a discrepancy between paragraphs (e) and (f) of § 708.22, which state that an individual being interviewed has the right to representation and that representatives of parties to the complaint are not entitled to be present at interviews.

Response: We do not find a discrepancy. While representatives of parties to the complaint (e.g., their attorneys) do not have a right to be present during a witness interview, they may attend at the request of the person being interviewed. Thus, a contractor's counsel may be present, but only if requested by the subject of the interview. It is for the interview subject to choose whether he or she wishes to speak to the investigator with no one else present, or with a representative present. The comment also seeks clarification whether this section applies to the procedures of the DOE's Employee Concerns Program. The provisions of § 708.22 apply to the investigation, hearing and appeal procedures in subpart C; they do not apply to informal resolution procedures undertaken by DOE offices, which are described in subpart B.

Finally, we are correcting a typographical error in § 708.15(d), which in the interim final rule refers to § 708.17(c)(2) when it should refer to § 708.17(c)(3), and we are adding the following new section at the end of the final rule to restore an important policy statement in the original 1992 version of part 708 that was inadvertently omitted from the interim final rule:

Section 708.40 Does This Rule Impose an Affirmative Duty on DOE Contractors Not To Retaliate?

Yes. DOE contractors may not retaliate against any employee because the employee (or any person acting at the request of the employee) has taken an action listed in sections 708.5(a)–(c).

DOE never meant to imply that contractors do not have an affirmative duty not to retaliate against employees who take protected actions. This new § 708.40 is restating what has always been a part of the rule (see old § 708.5, ''Prohibition against reprisals''), and thus it does not require notice and comment.

III. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to

determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose the rule for public comment, DOE did not prepare a regulatory flexibility analysis for this rule.

D. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Specifically, this rule deals only with administrative procedures regarding retaliation protection for employees of DOE contractors and subcontractors, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policy making discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and 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. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. This interim final rule does not contain any federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 708

Administrative practice and procedure, Energy, Fraud, Government contracts, Occupational Safety and Health, Whistleblowing.

Issued in Washington, on February 1, 2000.

George B. Breznay,

Director, Office of Hearings and Appeals.

Accordingly, the interim rule amending 10 CFR part 708 which was published at 64 FR 12862 on March 15, 1999, and amended at 64 FR 37396 on July 12, 1999, is adopted as a final rule with the following changes:

PART 708—[AMENDED]

1. The authority citation for part 708 continues to read as follows:

Authority: 42 U.S.C. 2201(b), 2201(c), 2201(i) and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254, 7255, and 7256; and 5 U.S.C. Appendix 3.

2. Section 708.5(a) (introductory text) is revised to read as follows:

§ 708.5 What employee conduct is protected from retaliation by an employer?

* * * * *

(a) Disclosing to a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, your employer, or any higher tier contractor, information that you reasonably believe reveals—

* * * * *

3. Section 708.6(a) is revised to read as follows:

§ 708.6 What constitutes ''a reasonable fear of serious injury?''

* * * * *

(a) A reasonable person, under the circumstances that confronted the employee, would conclude there is a substantial risk of a serious accident, injury, or impairment of health or safety resulting from participation in the activity, policy, or practice; or

* * * * *

4. Section 708.15(d) is revised to read as follows:

§ 708.15 What happens if an employee files a complaint under this part and also pursues a remedy under State or other law?

* * * * *

(d) If you file a complaint under State or other applicable law after filing a complaint under this part, your complaint under this regulation will be dismissed under § 708.17(c)(3).

5. A new Section 708.40 is added as follows:

§ 708.40—Does this rule impose an affirmative duty on DOE contractors not to retaliate?

Yes. DOE contractors may not retaliate against any employee because the employee (or any person acting at the request of the employee) has taken an action listed in §§ 708.5(a)–(c).

[FR Doc. 00–2797 Filed 2–8–00; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 272

[Docket No. R–1059]

Rules of Procedure

AGENCY: Federal Open Market Committee.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Open Market Committee (''the Committee'') is

amending its Rules of Procedure to revise and expand upon the means of communication available to the Secretary of the Committee and the members regarding meetings and proposed actions between meetings. The current rules provide that such communications must be in writing or by telegram. The proposed amendments would delete telegram as an accepted means of communication and would permit communications by telephone, including facsimile transmissions, or electronic means, such as by electronic mail. The option to require written communications would be retained.

DATES: February 9, 2000.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division, Board of Governors of the Federal Reserve System, (202) 452–3920. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The rules were last updated in 1979. Since that time, new and reliable, readily available methods of transmittal, such as facsimile and electronic mail, have become available while previously relied on methods, such as the telegram, are no longer used.

The proposed amendments would affect the manner in which the Secretary gives notice to members of the Committee of calls for meetings by the Chairman or requests by members for the calling of a meeting. They would also affect the means by which the Secretary transmits the relevant information and recommendations for an action to modify an outstanding Committee authorization or directive at a time when it is not feasible to call a meeting. The amendments to the rules also would permit a member to communicate with the Secretary by telephone or electronic means to request a meeting, to inform the Secretary when he or she will not be available to attend a meeting, and also to transmit his or her vote on an action proposed between meetings.

Accordingly, the Committee is amending its Rules of Procedure by changing all references to ''in writing or by telegram'' to ''in writing, by telephone, or by electronic means'' as the accepted methods of communication.

The amendments adopted by the Committee are rules of procedure. Accordingly, neither 5 U.S.C. 553(b), requiring notice and opportunity for public comment, nor the Congressional Review Act, 5 U.S.C. 801 *et seq.*, applies. In addition, the amendments are technical amendments to update the rules to reflect new methods of communication, and its prompt implementation will improve the Committee's operational efficiency without adversely affecting any other persons. Accordingly, the Committee finds good cause not to delay the effective date of the amendments pursuant to 5 U.S.C. 553(d).

List of Subjects in 12 CFR part 272

Administrative practice and procedure, Federal Open Market Committee, Organization and functions (Government agencies).

For the reasons set out in the preamble, 12 CFR part 272 is amended as set forth below:

PART 272—FEDERAL OPEN MARKET COMMITTEE—RULES OF PROCEDURE

1. The authority citation for part 272 continues to read as follows

Authority: 5 U.S.C. 552

§ 272.3 [Amended]

2. In § 272.3(a) and (b), remove the words ''in writing or by telegram'' wherever they appear and add in their place, the words ''in writing, by telephone, or electronic means.''

§ 272.4 [Amended]

3. Section 272.4(b) is amended by revising the fourth sentence to read as follows: ''All communications of recommended actions and votes under this paragraph shall be in writing, by telephone, or electronic means; if the communication is made orally, the Secretary shall cause a written record to be made without delay.''

By order of the Federal Open Market Committee, February 3, 2000.

Donald L. Kohn,

Secretary of the Committee.

[FR Doc. 00–2941 Filed 2–8–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–3

Amendment to Class D and Class E Airspace, Tupelo, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the name of Tupelo Municipal—C.D. Lemons Municipal Airport to Tupelo Regional Airport and changes the title of the airspace designation for the Tupelo Regional Airport located at Tupelo, MS, from Tupelo Municipal—C.D. Lemons Municipal Airport to Tupelo Regional Airport.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The Tupelo, MS, Airport Authority has changed the name of the airport to better describe the area served. This amendment is necessary to reflect that change. The dimensions, configuration and operating requirements of the affected airspace do not change. This rule will become effective on the date specified in the **DATES** section. Since this action does not change the dimensions, configuration or operating requirements of the Class D, Class E2 or Class E5 airspace for the airport, and as a result, has no impact on users of the airspace in the vicinity of the Tupelo Regional Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Designations for class D, Class E2 and Class E5 airspace areas extending upward from 700 feet or more above the surface are published in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the name of Tupelo Municipal—C.D. Lemons Municipal Airport and changes the title of the airspace designation for the Tupelo Regional Airport located at Tupelo, MS, from Tupelo Municipal—C.D. Lemons Municipal Airport, MS, to Tupelo Regional Airport. MS.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a

''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 5000 Class D Airspace.

* * * * *

ASO MS D Tupelo, MS [Revised]

Tupelo Regional Airport, MS
(Lat. 34°16′05″ N, long. 88°46′12″ W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of Tupelo Regional Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Area.

* * * * *

ASO MS E2 Tupelo, MS

Tupelo Regional Airport, MS
(Lat. 34°16′05″ N, long. 88°46′12″ W)

Within a 4.1-mile radius of Tupelo Regional Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO MS E5 Tupelo, MS

Tupelo Regional Airport, MS
(Lat. 34°16′05″ N, long. 88°46′12″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Tupelo Regional Airport.

* * * * *

Issued in College Park, Georgia, on January 31, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–2958 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29920; Amdt. No. 1974]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC) /Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with

the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency section of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 4, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 9727, 97.31, 97.33 AND 97.35 [Amended]

By amending; § 97.23 VOR,/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV, § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC No.	SIAP
01/10/00	GA	MARIETTA	COBB COUNTY—MCCOLLUM FIELD	FDC 0/0261	GPS RWY 9 ORIG... CORRECTS TL–04
01/14/00	GA	DEADHORSE	DEADHORSE	FDC 0/0387	VOR/DME OR TACAN RWY 22 AMDT 2...
01/18/00	GA	MARIETTA	COBB COUNTY—MCCOLLUM FIELD	FDC 0/0460	VOR/DME RWY 9, ORIG–C
01/19/00	AK	DEADHORSE	DEADHORSE	FDC 0/0491	LOC/DME BC RWY WW AMDT 8... THIS REPLACES FDC 0/03888
01/19/00	AK	HOMER	HOMER	FDC 0/0499	GPS RWY 3, ORIG–A... THIS REPLACES FDC 0/0247 AND 9/9697
01/19/10	OR	AURORA	AURORA STATE	FDC 0/0498	VOR/DME OR GPS–A, AMDT 2...
01/19/00	OR	EUGENE	MAHLON SWEET FIELD	FDC 0/0496	VOR/DME OR TACAN RWY 3 AMDT 3...
01/19/00	OR	EUGENE	MAHLON SWEET FIELD	FDC 0/0497	GPS RWY 3 ORIG...
01/19/00	OR	HERMISTON	HERMISTON MUNI	FDC 0/0495	VOR/DME OR GPW–A, AMDT 2...
01/19/00	PA	COATESVILLE	CHESTER COUNTY G.O. CARLSON	FDC 0/0486	GPS RWY 29, ORIG...
01/19/00	PA	COATESVILLE	CHESTER COUNTY G.O. CARLSON	FDC 0/0487	GPS RWY 11, ORIG...
01/19/00	PA	COATESVILLE	CHESTER COUNTY G.O. CARLSON	FDC 0/0488	ILS RWY 29, AMDT 6B..
01/19/00	TX	BRENHAM	BRENHAM MUNI	FDC 0/0478	GPS RWY 16, ORIG...
01/19/00	WI	EAU CLAIRE	CHIPPEWA VALLEY REGIONAL	FDC 0/0481	VOR OR GPS–A, AMDT 21...
01/19/00	WI	EAU CLAIRE	CHIPPEWA VALLEY REGIONAL	FDC 0/0483	ILS RWY 22, AMDT 6...
01/19/00	WI	EAU CLAIRE	CHIPPEWA VALLEY REGIONAL	FDC 0/0484	NDB OR GPS RWY 22, AMDT 6...
01/20/00	AK	KOTZBUE	RALPH WIEN MEMORIAL	FDC 0/0520	VOR/DME RWY 27, AMDT 1A...
01/20/00	AL	TALLAGEGA	TALLAGEGA MUNI	FDC 0/0463	VOR/DME RWY 3, AMDT 4...
01/20/00	AZ	TAYLOR	TAYLOR MUNI	FDC 0/0521	GPS RWY 21, ORIG...
01/20/00	GA	NASHVILLE	BERRIEN COUNTY	FDC 0/0527	GPS RWY 9, ORIG...
01/20/00	PA	REEDSVILLE	MIFFLIN COUNTY	FDC 0/0510	LOC RWY 5, AMDT 7A...

FDC date	State	City	Airport	FDC No.	SIAP
01/20/00	TX	HARLINGEN	VALLEY INTL	FDC 0/0511	VOR/DME OR TACAN RWY 31 ORIG... THIS REPLACES FDC 0/0131
01/21/00	CA	SAN DIEGO	SAN DIEGO INTL–LINDBERG FIELD	FDC 0/0539	LOC RWY 27 AMDT. 2B...
01/21/00	OH	YOUNGSTOWN	YOUNGSTOWN–WARREN REGIONAL.	FDC 0/0564	NBD OR GPS RWY 32, AMDT 18...
01/21/00	OR	ONTARIO	ONTARIO MUNI	FDC 0/0535	NDB OR GPS RWY 32, AMDT 4...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0568	RADAR–1 AMDT 9A...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0574	ILS RWY 11 (CAT I, II, III), AMDT 14...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0575	ILS RWY 29, AMDT 3D...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0576	VOR GR GPS–A, AMDT 15...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0577	GPS RWY 5, ORIG...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0578	GPS RWY 23, ORIG–A...
01/21/00	TX	WACO	TSTC WACO	FDC 0/0541	RADAR–1, AMDT 3...
01/21/00	TX	WACO	TSTC WACO	FDC 0/0553	NDB RWY 17L, AMDT 9...
01/21/00	TX	WACO	TSTC WACO	FDC 0/0554	GPS RWY 17L, ORIG...
01/21/00	TX	WACO	TSTC WACO	FDC 0/0557	GPS RWY 35R, ORIG...
01/21/00	TX	WACO	TSTC WACO	FDC 0/0558	ILS RWY 17L, AMDT 11A...
01/21/00	WY	LARAMIE	LARAMIE REGIONAL	FDC 0/0563	VOR/DME OR TACAN OR GPS RWY 30, AMDT 6...
01/21/00	WY	SHERIDAN	SHERIDAN COUNTY	FDC 0/0561	ILS/DME RWY 32, ORIG–A...
01/21/00	WY	SHERIDAN	SHERIDAN COUNTY	FDC 0/0562	VOR OR GPS RWY 14, ORIG...
01/24/00	KS	MANHATTAN	MANHATTAN REGIONAL	FDC 0/0643	ILS RWY 3, AMDT 6B...
01/24/00	KS	MANHATTAN	MANHATTAN REGIONAL	FDC 0/0644	NDB OR GPS–A, AMDT 19B...
01/24/00	KS	MANHATTAN	MANHATTAN REGIONAL	FDC 0/0645	VOR/DME OR GPS–F, ORIG–A...
01/24/00	KS	MANHATTAN	MANHATTAN REGIONAL	FDC 0/0646	VOR–H, AMDT 14A...
01/24/00	KS	MANHATTAN	MANHATTAN REGIONAL	FDC 0/0647	VOR OR GPS RWY 3, AMDT 17A...
01/24/00	MN	LITCHFIELD	LITCHFIELD MUNI	FDC 0/0658	VOR/DME RWY 13, ORIG...
01/24/00	NC	WASHINGTON	WARREN FIELD	FDC 0/0599	NDB RWY 5, ORIG–A...
01/24/00	NY	FARMINGDALE	REPUBLIC	FDC 0/0659	ILS RWY 14 AMDT 7...
01/24/00	OR	EUGENE	MAHLON SWEET FIELD	FDC 0/0650	VOR/DME OR TACAN RWY 34, AMDT 4...
01/24/00	OR	PENDLETON	EASTERN OREGON REGIONAL AT PENDLETON.	FDC 0/0649	VOR OR GPS RWY 7, AMDT 14...
01/24/00	PA	LATROBE	ARNOLD PALMER REGIONAL	FDC 0/0657	ILS RWY 23, AMDT 15...
01/24/00	PA	MEADVILLE	PORT MEADVILLE	FDC 0/0662	LOC RWY 25 AMDT 3A...
01/24/00	PA	MEADVILLE	PORT MEADVILLE	FDC 0/0663	GPS RWY 25 ORIG...
01/24/00	PA	MEADVILLE	PORT MEADVILLE	FDC 0/0664	VOR OR GPS RWY 7 AMDT 6...
01/24/00	TX	WACO	TSTC WACO	FDC 0/0661	NDB RWY 35R, AMDT 10...
01/26/00	KS	CHANUTE	CHANUTE MARTIN JOHNSON	FDC 0/0721	VOR/DME RNAV OR GPS RWY 36, AMDT 3B...
01/26/00	KS	CHANUTE	CHANUTE MARTIN JOHNSON	FDC 0/0722	VOR/DME OR GPSLA, AMDT 9B...
01/27/00	AK	PETERSBURG	JAMES A... JOHNSON	FDC 0/0759	LDA–DME–D, AMDT 5B...
01/27/00	AL	DECATUR	DECATUR/PRYOR FIELD REGIONAL	FDC 0/0752	VOR OR GPS RWY 18, AMDT 12...
01/27/00	NM	CLOVIS	CLOVIS MUNI	FDC 0/0742	VOR RWY 22, AMDT 4...
01/27/00	NM	CLOVIS	CLOVIS MUNI	FDC 0/0743	GPS RWY 22, ORIG...
01/28/00	AL	DECATUR	DECATUR/PRYOR FIELD REGIONAL	FDC 0/0780	VOR OR GPS RWY 36, AMDT 4...
01/28/00	FL	WILLLISTON	WILLISTON MUNI	FDC 0/0813	GPS RWY 22, ORIG...
01/28/00	KY	PIKEVILLE	PIKE COUNTY–HATCHER FIELD	FDC 0/0778	GPS RWY 8, ORIG...
01/28/00	KY	PIKEVILLE	PIKE COUNTY–HATCHER FIELD	FDC 0/0779	GPS RWY 26, ORIG...
01/28/00	PA	DOYLESTOWN	DOYLESTOWN	FDC 0/0795	VOR OR GPS RWY 23 AMDT 6...
01/28/00	PA	DOYLESTOWN	DOYLESTOWN	FDC 0/0801	NDB RWY 23 AMDT 2...
01/28/00	TN	MEMPHIS	MEMPHIS INTL	FDC 0/0775	ILS RWY 27 AMDT 2...
01/31/00	CA	SAN DIEGO	SAN DIEGO INTL–LINDBERGH FIELD	FDC 0/0849	NDB OR GPS RWY 27 AMDT 1B...
01/31/00	LA	SHREVEPORT	SHREVEPORT REGIONAL	FDC 0/0852	ILS RWY 14 (CAT I, II), AMDT 23...
01/31/00	MO	JEFFERSON CITY	JEFFERSON CITY MEMORIAL	FDC 0/0866	GPS RWY 30, ORIG...
01/31/00	MO	JEFFERSON CITY	JEFFERSON CITY MEMORIAL	FDC 0/0867	GPS RWY 12, ORIG...
01/31/00	UT	OGDEN	OGDEN–HINCKLEY	FDC 0/0869	VOR RWY 7, AMDT 5A...
02/01/00	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	FDC 0/0954	LOC BC RWY 26L AMDT 9...
02/01/00	AZ	TUCSON	TUCSON INTL	FDC 0/0951	LOC/DME BC RWY 29R AMDT 7...
02/01/00	AZ	TUCSON	TUCSON INTL	FDC 0/0952	VOR/DME OR TACON OR GPS RWY 29R AMDT2...
02/01/00	AZ	WINDOW ROCK	WINDOW ROCK	FDC 0/0909	VOR/DME OR GPS–A ORIG–A...
02/01/00	AZ	YUMA	YUMA MICAS–YUMA INTL	FDC 0/0948	GPS RWY 17 ORIG...
02/01/00	AZ	YUMA	YUMA MICAS–YUMA INTL	FDC 0/0964	VOR/DME OR TACAN–1 RWY 17 AMDT 1...
02/01/00	CA	BAKERSFIELD	MEADOWS FIELD	FDC 0/0906	GPS RWY 30R ORIG...
02/01/00	CA	BAKERSFIELD	MEADOWS FIELD	FDC 0/0910	NDB RWY 30R AMDT 6A...
02/01/00	CA	SAN FRANCISCO	SAN FRANCISCO INTL	FDC 0/0967	VOR RWY 19L AMDT 8A...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0805	ILS RWY 9L, AMDT 6A...
02/01/00	CA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0940	VOR OR GPS RWY 27L, AMDT 4...

FDC date	State	City	Airport	FDC No.	SIAP
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0941	ILS RWY 27L, AMDT 13...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0944	ILS RWY 27R, AMDT 3A...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0946	ILS RWY 26L, AMDT 17B...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0947	ILS RWY 8L (CAT II, III), AMDT 1B...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0950	ILS RWY 8R (CAT II), AMDT 58A...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0953	ILS RWY 9R (CAT II, III), AMDT 16...
02/01/00	NV	RENO	RENO/TAHOR INTL	FDC 0/0959	LOC/DME BC RWY 34L AMDT 1A...
02/01/00	NV	TONOPAH	TONOPAH	FDC 0/0960	GPS RWY 15 ORIG...
02/01/00	OR	EUGENE	MAHLON SWEET FIELD	FDC 0/0979	GPS RWY 34, ORIG...
02/01/00	PA	BEAVER FALLS	BEAVER COUNTY	FDC 0/0968	LOC RWY 10 AMDT 3...
02/01/00	PA	BEDFORD	BEDFORD COUNTY	FDC 0/0919	GPS RWY 32 ORIG...
02/01/00	PA	BEDFORD	BEDFORD COUNTY	FDC 0/0920	GPS RWY 14 ORIG...
02/01/00	PA	BEDFORD	BEDFORD COUNTY	FDC 0/0922	VOR OR GPS–A ORIG...
02/01/00	PA	ERIE	ERIE INTL	FDC 0/0936	ILS RWY 24 AMDT 7A...
02/01/00	PA	ERIE	ERIE INTL	FDC 0/0938	ILS RWY 6 AMDT 15A...
02/01/00	PA	HAZELTON	HAZELTON MUNI	FDC 0/0924	VOR RWY 10 AMDT 10B...
02/01/00	PA	HAZELTON	HAZELTON MUNI	FDC 0/0925	LOC RWY 28 AMDT 5B...
02/01/00	PA	HAZELTON	HAZELTON MUNI	FDC 0/0926	VOR RWY 28 AMDT 8B...
02/01/00	PA	INDIANA	INDIANA COUNTY/JIMMY STEWART FIELD.	FDC 0/0966	LOC RWY 28 ORIG...
02/01/00	PA	QUAKERTOWN	QUAKERTOWN	FDC 0/0927	NDB OR GPS RWY 29 AMDT 9...
02/01/00	PA	QUAKERTOWN	QUAKERTOWN	FDC 0/0928	VOR RWY 29 ORIG...
02/01/00	PA	SHAMOKIN	NORTHUMBERLAND COUNTY	FDC 0/0921	GPS RWY 26 ORIG...
02/01/00	PA	SHAMOKIN	NORTHUMBERLAND COUNTY	FDC 0/0923	VOR OR GPS RWY 8 AMDT 3...
02/01/00	SC	CHARLESTON	CHARLESTON AFB/INTL	FDC 0/0918	NDB RWY 15 AMDT 18...
02/01/00	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT.	FDC 0/0975	ILS RWY 8, AMDT 18F...
02/01/00	VA	CHESAPEAKE	CHESAPEAKE REGIONAL	FDC 0/0931	NDB RWY 5 AMDT 1B...
02/01/00	VA	CHESAPEAKE	CHESAPEAKE REGIONAL	FDC 0/0932	GPS RWY 5 AMDT 1...
02/01/00	VA	CHESAPEAKE	CHESAPEAKE REGIONAL	FDC 0/0934	LOC RWY 5 AMDT 2B...

[FR Doc. 00–2956 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29919; Amdt. No. 1973]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form

documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 4, 2000.

L. Nicholas Lacy,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, AND VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER, SIAPs, identified as follows:

** * * Effective February 24, 2000*

Atlanta, GA, The William B. Hartsfield Atlanta Intl, ILS RWY 8L, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, RNAV RWY 4R, Orig
Boston, MA, General Edward Lawrence Logan Intl, GPS RWY 4R, Orig, CANCELLED
Atlantic City, NJ, Atlantic City Intl, RNAV RWY 13, Orig
Greenville, NC, Pitt-Greenville, NDB RWY 20, Amdt 15
Greenville, NC, Pitt-Greenville, ILS RWY 20, Amdt 3
Sherman/Denison, TX, Grayson County, ILS RWY 17L, Orig
Charlottesville, VA, Charlottesville-Albemarle, RNAV, RWY 3, Orig
Morgantown, WV, Morgantown Muni-Walter L Bill Hart Field, RNAV RWY 18, Orig
Morgantown, WV, Morgantown Muni-Walter L Bill Hart Field, GPS RWY 18, Orig, CANCELLED

** * * Effective March 23, 2000*

Cocoa, FL, Merritt Island, NDB RWY 11, Amdt 1
Jasper, TX, Jasper County-Bell Field, NDB RWY 18, Amdt 9
Jasper, TX, Jasper County-Bell Field, GPS RWY 18, Amdt 1
Jasper, TX, Jasper County-Bell Field, GPS RWY 36, Orig

** * * Effective April 20, 2000*

Yap Island, FM, Yap International, GPS RWY 7, Amdt 1
Yap Island, FM, Yap International, GPS RWY 25, Amdt 1
Lakeland, FL, Lakeland Linder Regional, VOR OR GPS RWY 9, Amdt 3
Lakeland, FL, Lakeland Linder Regional, VOR OR GPS RWY 27, Amdt 6
Lakeland, FL, Lakeland Linder Regional, NDB OR GPS RWY 5, Amdt 3
Lakeland, FL, Lakeland Linder Regional, ILS RWY 5, Amdt 6
Westfield, MA, Barnes Muni, VOR OR TACAN RWY 2, Amdt 4
Westfield, MA, Barnes Muni, VOR RWY 20, Amdt 20
Westfield, MA, Barnes, NDB RWY 20, Amdt 15
Westfield, MA, Barnes, ILS RWY 20, Amdt 5
Majuro Atoll, MH, Marshall Islands Intl, GPS RWY 7, Amdt 1
Majuro Atoll, MH, Marshall Islands Intl, GPS RWY 25, Amdt 1
Minneapolis, MN, Flying Cloud, VOR OR GPS RWY 36, Amdt 12
Babelthuap Island, PW, Babelthuap/Koror, GPS RWY 9, Amdt 1
Babelthuap Island, PW, Babelthuap/Koror, GPS RWY 27, Amdt 1
Blacksburg, VA, Virginia Tech, NDB OR GPS–A, Amdt 3

[FR Doc. 00–2955 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–001]

Drawbridge Operation Regulations: Chelsea River, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation; withdrawal.

SUMMARY: The Commander, First Coast Guard District has withdrawn the

temporary deviation from the drawbridge operation regulations for the P.J. McArdle Bridge, mile 0.3, across the Chelsea River between Chelsea and East Boston, Massachusetts. This withdrawal was necessary because the bridge has been repaired and is operating under its normal operating regulations. The normal operating regulations require the bridge to open on signal at all times for vessel traffic.

DATES: This deviation withdrawal is effective January 18, 2000.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The bridge owner, the City of Boston, requested a temporary deviation from the operating regulations to facilitate vehicular and pedestrian traffic during electrical repairs at the P. J. McArdle Bridge, mile 0.3, across the Chelsea River between East Boston and Chelsea, Massachusetts. The submarine electrical cable for the bridge was damaged during harbor dredging operations requiring emergency repairs to be implemented in order to restore bridge operation and facilitate marine traffic.

The Coast Guard issued a temporary deviation from the operating regulations published in the **Federal Register** (65 FR 2541; January 18, 2000) effective January 6, 2000 through March 5, 2000. The purpose of the deviation was to help facilitate vehicular traffic during the weekday rush hours.

A temporary auxiliary operating system has been installed to open the bridge and the bridge is now operating under its normal operating regulations.

The temporary deviation from the operating regulations is no longer necessary as a result of the bridge being returned to a fully operable status. The bridge owner was advised on January 18, 2000, that the deviation has been withdrawn.

Notice is given that the P.J. McArdle Bridge, mile 0.3, across the Chelsea River shall open on signal at all times for vessel traffic.

Dated: January 25, 2000.

R.M. Larrabee,

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

[FR Doc. 00–2897 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–003]

RIN 2115–AE47

Drawbridge Operation Regulations: Reserved Channel, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the drawbridge operation regulations governing the Summer (L) Street Bridge, mile 0.2, across the Reserved Channel in Boston, MA. The bridge has been rebuilt as a fixed bridge and the operating regulations are no longer necessary. Notice and public procedure have been omitted from this action because the bridge the regulations formerly governed no longer exists.

DATES: This rule is effective February 9, 2000.

ADDRESSES: This docket (CGD01–00–003), is available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 6:30 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Summer (L) Street Bridge has been removed and replaced with a fixed bridge that does not open for navigation. The operating regulations are now unnecessary and will be removed by this final rule.

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice and comment for this rulemaking because notice and comment are unnecessary. Notice and comment are unnecessary because the bridge the regulations governed no longer exists.

The Coast Guard, for the reasons stated above, has determined that good cause exists for this rule to be effective upon publication in the **Federal Register**.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge the regulations governed no longer exists.

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. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

For reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize

litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

§ 117.617 [REMOVED]

2. Section 117.617 is removed.

Dated: January 25, 2000.

R.M. Larrabee,

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

[FR Doc. 00–2896 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans

CFR Correction

In Title 40 of the Code of Federal Regulations, part 52 (§§ 52.01 to 52.1018), revised as of July 1, 1999, page 533, § 52.820 is corrected by adding the effective date note following the source note as follows:

§ 52.820 Identification of plan.

* * * * *

Effective Date Note: At 64 FR 25827, May 13, 1999, § 52.820, paragraph (c) was amended by revising the entries for ''567–20.2'' in Chapter 20, ''567–22.1, 567–22.203, and 567–22.300'' in Chapter 22, ''567–23.1'' in Chapter 23, ''567–25.1'' in Chapter 25, and ''567–28.1'' in Chapter 28, effective July 12, 1999. For the convenience of the user, the superseded text is set forth as follows:

* * * * *

[FR Doc. 00–55502 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Docket No. NHTSA 2000–6740

RIN 2127–AH64

Federal Motor Vehicle Safety Standards; Hydraulic and Electric Brake Systems; Passenger Car Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration; final rule.

SUMMARY: This document responds to two petitions for reconsideration of amendments we made in September 1997 to Federal Motor Vehicle Safety Standards Nos. 105 and 135 specifying requirements for brake systems on electric vehicles (EV). In response to the petition by Hydro-Quebec of Canada, we are allowing the use, under certain conditions, of a regenerative braking system (RBS) for EV testing in accordance with S7.7 of Standard No. 135. This action is taken to facilitate new technology in the braking system of an EV. We are not amending Standard Nos. 105 and 135 in response to the petition for reconsideration by Toyota Motor Sales USA Inc. Amending the Standards as requested by Toyota may degrade the safety of EVs by reducing the stringency of the thermal tests.

DATES: The final rule is effective March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Samuel Daniel, Vehicle Dynamics Division, Office of Vehicle Safety Standards, NHTSA (phone: 202–366–4921).

SUPPLEMENTARY INFORMATION:

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I. Background

On September 5, 1997, we amended Federal Motor Vehicle Safety Standards (FMVSS) Nos. 105, Hydraulic Brake Systems, and 135, Passenger Car Brake Systems to accommodate EV brake systems. See 62 FR 46907 for full background information on this rule.

Electrically-powered vehicles have unique performance characteristics that do not permit them to be tested for braking performance in the same way that other light-duty vehicles are tested. For example, because of the limited range of EVs and the extensive travel distance specified in several Federal brake test series, we established procedures for re-charging or replacing the propulsion batteries during testing. Most EVs have a feature called a ''regenerative braking system'' (RBS) designed to extend the range of the vehicle by as much as 10 to 20 percent through conversion of vehicle kinetic energy into electrical energy when the vehicle is being decelerated. When operating, the RBS provides a vehicle deceleration, or braking force. The September 1997 amendments also established procedures for testing EV braking systems and EVs equipped with RBS.

We received two petitions for reconsideration of the final rule, from Hydro-Quebec of Canada (HQ), and from Toyota Motor Sales Corporation USA Inc. (Toyota).

II. Petitions for Reconsideration

A. HQ's Petition for Reconsideration

1. *The petition.* HQ commented that S7.7.3(h) of FMVSS No. 135, which specifies that an EV with an RBS be tested with the RBS inoperative during the S7.7 Stops with Engine Off tests, is inconsistent with other parts of FMVSS No. 135. Specifically, the stopping distance performance requirements of S7.5, Cold Effectiveness and S7.7, Stops with Engine Off, are identical; each test requires that the vehicle be stopped from 100 km/h (62 mph) within a distance of 70 m (230 ft.). However, the

RBS must be inoperative for S7.7 testing but operative for S7.5 testing. According to HQ, its EV brake system cannot meet the requirements of S7.7 without use of the RBS.

HQ recommends amendments to S7.7.3(h) that it believes are consistent with the intent of S7.7, and allow RBS use during the test. Amending FMVSS No. 135 as petitioned for by HQ would allow that company to meet the brake performance requirements in FMVSS No. 135 without altering its present EV brake system design. We anticipate that most EV manufacturers will certify their vehicles to FMVSS No. 135 rather than to FMVSS No. 105, because the latter will not apply to passenger cars built on and after September 1, 2000. What's more, FMVSS No. 105 will not apply to any vehicles with a GVWR less than 3,500 kg. (7,716 lb.) produced on and after September 1, 2002. HQ's petition refers specifically to FMVSS No. 135. We shall also, below, examine its relevance to compliance with brake performance requirements of FMVSS No. 105.

2. *Design of HQ's EV brake system.* According to its petition, HQ is developing a four-wheel drive power-train technology which features four in-wheel electric motors. The technology is aimed at producing sport utility vehicles and passenger cars with improved energy consumption, safety, and emissions. The RBS and the hydraulic brake system have approximately the same braking force capability. According to HQ, the braking force developed by the RBS is not dependent on the state of charge of the propulsion system batteries, unlike most production RBS. In the HQ system, when the electrical energy produced by the RBS is greater than the recharging rate of the batteries, the excess electrical energy is dissipated. As described in the petition, the HQ EV RBS will function if the propulsion batteries are disabled or if the motors are not supplied with electrical energy. According to HQ, the hydraulic braking system has a lower priority than the RBS in a series compound braking system and does not have the braking capacity to meet the S7.7 requirements of FMVSS No. 135, independent of the RBS.

3. *Amendments recommended by HQ.* HQ cannot comply with S7.7.3(h) of FMVSS No. 135, which specifies that EVs must be tested for compliance with S7.7, Stops with Engine Off, without RBS. HQ offered two versions of amendments for S7.7 that would allow RBS to be operative during this test. HQ believes that allowing the use of RBS during the test specified in S7.7.3(h) would not violate the intent of the test. According to HQ, switching off the power supply to the electric motors of its EV does not disable the RBS.

HQ had previously commented on this issue in responding to the Notice of Proposed Rulemaking (NPRM), 60 FR 49544. HQ requested in its comments on the NPRM that a definition or interpretation be provided for the term ''no electromotive force'' in S7.7.3(h). HQ also indicated in its comments that the HQ EV design had no failure mode that would be directly analogous to an engine stalling in an internal combustion engine (ICE) vehicle.

Engine stalling of a vehicle with an internal combustion engine (ICE) results in loss of power to vacuum or hydraulically operated brake power units, brake power assist units, and components of some antilock brake systems (ABS). The purpose of the S7.7 test in FMVSS No. 135 is to ensure that these components have sufficient reserve capacity to bring the vehicle to a complete stop, with acceptable effectiveness, in the event of engine stalling. We want to offer similar assurances for the braking performance of EVs.

In Section 7.C of the preamble for the September 5, 1997 final rule, we agreed with the comments on the NPRM from other EV manufacturers stating that the RBS is designed to convert some of the kinetic energy dissipated during braking into electrical energy to charge the propulsion batteries, thus extending the vehicle's travel range. At that time, the information available to us indicated that the RBS system would not be a major contributor to the braking capacity of EVs. We decided, in the September 1997 final rule, to require EVs to meet the stopping performance requirements of S7.7 without RBS.

According to HQ's petition, the front-wheel hydraulic brakes would need to be re-designed with increased braking capacity for its EV to meet the requirements of S7.7 without use of the RBS. According to HQ, this would limit HQ EV braking technology to small vehicles and would not be feasible for some intended applications such as installation on compact sport utility vehicles.

To deny HQ's petition would require it to conform with the apparent design practices of the rest of the industry and to redesign its brake system to meet the final rule. However, we do not believe it is in the public interest to restrict alternative technology this early in the development of RBS.

To resolve this issue, we have decided to allow use of RBS during the S7.7.3(h) test, if the RBS remains functional after the supply of electric power to the propulsion motor(s) has been switched off (EV equivalent to engine stalling in an ICE vehicle). If switching off the electric power supply to the propulsion motor(s) disables the RBS, then S7.7.3(h) must be conducted without use of the RBS.

We have decided to remove the term ''electromotive force'' from S7.7.3(h) since the term may cause confusion, and to replace it with the term ''electrical power.'' Accordingly, we are amending S7.7.3(h) of FMVSS No. 135 to read: For an EV, this test is conducted with no electrical power supplied to the vehicle's propulsion motor(s), but with the RBS and brake power or power assist still operating, unless cutting off the supply of electrical power to the propulsion motor(s) also disables those systems.

We believe that this approach to a resolution of the RBS use issues raised by HQ will allow adequate flexibility in EV braking system technology. According to HQ, the technology is available to produce in-wheel motor regenerative braking with deceleration rates only slightly lower than the average deceleration rate required by FMVSS No. 135 (0.56 g) for a fully operational, cold brake system.

HQ also commented that there is an inconsistency in the final rule between S7.7, Stops with Engine Off, S7.10, Hydraulic circuit failure, and S7.11, Brake power unit or brake power assist unit inoperative (System depleted). HQ correctly noted that the maximum stopping distance specified in S7.10 and S7.11, which is 168 m, is more than twice the stopping distance specified in S7.7, whereas under the final rule, all the EV tests, S7.7, S7.10, and S7.11 were to be conducted without use of the RBS.

The procedure in S7.7 is a test of the fully functional brake system rather than a partially failed brake system, as is the case with S7.10 and S7.11. The inconsistency between the requirements of these tests has been eliminated with our decision to allow RBS use for testing under S7.7.3(h) as long as switching off the supply of electrical power to the propulsion motor(s) does not disable the RBS. The intent of the S7.7 test is to ensure that brake system will stop the vehicle with normal effectiveness when the vehicle's engine is not operating. For ICE vehicles, the test is conducted by switching off the engine ignition prior to brake application. We are amending the standard to require the analogous test procedure for EVs.

We have also decided to retain the requirement that an EV manufacturer must certify that the vehicle meets S7.10 of FMVSS No. 135, test procedures conducted to evaluate brake system

performance under partial brake failure conditions. The test conditions and procedures in S7.10.3(f) require that an EV be tested for stopping performance with the RBS disabled and all other braking systems intact. Since the S7.10 test procedures apply to vehicles with a partially disabled brake system, a longer stopping distance is specified.

In addition to the amendments noted above, we have decided that the specification in S7.11(n) that EVs be tested without RBS should be removed because the RBS test requirements for EVs in S7.10 and S7.11 are identical.

4. *Conclusions.* We believe that HQ has identified some key issues with regard to the test conditions and requirements for EVs in the final rule amending FMVSS No. 135. The HQ petition has made us more aware that the EV braking amendments adopted in 1997 need further revisions to accommodate alternative EV braking systems. According to HQ, its EV braking system prioritizes RBS over the hydraulic brake system. The two systems are essentially connected in a series arrangement in which the hydraulic braking system is activated when braking force requirements approach the maximum capacity of the RBS. The HQ EV braking system design is based on in-wheel motor technology, which may be used in the future by other EV manufacturers.

We believe that these amendments will maintain the safety benefits of FMVSS No. 135 while improving the ability of the standards to accommodate unique EV brake system design features. Vehicles in which RBS is functional when the propulsion motor(s) are not being supplied with electrical power will be able to use the RBS for testing designed to simulate loss of power to the propulsion motor(s).

No further amendments to FMVSS No. 105 appear necessary. The standard does not contain a test for the fully functional brake system with the engine off in contrast to S7.7 of FMVSS No. 135. As a result, FMVSS No. 105 does not include a test for the fully functional brake system of an EV without use of the RBS.

B. Toyota's Petition for Reconsideration

1. *The petition.* Toyota stated it is ''disappointed'' that the September 1997 final rule amendments did not achieve more harmonization with the European light duty vehicle braking regulation, ECE R13–H. Its petition did not make specific recommendations for amendments to FMVSS No. 135, but asked us to harmonize the thermal test procedures with those of ECE R13–H.

2. Comparison of the thermal tests in FMVSS No. 135 and ECE R13–H.

a. *Overall test specifications.* FMVSS No. 135 and ECE R13–H are essentially the same with respect to the thermal test procedures, conditions, and requirements (Heating snubs, Hot performance, Cooling stops, and Recovery performance) for ICE vehicles, but not for Evs. ECE R13–H allows use of the RBS, whether or not the RBS is part of the service brake system, for the entire thermal test. FMVSS No. 135 allows an RBS that is not part of the service brake system to be used only in the burnish procedures, and not during any other phases of brake system performance testing, including the thermal tests.

b. *Comparison of four phases in the thermal tests.* The first phase of the thermal test in ECE R13–H and S7.13 of FMVSS No. 135, Heating procedure and Heating Snubs, respectively, have identical test procedures and conditions for ICE vehicles. ECE R13–H (Annex 3 Paragraph 1.5.1, Heating procedure) provides a specific procedure for testing EVs, which is designed to accommodate vehicles with insufficient power and energy to complete the brake heating procedure (in FMVSS No. 135, S7.13, Heating Snubs) on a single charge. The ECE procedure requires that the EV be accelerated to the test speed (120 km/h or 80 percent of maximum vehicle velocity) for the first of 15 decelerations (snubs) that reduce the vehicle speed to one-half the initial speed. For each subsequent deceleration in the procedure, the speed for initiation of braking is the speed reached after 45 seconds of maximum acceleration, which may be lower than the speed specified for the first test. By contrast, FMVSS No. 135 does not provide specific EV procedures or conditions for the thermal tests.

In the second phase of the thermal test series, ECE R–13H allows for the initial speed for the Hot performance tests to be the vehicle speed for the last test run of the Heating Procedure. The Hot performance test consists of two braking tests with a 100 km/h test speed immediately following the Heating Procedure. The Hot Performance test conditions and performance requirements in ECE R13–H and No. 135 (S7.14) are nearly identical for ICE vehicles and EVs. Each vehicle must meet a performance criterion that is based on a comparison of Hot performance (No. 135, S7.14) test results with the vehicle's Cold effectiveness test results (No. 135, S7.5).

The third phase of the thermal test is referred to as the Recovery procedure in ECE R13–H (Annex 3; 1.5.3) and Brake cooling stops in FMVSS No. 135 (S7.15). These procedures, which are identical in the two regulations for all vehicles, specify four stops from 50 km/h (31.1 mph) beginning immediately after the Hot performance tests. These stops are conducted at a constant deceleration rate and are designed to simulate normal braking.

The final phase of the thermal test procedure is called Recovery performance in both ECE R13–H and FMVSS No. 135 (S7.16). This phase of the thermal tests is designed to test the performance of the brakes after heating followed by normal brake use. The performance requirements for this phase of the thermal test are based on the cold effectiveness test results for the vehicle. Two recovery tests are required beginning immediately after completion of the fourth cooling stop (in FMVSS No. 135, S7.16.3(f) and (i)). In this phase, neither ECE R13–H nor FMVSS No. 135 include specific procedures for testing EVs.

3. *Amendments recommended by Toyota.* Toyota stated that harmonization between ECE R13–H and FMVSS No. 135 had not been achieved with the September 1997 amendments to FMVSS No. 135 and also indicated that the fade test (thermal test) should be further harmonized. Specifically, ECE R13–H allows use of RBS by EVs, whether or not the RBS is part of the service brake system, during all phases of the thermal test. Toyota's petition requests that we allow RBS use during the thermal tests for vehicles in which RBS is not part of the service brake system.

The ECE R13–H Heating procedure for EVs allows a reduction of the test speed during the acceleration and braking cycles if a vehicle cannot maintain the specified test speed for the entire procedure. The regulation does not specify, however, a minimum test speed below which the EV Heating procedure tests should not be conducted. Test speeds below 40 km/h (25 mph) are typically too low to allow proper evaluation of a vehicle's brake system. Further, ECE R13–H does not provide procedures or requirements for charging or replacing the propulsion batteries for an EV that is unable to accelerate to test speed during the test procedure. Also, ECE R13–H does not provide EV test procedures for the Recovery procedure portion of the thermal tests. These tests are to be conducted immediately after the Hot performance stops. Therefore, an EV that completed the Hot performance tests at a reduced speed due to depleted batteries may not be able to accelerate to the Recovery procedure test speed of 50 km/h.

For those reasons, the thermal test procedures for EVs in ECE R13–H are not sufficiently clear or objective to be adopted in FMVSS No. 135.

Toyota indicated that EVs in which RBS is not part of the service brake system may not be able to complete the thermal tests on a single battery charge. Toyota further implied that ECE R13H's allowance of RBS use may increase the range of all EVs, including EVs in which RBS is not part of the service brake system, and enhance their ability complete the thermal tests.

We do not believe the power and energy requirements of the heating cycle, or the entire thermal test, are beyond the capability of the propulsion systems of marketable EVs. We estimate that the entire thermal tests (S7.13 Heating Snubs, S7.14 Hot performance, S7.15 Brake cooling stops, and S7.16 Recovery performance) specified in FMVSS No. 135 and ECE R13–H can be completed with a total vehicle travel distance of 30 kilometers (19 miles) or less. However, the heating procedure/snubs phase of the thermal test series is essentially a series of 15 maximum accelerations with short intervals between to allow for braking. The heating procedure/snubs phase is a severe test of the power capacity of the batteries although the energy requirements are modest. However, if a vehicle cannot complete the test protocol on a single charge, the system can be recharged pursuant to S6.11.3.

An RBS that is not part of the service brake system may be deactivated by the vehicle driver at any given time, thus eliminating the braking force provided by the RBS. NHTSA usually specifies tests in our brake performance standards that represent the most stringent conditions that would be faced by drivers on the road. Following this practice, the final rule of September 7, 1997 did not allow use of RBS that is not part of the service brake system (driver-controlled), during brake performance testing in FMVSS Nos. 135 and 105. It is also possible that the stringency of the Hot performance test and the Recovery performance test would be reduced if these EVs with driver-controlled RBS were allowed to use RBS. The service brakes would reach a lower temperature during the S7.13 Heating snubs with RBS operational than they would with the RBS disabled. The magnitude of this temperature reduction has not been quantified, but any service brake temperature reduction for the Hot performance and Recovery performance tests would tend to reduce the stringency of the tests. The improvement in brake performance resulting from RBS use is a safety benefit for EVs in which RBS is part of the service brake system, but would not necessarily be realized with RBS controlled by the driver. Toyota did not provide test data or other information with which to evaluate the effect of RBS use on the safety benefits of the thermal tests. For these reasons, we do not believe FMVSS No. 135 should be amended to allow use of RBS that is not part of the service brake system during any phase of the thermal tests.

We did not specify unique conditions, procedures, or requirements in 1997 for conducting the thermal test on EVs. However, we did provide procedures to be used if a vehicle could not complete a given test on a single propulsion system charge (FMVSS No. 135, S6.11.3.) Since FMVSS No. 135 has provisions for testing EVs with depleted propulsion battery(s), we do not believe it is necessary to allow RBS use if RBS is not part of the service brake system, during any portion of the thermal test.

4. *Conclusions.* We believe the ECE R13–H Heating procedure and the Recovery procedure tests for EVs are not sufficiently demanding or objective when compared with the corresponding FMVSS No. 135 portions of the thermal test. Some of the test speeds reached during the R13–H Heating procedure may be too low for meaningful brake performance evaluation. The entire thermal test is required to be conducted without interruption and ECE R13–H does not provide procedures for conducting the Hot performance or the Recovery procedure tests if the vehicle is not capable of accelerating to test speed. We do not want to facilitate the introduction of EVs in the United States that are not tested in accordance with a sufficiently demanding and objective thermal test for brakes.

S6.3.11 State of charge of batteries of FMVSS No. 135 allows EVs to achieve the brake test speeds required in the thermal test series (S7.13–S7.16) under any battery state-of-charge condition. No such provisions are included in ECE R13–H. Allowing RBS to be operative during the Heating procedure may not be sufficient for some vehicles to complete the thermal test series on a single charge. As we have previously stated, FMVSS No. 135 includes procedures for EVs to assure that brake test speeds can be reached if a vehicle's batteries are depleted and need to be recharged or replaced to accelerate the vehicle to test speeds under its own power.

After our review of the Toyota petition for reconsideration, ECE R13–H, and FMVSS No. 135, we have concluded that the ECE R13–H EV thermal test conditions and procedures should not be included in FMVSS Nos. 135 and 105. We have also concluded that the use of an RBS that is not part of the service brake system during the thermal test would have a negative impact on the safety benefits of these tests, since the stringency of the tests would not be representative of encountered driving conditions.

For these reasons, we are denying Toyota's petition for reconsideration. We will continue to allow RBS use, for vehicles in which an RBS is part of the service brake system, in all testing except when the use of RBS is explicitly prohibited.

III. Additional Amendments—RBS Malfunction Indicator Lamp

The September 1997 final rule required that a RBS malfunction indicator lamp be mounted in front of and in clear view of the driver, FMVSS No. 105, S5.3 Brake system indicator lamp. S5.3 is organized with a description of the activation protocol in S5.3.1 and a description of the lamp word, symbol, and color of the lamp in S5.3.5. Inadvertently, we placed the activation protocol, the word or symbol to be used for RBS, and the color of the symbol in S5.3.1. For consistency and to eliminate confusion, we are taking this opportunity to place the various aspects of the malfunction lamp description in the proper section of FMVSS No. 105. We are making a similar amendment to FMVSS No. 135 for the same reason. Also, for the reason stated previously, the references to the color ''amber'' in the description of the RBS malfunction indicator lamp are removed and the color ''yellow'' is substituted. This change will make the color of the RBS malfunction warning indicator consistent with other malfunction indicator lamps.

Effective Dates

Because FMVSS No. 105 and FMVSS No. 135 are in effect, because EVs are being manufactured to comply with these standards, because the amendments serve to clarify existing requirements, and because the amendments do not affect existing requirements for vehicles with hydraulic brake systems, it is hereby found, for good cause shown, that an effective date earlier than 180 days after issuance of the amendments is in the public interest. Accordingly, the amendments are effective March 27, 2000.

Regulatory Analysis

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures.

This rulemaking has not been reviewed under Executive Order 12866. NHTSA has considered the economic implications of this regulation and determined that it is not significant within the meaning of the DOT Regulatory Policies and Procedure. The rule does not affect a substantial regulatory program or involve a change in policy.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic effect upon a substantial number of small entities. Accordingly, no Regulatory Flexibility Analysis has been prepared.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The amendment primarily affects manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Since each manufacturer serves a niche market, often specializing in replicas of ''classic'' cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 passenger cars manufactured per year by U.S. small businesses.

In contrast, in 1999, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions are not be significantly affected as the price of motor vehicles ought not to change as the result of this final rule.

Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The E.O. defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule, which regulates the manufacture of certain motor vehicles, will not have 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, as specified in E.O. 13132.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule does not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action will not have a significant effect upon the environment. There is no environmental impact associated with adaptation of test procedures to make them more appropriate for vehicles already required to comply with the Federal motor vehicle safety standards. However, to the extent that this rulemaking might facilitate the introduction of EVs which are powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electric current, and which may include a nonelectrical source of power designed to charge batteries and components thereof, the rulemaking would have a beneficial effect upon the environment and reduce fuel consumption because EVs emit no hydrocarbon emissions and do not depend directly upon fossil fuels to propel them.

Civil Justice Reform (Executive Order 12778)

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30161 of Title 49 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards.

That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. Section 571.105 is amended by:

a. Revising S5.3.1(g);

b. Adding S5.3.5(c)(1)(E);

c. Revising S5.3.5(c)(2).

The revised and added paragraphs read as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

* * * * *

S5.3 Brake system indicator lamp

* * *

S5.3.1 * * *

(g) For an EV with RBS that is part of the service brake system, failure of the RBS.

* * * * *

S5.3.5 * * *

(c)(1) * * *

(E) If a separate indicator is used for the regenerative brake system, the symbol ''RBS'' may be used. RBS failure may also be indicated by a lamp displaying the symbol ''ABS/RBS.''

* * * * *

(c)(2) Except for a separate indicator lamp for an anti-lock system, a regenerative system, or an indicator for

both anti-lock and regenerative system, the letters and background of each separate indicator lamp shall be of contrasting colors, one of which is red. The letters and background of a separate lamp for an anti-lock system, a regenerative system, or a lamp displaying both an anti-lock and a regenerative system shall be of contrasting colors, one of which is yellow.

§ 571.135 [Amended]

3. Section 571.135 is amended by:

a. Revising S5.5.1(g);

b. Revising S5.5.5(d)(6);

c. Adding S5.5.5(d)(7);

d. Amending S7.7.1 to add a second sentence;

e. Revising S7.7.3(h); and

f. Removing S7.11.3(n).

The revisions, additions, and amendments read as follows:

§ 571.135 Standard No. 135; Passenger car brake systems.

* * * * *

S5.5.1. Activation. * * *

(g) For an EV with a regenerative braking system that is part of the service brake system, failure of the RBS.

* * * * *

S5.5.5. Labeling. * * *

(d) * * *

(6) If a separate indicator is provided for the condition specified in S5.5.1(g), the letters and background shall be of contrasting colors, one of which is yellow. The indicator shall be labeled with the symbol ''RBS.'' RBS failure in a system that is part of the service brake system may also be indicated by a yellow lamp that also indicates ''ABS'' failure and displays the symbol ''ABS/RBS.''

(7) If a separate indicator is provided for any other function, the display shall include the word ''Brake'' and the appropriate additional labeling.

* * * * *

S7.7 * * *

S7.7.1 General information. * * * This test is also for EVs.

* * * * *

S7.7.3. * * *

(h) For an EV, this test is conducted with no electrical power supplied to the vehicle's propulsion motor(s), but with the RBS and brake power or power assist still operating, unless cutting off the supply of electrical power to the propulsion motor(s) also disables those systems.

Issued on: January 19, 2000.

Frank Seales, Jr.,

Acting Administrator.

[FR Doc. 00–2923 Filed 2–8–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE55

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Thlaspi californicum (Kneeland Prairie Penny-Cress) From Coastal Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for *Thlaspi californicum* (Kneeland Prairie penny-cress). *Thlaspi californicum* is known only from Kneeland Prairie in Humboldt County, California, where it grows in coastal prairie on serpentine outcrops. We consider the occurrences of *T. californicum* reported from Mendocino County to be *T. montanum,* a widely distributed species. Habitat loss, potential road realignment, and proposed airport expansion activities imperil the continued existence of *T. californicum.* The restricted range of this species, limited to a single population, increases the risk of extinction from naturally occurring events such as fire. This action implements the protection of the Act for this plant species.

DATES: This rule is effective on March 10, 2000.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W2605, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp or Jan Knight, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone number 916/414–6645; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

The single known population of *Thlaspi californicum* (Kneeland Prairie penny-cress) is found on serpentine soils at a coastal prairie in Humboldt County, California. Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron) such as serpentinite, dunite, and peridotite, which are found in discontinuous outcrops in the Sierra Nevada and Coast Ranges of California from Santa Barbara County to Humboldt County. The chief constituent of the parent rock is a variant of iron-magnesium silicate. Most serpentine soils are formed in place over the parent rock and are, therefore, shallow, rocky, and highly erodible. Serpentine soils, because of the parent material, tend to have high concentrations of magnesium, chromium, and nickel and low concentrations of calcium, nitrogen, potassium, and phosphorus (Kruckeberg 1984). Serpentine soils alter the pattern of vegetation and plant species composition nearly everywhere they occur. While serpentine soils are inhospitable for the growth of most plants, some plants are wholly or largely restricted to serpentine substrates (Kruckeberg 1984).

Sereno Watson (1882) described *Thlaspi californicum* based on a collection made by Volney Rattan from Kneeland Prairie at 760 meters (m) (2,500 feet (ft)) elevation in Humboldt County, California. Payson (1926) maintained it as a full species in his monograph of the genus, whereas it was referred to as *T. alpestre* var. *californicum* in Jepson's (1925) manual and *T. glaucum* ssp. *californicum* by Munz (1959). Holmgren (1971) assigned the name *Thlaspi montanum* var. *californicum* and gave its range as Kneeland Prairie (including a 1952 specimen from a serpentine rockpile toward Ashfield Butte). She noted that the plant had last been collected in 1962. Rollins (1993a, 1993b) has elevated it to a full species—*Thlaspi californicum.*

Thlaspi californicum is a perennial herb in the mustard family (Brassicaceae) that grows from 9.5 to 12.5 centimeters (cm) (3 to 6 inches (in)) tall, with a basal cluster of leaves that develops at the base of the plant prior to the flowering stage. The margins of the basal leaves range from entire to toothed. The white flowers have strongly ascending pedicels (flower stalks). The fruit is a sharply pointed silicle (a short fruit typically no more than 2 to 3 times longer than wide). *Thlaspi californicum* flowers from May to June. Characteristics that separate *T. californicum* from *T. montanum* include the orientation of the pedicel, shape and notching of the fruit, and length/width ratio of the fruit. *Thlaspi montanum* has pedicels perpendicular to the stem, not strongly ascending, and the silicles are either truncate or shallowly notched, but not as acute at the apex as they are in *T. californicum* (Meyers 1991).

Rollins (1993a, 1993b) and Holmgren (1971) considered *Thlaspi californicum* to occur only at Kneeland Prairie. Smith and Wheeler (1991), in their ''Flora of Mendocino County,'' reported two additional occurrences of *T. californicum* located on Mendocino National Forest in Mendocino County. These sites have been examined by David Isle, Mendocino National Forest botanist; Dave Imper, Environmental Specialist with SHN Consulting Engineers and Geologists; and Service staff. In addition, all of the herbarium specimens for *T. californicum* and *T. montanum* at Humboldt State University, including those collected in Mendocino County, have been examined by Imper and Service staff. The only collections considered by Imper and the Service to be *T. californicum* are from Kneeland Prairie in Humboldt County (Imper 1997; Larry Host and Kirsten Tarp, U.S. Fish and Wildlife Service (USFWS), pers. comms., 1997). Plants from Blue Banks and near the Spruce Grove campground on the Mendocino National Forest have pedicels that are perpendicular to the stem and silicles that are truncate and notched, characteristic of *T. montanum.* Additionally, the habitat and elevation are different from Kneeland Prairie. Other herbarium specimens, housed at the Humboldt State University herbarium and collected from Blue Banks and from Spruce Grove campground, are identified as *T. montanum.* McCarten and Rogers (1991) did not find any *T. californicum* in their habitat management study of rare plants and communities associated with serpentine soils on the Mendocino National Forest. The Mendocino National Forest botanist and the botanical consultant for Humboldt County concurred with this conclusion (Imper 1997; David Isle, botanist, Mendocino National Forest, pers. comm., 1997; L. Host and K. Tarp, pers. comms., 1997).

The California Natural Diversity Database (CNDDB) includes one occurrence for *Thlaspi californicum* based on Constance & Rollins' collection #2877 from 1942 (5 mi S of Hoopa Valley), housed at the Humboldt State University herbarium. The specimen had been annotated as *T. californicum* in 1976 by T. Nelson, then the herbarium's curator. A duplicate of this specimen, housed at another herbarium, had been assigned to *T. montanum* var. *montanum* by Patricia Holmgren in her 1971 biosystematic study of North American *T. montanum* and its allies. The specimen has since been examined by Imper and Service staff, who concur that it is *T. montanum* (Meyers 1991, Imper 1997).

The only known population of *Thlaspi californicum* is scattered within an area of 0.25 hectare (ha) (0.6 acre (ac)), with a total of about 11,000 individuals at Kneeland Prairie in Humboldt County (Dave Imper, Environmental Specialist, SHN Consulting Engineers and Geologists, pers. comm., 1997). The Kneeland Prairie population is bisected into two colonies by the Kneeland Prairie Airport. Both colonies occur on private land immediately adjacent to the Kneeland Prairie Airport. At Kneeland Prairie, the habitat for *T. californicum* has been reduced by approximately 60 to 70 percent within the past 33 years through development of the site for the Kneeland Prairie Airport, a county road realignment, and a helitack base (CNDDB 1997, Meyer 1991, Imper 1997). This population is currently threatened by the proposed expansion of the County airport and potential additional realignment of the adjacent road. Because of its extremely restricted range, the plant is also vulnerable to extinction from naturally occurring events such as fire (CNDDB 1997).

To assess the significance of the Kneeland Prairie population to the species, Imper (1997) inspected potentially suitable habitat for *Thlaspi californicum* in other areas near Kneeland Prairie and to the south. He found no other occurrences. Additionally, *T. californicum* has been targeted for surveys by the Bureau of Land Management (BLM) and U.S. Forest Service staff. The Six Rivers National Forest has no documented occurrences (Lisa Hoover, botanist, Six Rivers National Forest, pers. comm., 1997). A search for the species has not revealed any *T. californicum* on the serpentine at Iaqua Buttes on BLM lands (Jennifer Wheeler, botanist, BLM, Arcata Resource Area, pers. comm., 1997).

Previous Federal Action

Federal Government action on *Thlaspi californicum* began when we published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480), that identified those plants currently being considered for listing as endangered or threatened. We included *T. californicum* (then known as *T. californicum* var. *montanum*) as a category 2 candidate for Federal listing in this document. Category 2 candidates were those taxa for which data on biological vulnerability and threats in our possession indicated that listing was possibly appropriate but was not sufficient to support proposed rules. Our November 28, 1983, supplement to the NOR (48 FR 53640) as well as the subsequent revision on September 27, 1985 (50 FR 39526), included *T. californicum* as a category 2 candidate.

We revised the plant NOR again on February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). In both notices, we included *Thlaspi californicum* as a category 1 candidate. Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority. In our February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (61 FR 7596), we discontinued designation of multiple categories of candidates, and only those taxa meeting the definition of former category 1 are now considered candidates for listing. *Thlaspi californicum* was included as a candidate species in the February 28, 1996, notice. We published a proposed rule on February 11, 1998, to list this species as endangered. We based the proposal on information supplied by reports to the CNDDB and observations and reports by numerous botanists.

Based on all available information including comments received in response to the proposal (see the Summary of Comments and Recommendations section of this final rule), we have now determined *Thlaspi californicum* to be endangered. The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under Listing Priority Guidance. This final rule is a Priority 2 action. We have updated this rule to reflect any changes in information

concerning distribution, status, and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

In the proposed rule published February 11, 1998, in the **Federal Register** (63 FR 7112) and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to development of a final rule. The public comment period closed on April 13, 1998. We contacted appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties and requested comments. We also sent copies of the proposed rule and the letter for request of comment to three local libraries for public display. We published a newspaper notice in the *Eureka Times-Standard* on February 25, 1998, which invited general public comment. We received no requests for a public hearing.

Six individuals or agencies submitted comments. Two commenters supported the listing, three commenters opposed the listing, and one commenter was neutral. We received supporting comments from the California Native Plant Society and BLM. We received opposing comments from the Washington Legal Foundation, Pacific Legal Foundation, and a private citizen. We organized opposing comments and other comments questioning the proposed rule into specific issues, grouped comments of a similar nature by issue, and summarized them as follows:

Issue 1: One respondent asserted that listing this species would exceed the scope of the Federal commerce power under the Commerce Clause of Article I, section 8 of the U.S. Constitution.

Response: We maintain that we do have the authority to list plants such as the one in this final rule pursuant to the Act. A recent decision in the United States Court of Appeals for the District of Columbia Circuit (*National Association of Home Builders of the U.S.* v. *Babbitt*, 130 F.3d 1041, D.C. Cir. 1997) makes it clear in its application of the test used in the United States Supreme Court case, *United States* v. *Lopez*, 514 U.S. 549 (1995), that regulation of species limited to one State under the Act is within Congress' commerce clause power. On June 22, 1998, the Supreme Court declined to accept an appeal of this case (118 S. Ct. 2340 1998). Therefore, our application of the Act to *Thlaspi californicum* is constitutional.

Issue 2: One respondent wanted to know the full economic impact of the listing of this plant.

Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ''ensure'' that listing decisions are ''based solely on biological criteria and to prevent non-biological considerations from affecting such decisions,'' H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, ''Applying economic criteria * * * to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word ''solely'' in this legislation,'' H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). Because we are specifically precluded from considering economic impacts in a final decision on a proposed listing, we have not examined such impacts and cannot respond to comments and requests concerning possible economic consequences of listing this plant.

Issue 3. One respondent stated that the Service does not have sufficient scientific data to support a determination of endangered and that the Service did not cite any studies that might question the validity of the proposal.

Response: The Act requires us to reach a decision based on the best scientific and commercial information available. We believe that botanical study of the appropriate habitats on public lands in Humboldt and nearby counties has been adequate to show that this plant is indeed extremely rare. The threats to this species discussed under the Summary of Factors Affecting the Species section of this rule are also based on the best information available and are well documented or reasonably foreseeable. By their nature, threats are descriptions of events that have not yet taken place but are likely to occur in the foreseeable future. All information received from all sources was carefully evaluated.

Criteria for what information may be considered are discussed in the Summary of Factors Affecting the Species section. We have attempted to check all substantive information for accuracy and believe that the information included in this rule is reliable.

Issue 4: One respondent asked a series of questions about the CNDDB including its function, sources of information and funding, and review process.

Response: The CNDDB is a computerized inventory with information on the location and condition of special status plants, animals, and natural communities. The CNDDB receives funding through the State of California and receives its information from a variety of sources including consultants, academia, State and Federal agency biologists, and knowledgeable lay people. The information submitted to CNDDB is reviewed by CNDDB staff for general accuracy before it is entered into the database.

Peer Review

We have routinely solicited comments from parties interested in, and knowledgeable of, species that have been proposed for listing as threatened or endangered. The July 1, 1994, Peer Review Policy (59 CFR 34270) established the formal requirement that a minimum of three independent peer reviewers be solicited to review our listing decisions. We received no responses to our requests for peer review of this listing action.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that *Thlaspi californicum* should be classified as an endangered species. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thlaspi californicum* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Thlaspi californicum* has been significantly reduced within the past 33 years. Just before 1964, an estimated 2.0 to 2.25 ha (5 to 6 ac) of habitat existed at Kneeland Prairie (Meyers 1991). Approximately 60 to 70 percent of the habitat at Kneeland Prairie has been lost since 1964, due to construction of the Kneeland Prairie Airport, realignment of the county road that runs through Kneeland Prairie, and construction of the California Department of Forestry (CDFFP) helitack base (Meyers 1991; Imper 1990; Imper, pers. comm., 1997). Additional habitat and plants are currently threatened by the proposed expansion of the Kneeland Prairie Airport and potential road realignment.

The Kneeland Prairie Airport serves principally as the backup airport for Rohnerville, Murray, Eureka Municipal, and Arcata-Eureka airports. Small single-engine and occasionally twin-engine planes use Kneeland Prairie Airport. This airfield is especially important when airports at lower elevations are fogged in, a frequent occurrence in the region (Hodges & Shutt 1993). Kneeland Prairie Airport is the only airport in the Humboldt Bay area that can be used when the bay is fogged in (Don Tuttle, Resource Specialist, Humboldt County Public Works, pers. comm., 1997). The airport is particularly important for commercial express mail and air freight carriers, as well as other couriers (Ray Beeninga, Airports Manager, Humboldt County, pers. comm., 1997).

Humboldt County contracted a study to evaluate its airports and prepare appropriate planning documents (Hodges & Shutt 1993). The study provided an assessment of Kneeland Airport's role and associated airfield requirements. The report also discussed land use compatibility issues and descriptions of capital projects and provided documentation required to upgrade Kneeland Prairie Airport from temporary to permanent inclusion in the National Plan for Integrated Airport Systems. That designation allows the county to receive Federal funding for airport modifications through the Federal Aviation Administration (FAA). Recommendations in the report included development of a complete geotechnical study of specific engineering designs to stabilize the airport and construction of a new parking area meeting FAA setback standards. The report discussed design constraints for placement of the new parking area. The location of the CDFFP helitack base limits the ability of the airport to expand the existing parking area to the northwest (Hodges & Shutt 1993). The recommended location for the new parking area is on the eastern side of the airport (Hodges & Shutt 1993), adjacent to the eastern colony of *Thlaspi californicum*. Construction of the parking facility at Kneeland Prairie Airport could adversely affect the habitat and individuals of the eastern colony due to the proximity of the plants to the potential site.

Humboldt County is also contracting an initial study to evaluate the geotechnical feasibility and cost of modifying Kneeland Prairie Airport. The study, currently in progress (D. Tuttle and D. Imper, pers. comms., 1997), is evaluating ways to solve problems involving subsidence of the runway, slope stabilization, and the safety issue that the runway is too short (Dave Dietz, Project Manager, Shutt-Moen Associates, pers. comm., 1997). Possible options include leaving the airport configuration as is (i.e., repairing current subsidence, but not extending the runway), finding a different site for a new airport, or modifying the existing airport (D. Dietz, pers. comm., 1997). Financial constraints could influence the choice among the alternatives (R. Beeninga, pers. comm., 1997). In addition, exploratory soil boring is needed to determine how to stabilize the airport and to determine the cost of extending the runway (D. Dietz, pers. comm., 1997). *Thlaspi californicum* occurs on the slopes immediately adjacent to the airfield. Exploratory boring may affect individuals located immediately adjacent to airport lands (L. Host and K. Tarp, pers. obs. 1997). Modification of the existing airport is anticipated to occur in the year 2000 (R. Beeninga, pers. comm., 1997).

The realignment of the county road adjacent to the airport could affect the western occurrence of *Thlaspi californicum* at Kneeland Prairie (D. Imper, pers. comm., 1997). The road currently runs along the southwest edge of the runway and serves areas beyond the airport. The aviation manager would not be authorized to modify the road except as necessary for slope stabilization or as the result of possible runway extension at the south end of the airport. The extension of the runway to the south is not expected to directly impact *T. californicum*. However, if the runway is extended 30 to 65 m (90 to 200 ft) (R. Beeninga, pers. comm., 1997), the runway will run through the current road. The road would then either need to go under the runway via a tunnel or be realigned. The western colony of *T. californicum* occurs just downslope of the current road. Road realignment could result in impacts to habitat and individual plants.

For safety reasons, it is likely that Humboldt County will undertake straightening and/or widening the road, either independent of or concurrent with runway expansion (L. Host, *in litt.*, 1997). The road adjacent to the airport is narrow; a blind, 90-degree curve in the road around the end of the runway limits safe speeds to only 10 to 15 miles per hour. These conditions could warrant a county decision to realign the road to achieve a safer curve radius at the end of the runway. Unless the approach to that portion of the road is moved outward beyond the plants (which would require extra length and expense), the realignment would cross the remaining serpentine habitat and eliminate about half of the remaining plants in the western colony. We anticipate that such roadwork would occur during airport construction to avoid the expense of bringing necessary machinery to the site twice.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a threat for this plant.

C. *Disease or predation.* We know of no threats to *Thlaspi californicum* from disease. Cattle grazing occurs throughout the prairie and the area surrounding the airport (Imper 1997). Cattle trails run through *T. californicum* habitat (Meyers 1991), but current levels of grazing do not appear to threaten the species.

D. *The inadequacy of existing regulatory mechanisms.* The California Environmental Quality Act (CEQA) (chapter 2, section 21050 *et seq.* of the California Public Resources Code) requires full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to reduce the number or restrict the range of a rare or endangered plant or animal. Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is therefore dependent upon the discretion of the agency involved.

When the CDFFP constructed the Kneeland Helitack Base in 1980, a botanical assessment was required by the Humboldt County Planning Department for issuance of a conditional use permit. However, CDFFP did not include any analysis of potential impacts to *Thlaspi californicum*, although records of its California Native Plant Society 1B status and CNDDB documentation of the species' presence were available at that time (Imper 1990, Meyers 1991).

E. *Other natural or manmade factors affecting its continued existence.* *Thlaspi californicum* has never been found anywhere other than at Kneeland Prairie, where the single population occupies 0.25 ha (0.6 ac), bisected by the Kneeland Airport. This plant occupies serpentine prairie habitat that is quite restricted in extent. The combination of a single population and restricted habitat makes *T. californicum* susceptible to destruction of all or a significant portion of its range from naturally occurring events such as fire, drought, or severe erosion (Shaffer 1981, Primack 1993). Chance events causing population fluctuations or even population extirpations are not usually a concern until the number of individuals or geographic distribution becomes as limited as with *T. californicum* (Primack 1993). The single known locality of the species also makes the population at Kneeland Prairie particularly susceptible to extinction due to fire or an erosional event causing slope failure. Even one such event has the potential to seriously impact the sole population of the species.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Airport expansion activities, potential road realignment, inadequate regulatory mechanisms, and naturally occurring events such as fire imperil the continued existence of this plant. The one known population of *Thlaspi californicum* includes approximately 11,000 individual plants scattered within a 0.25 ha (0.6 ac) area. The species is in danger of extinction throughout all of its known range. Based on this evaluation, the preferred action is to list *T. californicum* as endangered. Other alternatives to this action were considered but not preferred. A conservation agreement could not be negotiated with the private land owners (D. Imper, *in litt.*, 1994), and listing *T. californicum* as threatened would not provide adequate protection and would not be consistent with the Act. Listing *T. californicum* as endangered would provide additional protection and is consistent with the Act's definition of endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary. The regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Thlaspi californicum* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Thlaspi californicum* would be prudent.

Due to the small number of populations, *Thlaspi californicum* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Thlaspi californicum* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if a critical habitat designation would provide any benefits, then a prudent finding is warranted. In the case of this species, designating critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat (see Available Conservation Measures section). While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that critical habitat is prudent for *Thlaspi californicum*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Thlaspi californicum* has allowed us to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of *Thlaspi californicum* without further delay. However, because we have successfully reduced, although not eliminated, the

backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for *Thlaspi californicum* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations (like the one at issue in this case).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

All of the occurrences of *Thlaspi californicum* are on privately owned land. However, impacts of modifying the adjacent airport have the potential to adversely affect *T. californicum*, due to the proximity of the plants to the proposed parking apron. Funds from the FAA have been used to partially finance a planning document for the Kneeland Prairie Airport and are proposed to be used for airport modifications. Private sector funding is not anticipated to be available for Kneeland Prairie Airport (Hodges & Shutt 1993). Realignment of a county road adjacent to the airport may be required if the runway is extended. This work could be partially funded by Federal Highway Administration grants, thereby providing another avenue for section 7 consultation.

Listing *Thlaspi californicum* would provide for development of a recovery plan for this plant. Such a plan would bring together both State and Federal efforts for conservation of the plant species. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish recovery. It also would describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, under section 6 of the Act, we would be able to grant funds to the State for management actions promoting the protection and recovery of this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered plant, transport such a plant in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale an endangered plant in interstate or foreign commerce, or remove and reduce an endangered plant to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because this species is not common in cultivation or common in the wild. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.62. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of California State law or regulation, or in the course of violation of California State criminal trespass law. Otherwise such activities would not constitute a violation of the Act on non-Federal lands.

Questions on whether specific activities would likely constitute a violation of section 9 should be directed to the Field Supervisor of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Regulatory Planning and Review

This rule is not subject to review by the Office of Management and Budget under Executive Order 12866.

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

References Cited

A complete list of all references cited in this rule is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Kirsten Tarp, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Flowering Plants, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Thlaspi californicum	Kneeland Prairie penny-cress.	U.S.A. (CA)	Brassicaceae	E	684	NA	NA
*	*	*	*	*	*		*

Dated: January 13, 2000.

Jamie Rapport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–2950 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–55–U

Proposed Rules

Federal Register
Vol. 65, No. 27
Wednesday, February 9, 2000

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AI76

Sick Leave for Family Care Purposes

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to expand the use of sick leave for family care purposes. Under the proposed regulations, an employee would be able to use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition. This benefit would broaden the options available for employees to meet their family responsibilities.

DATES: Comments must be received on or before March 27, 2000.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, FAX (202) 606–0824, or email to payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Jo Ann Perrini, (202) 606–2858, FAX (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On May 24, 1999, President Clinton issued a memorandum directing the Office of Personnel Management (OPM) to expand the use of paid sick leave for family care purposes. Consistent with the President's goal of eliminating ''a significant barrier to caring for a family member with a serious health condition,'' we are issuing proposed regulations that would permit full-time employees to use a total of up to 12 administrative workweeks of sick leave each leave year to care for a family member with a serious health condition.

Current regulations permit Federal employees to use a maximum of 13 days of sick leave each leave year to care for a family member who is incapacitated or to make arrangements for or attend the funeral of a family member. Federal employees and agencies have expressed full support for the use of sick leave for family care or bereavement purposes. Federal agencies believe the program fosters goodwill and creates a more compassionate, family-friendly work environment, resulting in a more productive workforce that enables the Government to accomplish its mission. However, because of the 13-day limitation, many employees face extended periods of leave without pay when caring for a family member after they have exhausted their entitlement to use annual and sick leave. In a survey for our 1997 report to Congress on the use of sick leave for family care purposes, OPM found there was concern that the 13-day limitation was inadequate for employees affected by long-term, catastrophic illnesses of family members.

Under the proposed regulations, mothers and fathers caring for their children, grandparents who are raising their grandchildren, and employees caring for other family members, including mothers- and fathers-in-law, would all greatly benefit from the more generous leave entitlement. The new benefit also would address the dilemmas faced by parents of children with special needs when trying to balance their work and family responsibilities. Allowing an employee to use up to 12 weeks of his or her own accrued sick leave each year would reduce the need for extended periods of leave without pay, which has a negative effect on an employee's pay and benefits, such as within-grade increases and health benefits. As a result, employees would be better able to deal with the financial and personal strain caused by a family member's medical needs.

Under the proposed regulations, the term ''serious health condition'' would have the same meaning as found in OPM's regulations at 5 CFR 630.1202 for administering the Family and Medical Leave Act of 1993 (FMLA). That definition includes such conditions as cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. The term ''family member'' would have the same meaning as found in OPM's regulations at 5 CFR 630.201, which includes the following relatives of the employee: (a) Spouse and parents thereof; (b) children, including adopted children, and spouses thereof; (c) parents; (d) brothers and sisters, and spouses thereof; and (e) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Part-Time and Uncommon Tours

Under the proposed regulations, the entitlement to use sick leave to care for a family member with a serious health condition would be prorated for part-time employees or employees with an uncommon tour of duty. For those employees, the amount of sick leave available to care for a family member with a serious health condition would be equal to 12 times the average number of hours in the employee's regularly scheduled administrative workweek.

Requesting and Approving Sick Leave for Family Care Purposes

Employees who wish to use more than 13 days of sick leave in a leave year to care for a family member with a serious health condition would be subject to the requirements in 5 CFR 630.402 for requesting sick leave. To the extent possible, employees would be required to request advance approval for sick leave to provide care for a family member with a serious health condition. In addition, employees would be subject to the requirements in 5 CFR 630.403 for providing administratively acceptable evidence or medical certification of a serious health condition. Most agencies have established procedures for requesting and approving sick leave, and employees would continue to follow these procedures when requesting sick leave for family care purposes.

In addition, we are proposing to revise 5 CFR 630.403 to permit agencies to establish a uniformly applied policy that requires employees to provide administratively acceptable evidence or medical certification for a request for sick leave within a specified time period. An employee who does not provide the required evidence or medical certification within the specified time period would not be entitled to sick leave.

Relationship to Other Family-Friendly Leave Programs

An employee would continue to be entitled to a total of up to 12 workweeks of unpaid leave under the FMLA for certain family and medical needs. Therefore, an employee would be permitted to substitute up to12 weeks of sick leave for unpaid leave under the FMLA if he or she is caring for a spouse, son or daughter, or parent with a serious health condition.

Employees would continue to be entitled to use a total of up to 13 days of sick leave each leave year to (1) provide care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment; or (2) make arrangements necessitated by the death of a family member or attend the funeral of a family member, subject to the requirements and limitations in 5 CFR 630.401. The proposed regulations simply extend the period during which sick leave may be used to care for a family member with a serious health condition. Under the proposed regulations, however, any portion of the 13 days of sick leave previously used in a leave year for general family care purposes would be subtracted from the new entitlement to use a total of up to 12 weeks of sick leave to care for a family member with a serious health condition.

Example 1: An employee uses 13 days (104 hours) of sick leave for family care purposes early in the leave year (leave year 1). On April 1, the employee requests additional sick leave to care for a mother-in-law with a serious health condition. Since the employee has already used the 13-day (104-hour) entitlement to sick leave to care for a family member under § 630.401(a)(3)(i), she may use only 9 weeks and 2 days (376 hours) of sick leave in the same leave year to care for a family member with a serious health condition. As of the beginning of the next leave year (leave year 2), the employee has a new entitlement to use up to 13 days of sick leave for family care or bereavement purposes and a new entitlement to use up to 480 hours of sick leave to care for a family member with a serious health condition.

Example 2: An employee used 3 days (24 hours) of sick leave to attend the funeral of her grandmother in January. The employee then requested an additional 4 weeks (160 hours) of sick leave to care for her grandfather, who had pneumonia, a serious health condition. The employee has used 184 hours of sick leave for all family care purposes. She has a remaining entitlement to 10 days (80 hours) of sick leave for general family care purposes or up to 7 weeks and 2 days (296 hours) of sick leave to care for a family member with a serious health condition.

An employee would continue to be responsible for notifying the employing agency as to whether he or she is requesting sick leave for family care or bereavement purposes or to care for a family member with a serious health condition. The employing agency would continue to be responsible for maintaining a record of each employee's use of sick leave for all family care or bereavement purposes, as required by 5 CFR 630.408.

Employees who exhaust their available sick and annual leave as a result of caring for a family member may request donated annual leave under the voluntary leave transfer or leave bank programs. However, an employee's expanded entitlement to use 12 weeks of sick leave under the proposed regulations would have to be considered in determining his or her eligibility to become a leave recipient under these programs. Under the proposed regulations, if an employee wishes to become a leave recipient, and the medical emergency involves a family member, the employee would have to use all sick leave available to him or her under 5 CFR 630.401 for family care purposes before qualifying for donated annual leave.

Minimum Sick Leave Balance

A full-time employee is entitled to use up to 5 days (40 hours) of his or her accrued or accumulated sick leave (or in the case of a part-time employee or an employee on an uncommon tour of duty, the number of days in his or her regularly scheduled workweek) for family care or bereavement purposes without regard to his or her sick leave balance. To use more than 5 days (40 hours) of sick leave to care for a family member, up to a maximum of 13 days (104 hours), an employee must maintain a sick leave balance of at least 10 days (80 hours) at all times. Under the proposed regulations, if an employee uses sick leave to care for a family member with a serious health condition, these same limitations would apply. In summary, an employee may not use more than 5 days (40 hours) of sick leave for any family-care purpose, unless he or she maintains a sick leave balance of at least 10 days (80 hours) (or, in the case of a part-time employee or an employee with an uncommon tour of duty, two times the number of days in his or her regularly scheduled workweek). Although an agency may advance up to 40 hours of sick leave for family care or bereavement purposes, an agency may not advance sick leave to fulfill the 80-hour requirement. In addition, an agency may not advance sick leave to allow an employee who has a minimum of 80 hours of sick leave in his or her account to use additional sick leave for family care purposes.

Since the President directed OPM to issue proposed regulations, we have received numerous inquiries from employees, agency officials, and other interested parties who are experiencing a family medical emergency and need additional paid time off. To accommodate the pressing need for this benefit, we are shortening the normal 60-day public comment period to 45 days in order to expedite final action on this proposal.

Regulatory Flexibility Act

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

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Family Assessment Certification

I certify that these regulations would strengthen the stability of the family, help families meet their responsibilities, and increase the disposable income of families in accordance with section 654 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) of Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR,

1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

2. In § 630.201(b), a new definition of *serious health condition* is added in alphabetical order to read as follows:

§ 630.201 Definitions.

* * * * *

Serious health condition has the meaning given that term in § 630.1202.

* * * * *

Subpart D—Sick Leave

3. In § 630.401, the introduction to paragraph (a) and paragraphs (a)(3) and (b) are revised; paragraphs (c) through (e) are redesignated as paragraphs (d) through (f), respectively; a new paragraph (c) is added; and in newly designated paragraph (e), ''(c)'' is removed and ''(d)'' is added in its place wherever it appears to read as follows:

§ 630.401 Grant of sick leave.

(a) Subject to paragraphs (b) through (f) of this section, an agency must grant sick leave to an employee when the employee—

* * * * *

(3)(i) Provides care for a family member who is incapacitated as the result of physical or mental illness, injury, pregnancy, or childbirth or who receives medical, dental, or optical examination or treatment; or

(ii) Provides care for a family member with a serious health condition.

* * * * *

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave normally accrued by that employee during a leave year).

(c)(1) An employee who is caring for a family member with a serious health condition under paragraph (a)(3)(ii) of this section may use a total of up to 480 hours of sick leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) during a leave year, subject to the limitation found in paragraph (c)(2) of this section.

(2) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (a)(3)(ii) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, that amount must be subtracted from the maximum number of hours authorized under paragraph (c)(1) of this section to determine the total amount of sick leave that may be used during the remainder of the leave year to care for a family member with a serious health condition.

* * * * *

4. Section 630.403 is revised to read as follows:

§ 630.403 Supporting Evidence.

(a) An agency may grant sick leave only when supported by evidence administratively acceptable. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as evidence administratively acceptable. For an absence in excess of 3 workdays, or for a lesser period when determined necessary, the agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a).

(b) An agency may establish a uniformly applied policy that requires employees to provide administratively acceptable evidence or medical certification for a request for sick leave within a specified time period. An employee who does not provide required administratively acceptable evidence or medical certification within his or her agency's specified time period is not entitled to sick leave.

§ 630.405 [Amended.]

5. In paragraph (a), remove ''(e)'' and add in its place ''(f),'' and in paragraph (b), remove the last sentence.

* * * * *

[FR Doc. 00–2932 Filed 2–4–00; 4:26 pm]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00–989–2 PR]

Raisins Produced From Grapes Grown in California; Increase in Compensation Rate for Handlers' Services Performed Regarding Reserve Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on increasing, by approximately 15 percent, the compensation rate for handlers' services performed in connection with reserve raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). These changes are necessary to reflect current industry costs.

DATES: Comments must be received by April 10, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule invites comments on increasing the compensation rate for handlers' services performed in connection with reserve raisins covered under the order. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. This rule would increase this rate from $40 to $46 per ton to reflect current industry costs. This action was unanimously recommended by the Committee on November 10, 1999. Additional payment for reserve raisins held beyond the crop year of acquisition would be increased from $2.00 to $2.30 per ton for the first 3 months, and from $1.03 to $1.18 per ton per month for the remaining 9 months. This action was unanimously recommended by the Committee on January 13, 2000.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Proceeds generated from sales of reserve raisins are also used to support handler sales to export markets, which are generally lower-priced than the domestic market. Net proceeds from sales of reserve raisins are distributed to the reserve pool's equity holders, primarily producers.

Section 989.66(f) of the order specifies that handlers be compensated for receiving, storing, fumigating, and handling that tonnage of reserve raisins determined by the reserve percentage of a crop year and held by them for the account of the Committee, in accordance with a schedule of payments established by the Committee and approved by the Secretary. Such compensation is paid by the Committee to handlers as soon as practicable after the end of the second quarter of the crop year (January) and quarterly thereafter. The crop year runs from August 1 through July 31. The order also requires that the Committee review this rate annually.

Section 989.401(a) of the order's rules and regulations specifies that handlers be compensated at a rate of $40 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling reserve raisins acquired during a particular crop year. The Committee conducted a survey among handlers to obtain data on the current costs of receiving, storing, fumigating, and handling raisins. The survey showed that such costs ranged from about $40 to $71.50 per ton. After analyzing the survey, the Committee recommended that the compensation rate provided for such services performed in connection with reserve raisins be increased from $40 to $46 per ton to reflect current industry costs. Paragraph (a)(1) of § 989.401 is proposed to be modified accordingly.

In addition, the Committee recommended that payment to handlers for reserve raisins held beyond the end of a crop year be increased by the same percentage (15 percent). Additional payment for reserve raisins held beyond the crop year of acquisition would be increased from $2.00 to $2.30 per ton for the first 3 months (August through October), and from $1.03 to $1.18 per ton per month for the remaining 9 months (November through July). Appropriate modifications are proposed to paragraph (b) of § 989.401.

This rule would also make a minor correction to paragraph (b) of § 989.401. That paragraph, which, as indicated above, specifies the additional payment for reserve raisins held beyond the crop year of acquisition, states such additional payment for months reflecting a crop year from September 1 through August 31. However, the order was amended in 1976 to change the crop year from August 1 through July 31. Thus, the first 3 months of the crop year should be August through October, rather than September through November, and the remaining 9 months of the crop year would be the period November through July. Accordingly, appropriate modifications are proposed to paragraph (b) of § 989.401.

Finally, this rule would make a conforming change to paragraph (c) of § 989.401 regarding rental payment on boxes and bins containing raisins held beyond the crop year of acquisition. Persons who furnish boxes or bins used for storing reserve raisins are compensated for the use of such containers. Section 989.401(c) currently reflects a crop year from September 1 through August 31 and should be modified to reflect the current August 1 through July 31 crop year. Appropriate changes are proposed to § 989.401(c).

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have estimated sales less than $5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

Pursuant to § 989.66(f) of the order, this rule would increase the compensation rate for handlers' services performed in connection with reserve raisins covered under the order. This rule would revise paragraphs (a)(1) and (b) of § 989.401, respectively, to increase the handlers' compensation for receiving, storing, fumigating, and handling reserve raisins acquired during a particular crop year from $40 to $46 per ton, and increase such additional payment for reserve raisins held beyond the crop year of acquisition from $2.00 to $2.30 per ton for the first 3 months (August through October), and from $1.03 to $1.18 per ton per month for the remaining 9 months (November through July). These changes are necessary to reflect current industry costs. Conforming changes are also proposed to paragraphs (b) and (c) of § 989.401 to reflect the current August 1 through July 31 crop year.

Regarding the impact of this rule on affected entities, handlers and producers, the order provides that handlers store reserve raisins for the account of the Committee. Net proceeds from sales of such reserve raisins are distributed back to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in receiving, storing, fumigating, and handling reserve raisins. Currently, handlers are compensated at a rate of $40 per ton for reserve raisins acquired during a particular crop year. For example, for the 1997–98 crop year, about 130,000 tons of raisins were held in reserve, and handlers were compensated a total of about $5.7 million from the 1997–98 reserve pool. A Committee survey showed that handler costs regarding reserve raisins has increased in recent years and that handlers have been absorbing these costs. Increasing the $40 per ton fee to $46 per ton for reserve raisins acquired during a particular crop year would more appropriately reflect the costs incurred by handlers and thereby reduce net proceeds to equity holders. There should be no disproportionate impact of this proposed action on small entities. Costs are allocated to equity holders based on their proportionate share of raisins in the reserve pool. In addition, this cost is incorporated into the price of reserve raisins that are sold to handlers for free use. Thus, the reserve pool is ultimately reimbursed for some of this cost.

Other alternatives to the proposed rates were considered by the raisin industry prior to the Committee's recommendations. The Committee's Administrative Issues Subcommittee met on November 9, 1999, and considered rates of $44 and $50 per ton for services performed in connection with reserve raisins acquired during a crop year. Ultimately, the Committee concluded that the proposed $46 per ton rate for services performed during the year of acquisition, and comparable rates for the succeeding crop year, were appropriate.

This proposed rule would increase the compensation rate for handlers' services regarding reserve tonnage raisins. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's Administrative Issues Subcommittee meeting on November 9, 1999, and the Committee meetings on November 10, 1999, and on January 13, 2000, where this action was deliberated were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab/html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is invited to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.401, paragraphs (a)(1), (b), and (c) are revised to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition.*—(1) *Receiving, storing, fumigating, and handling.* Each handler shall be compensated at a rate of $46 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Committee during all or any part of the same crop year.

* * * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 1 shall be compensated for storing, handling, and fumigating such raisins at the rate of $2.30 per ton per month, or any part thereof, between August 1 and October 31, and at the rate of $1.18 per ton per month, or any part thereof, between November 1 and July 31. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

(c) *Payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition.* Payment of rental on boxes and bins containing

reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which such raisins are held for the account of the Committee on August 1 shall be compensated for the use of such boxes and bins. The rate of compensation shall be: For boxes, two and one-half cents per day, not to exceed a total payment of $1 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins 20 cents per day per bin, not to exceed a total of $10 per bin per year. For purposes of this paragraph, *box* means any container with a capacity of less than 1,000 pounds and *bin* means any container with a capacity of 1,000 pounds, or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes on the succeeding August 1.

* * * * *

Dated: February 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2980 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. FHWA–99–6232]

RIN 2125–AE68

Utilities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its regulation prescribing policies, procedures, and reimbursement provisions for the adjustment and relocation of existing utility facilities, and for the accommodation of new utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. These amendments will bring the FHWA's utilities regulation into conformance with recent laws, regulations, or guidance, and will provide State transportation departments (STDs) clarification and more flexibility in implementing it.

DATES: Comments in response to this NPRM must be received on or before April 10, 2000.

ADDRESSES: Submit written, signed comments to the docket number appearing at the top of this document. You must submit your comments to the Docket Clerk, U.S. DOT Dockets Room, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To receive notification of receipt of comments you must include a pre-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, (202) 366–4104, Office of Program Administration, HIPA–20, or Mr. Reid Alsop, (202) 366–0791, Office of the Chief Counsel, HCC–31. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

Present FHWA regulations regarding utility relocation and accommodation matters have evolved from basic principles established decades ago, with many of the policies remaining unchanged. The present regulations are found in 23 CFR part 645. Subpart A of this part pertains to utility relocations, adjustments, and reimbursement. Subpart B pertains to the accommodation of utilities.

The utility regulations were revised on May 15, 1985, when a final rule was published in the **Federal Register** at 50 FR 20344. Three significant changes have occurred since then, on February 2 and July 1, 1988, when amendments to the regulation were published at 53 FR 2829 and 53 FR 24932; and on July 5, 1995, when a final rule was published at 60 FR 34846. The February 2, 1988, amendment provided that each State must decide, as part of its utility relocation plan, whether to allow longitudinal utility installations within the access control limits of freeways and if allowed under what circumstances. The July 1, 1988, amendment clarified that costs incurred by highway agencies in implementing projects solely for safety corrective measures to reduce the hazards of utilities to highway users are eligible for Federal-aid participation. The July 5, 1995, amendment raised the upper limit for FHWA forgoing preaward review and/or approval of consultant contracts for preliminary engineering from $10,000 to $25,000; increased the ceiling for lump sum agreements from $25,000 to $100,000; clarified the methodology to be used to compute indirect or overhead rates; required utilities to submit final billings within 180 calendar days following completion of the work; brought the definition of ''clear zone'' into conformance with the American Association of State Highway and Transportation Officials (AASHTO) ''Roadside Design Guide''; and conformed the utilities regulations to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914.

The proposed amendments would change the regulation as follows:

—Eliminate the $100,000 upper limit for lump-sum agreements.

—Allow reimbursement for labor surcharge, material, and supply costs to be based upon unit costs, as well as average costs, in lieu of actual costs.

—Apply the utility regulations to facilities similar to utilities, *i.e.,* facilities, such as wireless telecommunications towers, that are included in the definition of utility and are considered to be utilities by many, but not all, of the States.

—Suggest the Federal share of net income from revenues obtained by STDs for utility use of highway rights-of-way on Federal-aid highway projects be used by the State for projects eligible under title 23, U.S.C.

—Clarify the intent of the regulations that STDs control utility use of highway right-of-way on Federal-aid highway projects within the State and its political subdivisions, but not necessarily on all Federal-aid highways.

—Set forth as the most important consideration in determining whether

a proposed installation is a utility or not is how the STD views it under its own State laws and/or regulations.

—Suggest when a STD intends to permit utilities to use and occupy the right-of-way on a Federal-aid highway project, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project.

—Suggest when acquiring highway right-of-way, the STD, in consultation with the utilities, should consider acquiring sufficient right-of-way to accommodate utility needs.

—Indicate when a STD acquires and retains right-of-way on a Federal-aid highway project for use by utilities in accordance with established standard criteria pursuant to State law, ordinance, or administrative practice, such right-of-way may be considered eligible for Federal-aid reimbursement as an integral part of the project right-of-way.

—Eliminate a confusing provision to clarify the intent that the utility regulations are not applicable to longitudinal installations of private lines.

—Delete the provision encouraging STDs to adopt the alternate procedure for utilities.

—Incorporate an amendment conforming the utilities regulations to the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107.

The FHWA proposes to amend these regulations in the following manner and for the reasons indicated below.

Section-by-Section Analysis

Section 645.101 Purpose

The term ''utility facilities'' would be changed to ''utilities.'' The term ''utilities'' has commonly been used to describe lines, facilities, or systems for producing, transmitting, or distributing communications, electricity, or any other similar commodity. Hence, the term ''utility facilities,'' as presently used to describe the purpose of subpart A, though technically correct, is not all inclusive as it fails to cover ''lines'' and ''systems.'' The term ''utilities'' is a more common term and better covers all possible adjustment or relocation activities.

Section 645.105 Definitions

Paragraph designations would be removed from all definitions and all definitions would be placed in alphabetical order in order to conform subpart A to the existing format in subpart B. Also, the definitions ''State highway agency'' and ''Highway agency (HA)'' would be changed to ''State transportation department'' and ''Transportation department,'' respectively, to conform the utilities regulation to section 1212(a) of the TEA–21. The definition ''adjustment'' would be added, and the definition ''relocation'' would be revised. Adjustment and relocation are two separate activities in subpart A, but both are included under the definition for relocation. This amendment would merely separate the one, all-inclusive definition, into two separate definitions without changing the intent or meaning of either activity.

Section 645.113 Agreements and Authorizations

Paragraph (f) would be amended to eliminate the $100,000 ceiling for using the lump sum payment arrangement for reimbursement for utility adjustments on Federal-aid and direct Federal highway projects. The proposed amendment would provide the States greater flexibility in utilizing the lump sum payment arrangement. The purpose of allowing lump sum agreements, in lieu of agreements based on an accounting of actual costs, is to reduce the administrative burden associated with utility relocation projects. Under the lump sum process, cost accounting is easier, project billings are simplified, and a final audit of detailed cost records is not required. The FHWA believes the small degree of accuracy that might be realized if more detailed cost accounting methods were followed does not justify the extra cost involved in carrying out detailed audits. This revision would increase the number of utility relocations potentially eligible for lump sum payment.

Section 645.117 Cost Development and Reimbursement

Paragraphs (c)(1) and (e)(4) would be revised to: Allow reimbursement for labor surcharge, material, and supply costs based upon unit costs, as well as average costs, in lieu of actual costs; indicate average rates or unit costs may be adjusted as deemed appropriate by the STD or the FHWA; and indicate approval of the methodology to be used and periodic STD reviews may provide all the oversight necessary to satisfy the intent of the regulations. The proposed amendments would provide the States greater flexibility in utilizing the lump sum payment arrangement. They would also decrease unnecessary paperwork and encourage innovation.

Paragraph (i)(2) would be revised to clarify the intent of the regulation requiring utilities to submit final billings within 180 calendar days following completion of work. The intent was to authorize STDs to require utilities to submit final bills for utility relocation work within one year of completion of the work, and if final bills were not submitted within that time frame, to consider previous payments to the utility to be final. This regulation was intended to be a tool to help STDs close out projects in a timely manner; however, the intent was also to allow STDs to make exceptions. If they desire, STDs may pay bills received from utilities more than one year following completion of the work and be reimbursed with Federal-aid highway funds for eligible items.

Section 645.119 Alternate Procedure

The first sentence in paragraph (c) would be amended to delete the provision encouraging STDs to adopt the alternate procedure for utilities, but would continue to indicate that if they want to adopt the alternate procedure, they may do so by filing a formal application to the FHWA for approval. The alternate procedure was a forerunner of the certification acceptance process and was similar in many ways. But, with passage of the TEA–21, the States were given the option of exempting the FHWA from oversight on many Federal-aid projects under the provisions of 23 U.S.C. 106(b). As a result, there became limited interest in using the alternate procedure for utilities. The alternate procedure will remain available for STDs that want to use it, but the FHWA will no longer encourage STDs to use it.

Section 645.201 Purpose

The term ''utility facilities'' would be changed to ''utilities.'' The term ''utilities'' has commonly been used to describe lines, facilities, or systems for producing, transmitting, or distributing communications, electricity, or any other similar commodity. The term ''utility facilities,'' as presently used to describe the purpose of subpart B, though technically correct, is not all inclusive as it fails to cover ''lines'' and ''systems.'' The term ''utilities'' better covers all possible accommodation activities.

Section 645.203 Applicability

Paragraph (e) would be added to apply the utility regulations to facilities similar to utilities, *i.e.*, facilities, such as wireless telecommunications towers, that are considered by the FHWA to be included in the definition of ''utility'' in this subpart and are considered to be utilities by many, but not all, of the States. This proposed amendment would only effect the FHWA

accommodation procedures. Presently, utilities may be accommodated on highway right-of-way under provisions in this subpart; whereas, non-utilities may also be accommodated on highway right-of-way, but under provisions in another regulation, 23 CFR 1.23(c). The FHWA definition of ''utilities'' and many States' definitions of ''utilities'' cover wireless telecommunications towers; whereas, some States' definitions of ''utilities'' do not. The proposed amendment would allow wireless telecommunications towers, and other similar facilities, whether considered by an individual State to be ''utilities'' or not, to be accommodated under the provisions contained in this part of the utility regulations. This will provide uniformity by avoiding wireless telecommunications towers, and similar facilities, from being accommodated under one FHWA procedure in one State and a different FHWA procedure in another State.

Section 645.205 Policy

Paragraph (e) is added to indicate States may charge a fee for utility use of highway rights-of-way on Federal-aid highway projects, but suggests that if they do the proceeds should be used for title 23, U.S.C., projects. It has been the FHWA's policy for many years to allow States to charge fees for utility use if they desire, but to allow them to use the proceeds as they see fit. The FHWA has informally encouraged the States to use such proceeds for transportation purposes. This proposed amendment would formally establish the FHWA's desire for proceeds from fees charged for utility use of highway right-of way to be used for title 23, U.S.C., purposes.

Section 645.207 Definitions

The definitions ''State highway agency'' and ''Highway agency'' would be changed to ''State transportation department'' and ''transportation department,'' respectively, to conform the utilities regulation to section 1212(a) of the TEA–21.

The definition ''utility facility'' would be changed to ''utility,'' and in the definition ''private lines'' the term ''utility facility'' would be changed to ''utility.'' As discussed previously, the term ''utilities'' has commonly been used to describe lines, facilities, or systems for producing, transmitting, or distributing communications, electricity, or any other similar commodity. Hence, the term ''utility facilities,'' as presently used to describe the purpose of subpart B, though technically correct, is not all inclusive as it fails to cover ''lines'' and ''systems.'' The term ''utilities'' better covers all possible accommodation activities.

The definition of ''clear zone'' is amended to remove the date of the referenced publication and to indicate that the most current edition should be used, and to remove the reference to FHWA Regional Offices. The purpose for deleting the date of the publication and making reference to ''the most current edition'' would be to ensure the most recent information is used. Reference to FHWA Regional Offices would be deleted because in a recent reorganization all FHWA Regional Offices were abolished. All utility-related responsibilities of the FHWA Regional Offices have been delegated to FHWA Division Offices.

Section 645.209 General Requirements

Paragraph (d) would be amended to clarify the intent that STDs control utility use of highway right-of-way on Federal-aid highway projects within the State and its political subdivisions, but not necessarily on all Federal-aid highways. The FHWA's concern in this regard is limited to streets and highways that have been developed and constructed using Federal-aid highway funds. Even though STDs may only be required to regulate utility use on Federal-aid highway projects, as a practical matter it is difficult for them to adopt one policy for Federal-aid funded projects versus a different policy for adjoining State funded projects. As a result, STDs normally adopt a utility accommodation policy that covers highway routes under their jurisdiction as a group. Even so, the distinction in this regard between Federal-aid projects and Federal-aid highways may be helpful.

Paragraph (j) would be amended to remove the date of the referenced publication and indicate the most current edition should be used, and to remove the reference to FHWA Regional Offices. The reasons for doing this are the same as discussed in § 645.207 above.

Paragraph (m) would be added to clarify existing policy that the most important consideration in determining whether a proposed installation is a ''utility'' or not is how the STD views it under its own State laws and/or regulations, and a lesser, but nonetheless important consideration in making this determination is the definition of a ''utility'' in the definitions section of subpart B. This determination is important because utilities are handled under this regulation; whereas, private lines and other non-utilities are handled under other regulations, except for wireless telecommunications towers and other similar facilities as discussed above in § 645.203. As in many utility-related matters, the FHWA policy is broad enough in this instance to cover most situations, but nonetheless, in States where the State policy is more restrictive, and sometimes more liberal, than the FHWA policy, the FHWA will normally look upon a particular situation in the same manner the State does.

Paragraph (n) would be added to encourage STDs, when they intend to permit utilities to use and occupy the right-of-way on a Federal-aid highway project, to consider such potential use in determining the extent and adequacy of the right-of-way needed for the project. Paragraph (n) would also encourage STDs, in consultation with the utilities, to consider acquiring the right-of-way needed to accommodate the utilities, with the understanding they may keep the acquired right-of-way, or may sell, lease, or somehow convey it to the utilities. This will minimize inconvenience to property owners. Right-of-way acquired for utility purposes and retained by STDs may be eligible for Federal-aid reimbursement.

The FHWA's authority for allowing utility use and occupancy of the right-of-way of Federal-aid and direct Federal highway projects is contained in 23 CFR 1.23. Under the provisions of this section, the State must acquire right-of-way which is adequate not only for the construction of the highway facility, but also for its operation and maintenance. The right-of-way must be devoted exclusively to public highway purposes.

Section 1.23(c) permits certain non-highway uses of the right-of-way which are found to be in the public interest, provided such uses do not impair the highway or interfere with the free and safe flow of traffic thereon. Such a public interest finding has been made for utility facilities. A direct relationship exists between § 1.23 requirements concerning the adequacy of right-of-way to be acquired and the provisions for permitted non-highway uses. Proposed non-highway uses cannot be of a nature which would negate the general requirement regarding the adequacy of the right-of-way. Therefore, it is implicit in the public interest finding for utility use of the right-of-way of Federal-aid or direct Federal highway projects that there must be adequate space available to locate the utility facilities in a manner which does not interfere with the safe and efficient operations of the highway. Consequently, when a State intends to permit utilities to use and occupy

public highway right-of-way, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project. Failure to recognize the impact of such use, as well as other uses on private property located adjacent to the public highway right-of-way, may affect the safe and efficient operations of the highway and may result in the acquisition of right-of-way which is inadequate to meet the needs of the highway and the traveling public.

For example, little would be gained by acquiring restricted right-of-way and denying its use to certain utilities if these utilities could locate their facilities on private property adjacent to the restricted right-of-way with substantially the same impact on the highway and its user. The issue of adequate accommodation of utilities is a legitimate consideration in the development of highway projects. This is particularly true of land service facilities where the highway user and utility consumer tend to be one and the same.

A corresponding issue then becomes who pays for right-of-way acquired to accommodate utilities, the STD or the utilities. This is a matter to be determined by the affected parties. No matter who ends up paying for the right-of-way, it is normally desirable for the STD to approach a property owner for the purpose of acquiring all the right-of-way needed for both the highway and the utilities. The STD may later sell, lease, or somehow convey a portion of the right-of-way to the utilities for their use. At any rate, the property owner is only inconvenienced once. Should the STD decide to acquire right-of-way for utilities and retain possession, Federal-aid highway funds may be eligible to participate in the acquisition costs of the needed right-of-way. Utility use of highway right-of-way is not considered to be a use for a highway purpose. Therefore, Federal-aid highway funds are, theoretically, not eligible to participate in right-of-way acquired solely for the purpose of accommodating utility facilities in excess of that normally acquired in accordance with standard criteria and procedures. Even so, when a State or locality routinely dedicates or permits a portion of the road and street right-of-way for use by utilities in accordance with established standard criteria pursuant to State law, ordinance, or administrative practice, such right-of-way may be considered eligible for Federal-aid reimbursement as an integral part of the project right-of-way.

Section 645.211 State Highway Agency Accommodation Policies

The section heading would be changed to reflect the statutory name change from ''State highway agency'' to ''State transportation department.'' The introductory paragraph would be amended to remove the dates of the referenced publications and indicate that the most current editions should be used, and to remove the reference to FHWA Regional Offices. This is for the same reasons as discussed in § 645.207 above.

Section 645.215 Approvals

Paragraph (d) would be amended to remove all references to the approval of longitudinal installations of private lines. In § 645.203, it is indicated that private lines installed longitudinally on highway right-of-way are to be approved under the provisions of § 1.23(c) which cover the use of highway right-of-way, including air space, for non-highway purposes. This provision in § 645.203 was intended to exclude longitudinal private line installations from coverage under the utility regulations. It was not originally intended, however, for longitudinal private lines to be handled under the FHWA's air space provisions, but since that time, air space has come to be defined to include everything over, under, and on the right-of-way, and it has become common practice to include longitudinal private lines in this category. Not knowing that this would happen when § 645.203 was written, another reference was made to longitudinal private lines in § 645.215(d)(2) relative to approvals. This reference is no longer applicable and conflicts with existing requirements for handling air space items; therefore, it would be removed from the utility regulations.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address or via the electronic addresses provided above. The FHWA will file comments received in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed action is not a significant regulatory action within the meaning of Executive Order 12866, nor would it be a significant regulatory action within the Department of Transportation's regulatory policies and procedures. The proposed amendments would simply make minor changes to update the utilities regulations to conform to recent laws, regulations, or guidance, and to clarify existing policies. It is anticipated that the economic impact of this rulemaking will be minimal because the proposed amendments would only simplify or clarify procedures presently being used by STDs and utilities. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This is because the proposed amendments would only clarify or simplify procedures used by STDs and utilities in accordance with existing laws, regulations, or guidance.

National Environmental Policy Act

The FHWA has also analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and anticipates this action would not have any effect on the quality of the human and natural environment.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient Federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. This proposed rule would merely reduce the level of Federal approval actions by placing greater responsibility at the State or local level. Throughout the proposed regulation

there is an effort to keep administrative burdens to a minimum.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must determine whether requirements contained in proposed rulemakings are subject to the information collection provisions of the PRA. The FHWA has determined that this proposed action would not constitute an information collection within the scope or meaning of the PRA. Implementation of this proposal would impose no burden on the States and private entities because it merely provides clarification and more flexibility to STDs in implementing the FHWA's utilities regulations contained in 23 CFR 645. As a result, no additional information collection burdens will be imposed on the States, the local governments, or the private sector.

At present, the FHWA sponsors four information collections that are related to public utilities requirements. Each of these collections is currently cleared by the Office of Management and Budget (OMB). These FHWA collections are entitled as follows: (1) Develop and Submit Utility Accommodation Policies, OMB Control No. 2125–0514; (2) Eligibility Statement for Utility Adjustments, OMB Control No. 2125–0515; (3) Developing and Recording Costs for Utility Adjustments, OMB Control No. 2125–0519; and (4) Utility Use and Occupancy Agreements, OMB Control No. 2125–0522. The currently approved burden hours for these collections would not be affected by this proposal.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 645

Grant Programs—transportation, Highways and roads, Utilities—relocations.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, by revising part 645, subparts A and B to read as set forth below.

Issued on: January 28, 2000.

Kenneth R. Wykle,

Administrator.

PART 645—[REVISED]

1. The authority citation for part 645 continues to read as follows:

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

2. In part 645, revise all references in the left column wherever they appear to read as shown in the right column:

Old reference	New reference
Highway agency	Transportation department
Highway agencies	Transportation departments
State highway agency	State transportation department
State highway agencies.	State transportation departments
HA	TD
SHA	STD

3. Revise § 645.101 to read as follows:

§ 645.101 Purpose.

The purpose of this subpart is to prescribe policies, procedures, and reimbursement provisions for the adjustment and relocation of utilities on Federal-aid and direct Federal highway projects.

4. Amend § 645.105 by removing the paragraph designations from all definitions; by placing all definitions in alphabetical order; by adding the definition ''adjustment'; and by revising the definition ''relocation'' to read as follows:

§ 645.105 Definitions.

* * * * *

Adjustment—the adjustment of utility facilities required by the highway project. It includes moving, rearranging, or changing the type of existing facilities at the existing location, and taking any necessary safety and protective measures. It also means constructing a replacement facility in place that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

* * * * *

Relocation—the relocation of utility facilities required by the highway project. It includes removing and reinstalling the facility at a new location, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities, and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

* * * * *

5. Revise § 645.113(f) to read as follows:

§ 645.113 Agreements and authorizations.

* * * * *

(f) When proposed utility adjustment or relocation work on a project for a specific utility company can be clearly defined and the cost can be accurately

estimated, the FHWA may approve an agreement between the TD and the utility company for a lump-sum payment without later confirmation by audit of actual costs.

* * * * *

6. Revise § 645.117(c)(1), (e)(4), and (i)(2) to read as follows:

§ 645.117 Cost development and reimbursement.

* * * * *

(c) *Labor surcharges.* (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility, or, at the option of the utility, average rates or unit costs which are representative of actual costs may be used in lieu of actual costs if approved by the STD and the FHWA. Prior FHWA approval of the methodology to be used in developing average rates or unit costs and periodic STD reviews may provide all the oversight that is necessary to satisfy the intent of the regulations in this subpart. These average rates or unit costs should be adjusted at least once annually, or as otherwise deemed appropriate by the STD and the FHWA, to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

* * * * *

(e) *Material and supply costs.* * * *

(4) The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates or unit costs which are representative of actual costs may be used if approved by the STD and the FHWA. Prior FHWA approval of the methodology to be used in developing average rates or unit costs and periodic STD reviews may provide all the oversight that is necessary to satisfy the intent of the regulations in this subpart. These average rates or unit costs should be adjusted at least once annually, or as otherwise deemed appropriate, to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, five percent of the amounts billed for the materials and supplies issued from company stores and material yards or the value of recovered materials will be reimbursed in lieu of actual, average, or unit costs for handling.

* * * * *

(i) Billings. * * *

(2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, within one year following completion of the utility relocation work, otherwise previous payments to the utility may be considered final, except as agreed to between the STD and the utility. Billings received from utilities more than one year following completion of the utility relocation work may be paid if the STD so desires, and Federal-aid highway funds may participate in these payments.

* * * * *

7. Revise the introductory paragraph in § 645.119(c) to read as follows:

§ 645.119 Alternate procedure.

* * * * *

(c) To adopt the alternate procedure, the STD must file a formal application for approval by the FHWA. The application must include the following:

* * * * *

8. Revise § 645.201 to read as follows:

§ 645.201 Purpose.

The purpose of this subpart is to prescribe policies and procedures for accommodating utilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects.

9. Amend § 645.203 in paragraph (c) by removing the last word ''and''; in paragraph (d) by replacing the last period with '', and''; and by adding paragraph (e) to read as follows:

§ 645.203 Applicability.

* * * * *

(e) Facilities similar to utilities (*i.e.,* facilities, such as wireless telecommunications towers, that are included in the definition of ''utility'' in this subpart and are considered to be utilities by many, but not all, of the States).

10. Amend § 645.205 by adding paragraph (e) to read as follows:

§ 645.205 Policy.

* * * * *

(e) States may charge a fee for utility use of highway rights-of-way on Federal-aid highway projects. When this is done, the Federal share of net income from the revenues obtained should be used by the State for projects eligible under title 23, United States Code. Disposition of income received shall be the STD's responsibility and credit to Federal funds is not required.

11. Amend § 645.207 by revising the definitions ''clear zone'' and ''private lines'' by revising the definition heading ''utility facility'' to read ''utility'' and by placing all definitions in alphabetical order to read as follows:

§ 645.207 Definitions.

* * * * *

Clear zone—the total roadside border area starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or the area at the toe of a non-recoverable slope available for safe use by an errant vehicle. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. The current edition of the AASHTO ''Roadside Design Guide'' should be used as a guide for establishing clear zones for various types of highways and operating conditions. It is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, DC 20001.).

* * * * *

Private lines—privately-owned facilities which convey or transmit the commodities outlined in the definition of ''utility'' of this section, but are devoted exclusively to private use.

* * * * *

12. In § 645.209, revise paragraphs (d) and (j); and add paragraphs (m) and (n) to read as follows:

§ 645.209 General requirements.

* * * * *

(d) *Uniform policies and procedures.* For a highway agency to fulfill its responsibilities to control utility use of highway right-of-way on Federal-aid highway projects within the State and its political subdivisions, it must exercise or cause to be exercised, adequate regulation over such use and occupancy through the establishment and enforcement of reasonably uniform policies and procedures for utility accommodation.

* * * * *

(j) *Traffic control plan.* Whenever a utility installation, adjustment or maintenance activity will affect the movement of traffic or traffic safety, the utility shall implement a traffic control plan and utilize traffic control devices as necessary to ensure the safe and expeditious movement of traffic around the work site and the safety of the utility

work force in accordance with procedures established by the transportation department. The traffic control plan and the application of traffic control devices shall conform to the standards set forth in the current edition of the ''Manual on Uniform Traffic Control Devices'' (MUTCD) and 23 CFR part 630, subpart J. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, DC. It is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7.).

* * * * *

(m) *Utility determination.* In determining whether a proposed installation is a ''utility'' or not, the most important consideration is how the STD views a particular facility under its own State law and/or regulations.

(n) *Right-of-way considerations.* When an STD intends to permit utilities to use and occupy the right-of-way on a Federal-aid highway project, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project. When acquiring highway right-of-way, the STD in consultation with the utilities should consider acquiring sufficient right-of-way to accommodate utility needs. This will minimize inconvenience to property owners. The STD may retain possession of the acquired right-of-way, or may sell, lease, or convey it to the utilities. When an STD acquires and retains right-of-way on a Federal-aid highway project for use by utilities in accordance with established standard criteria pursuant to State law, ordinance, or administrative practice, such right-of-way may be considered eligible for Federal-aid reimbursement as an integral part of the project right-of-way.

13. Amend § 645.211 by revising the introductory paragraph to read as follows:

§ 645.211 State transportation department accommodation policies.

The FHWA should use the current editions of the AASHTO publications, ''A Guide for Accommodating Utilities Within Highway Right-of-Way'' and ''Roadside Design Guide'' to assist in the evaluation of adequacy of STD utility accommodation policies. They are available for inspection from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, DC 20001.). At a minimum, such policies shall make adequate provisions with respect to the following:

* * * * *

14. Revise § 645.215(d) to read as follows:

§ 645.215 Approvals.

* * * * *

(d) When a utility files a notice or makes an individual application or request to a STD to use or occupy the right-of-way of a Federal-aid highway project, the STD is not required to submit the matter to the FHWA for prior concurrence, except when the proposed installation is not in accordance with this subpart or with the STD's utility accommodation policy approved by the FHWA for use on Federal-aid highway projects.

* * * * *

[FR Doc. 00–2674 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[USCG 1999–6097]

Federal Pilotage for Foreign-Trade Vessels in Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting and extension of comment period.

SUMMARY: The Coast Guard is holding a public meeting to solicit comments on a proposed change to the licensing requirements for pilots of vessels engaged in foreign trade, under way on the navigable waterways within the State of Maryland. We have proposed to require that such vessels be under the direction and control of Federally-licensed pilots when not under the direction and control of State-licensed pilots. Because of substantial interest, we have scheduled a public meeting on March 1, 2000, regarding the proposed rule, and we have extended the public comment period until April 1, 2000. We encourage you to provide oral and written comments about the proposed change.

DATES: The public meeting is scheduled for Wednesday, March 1, 2000, from 7 p.m. to 10 p.m. The meeting will convene at 7 p.m.; however, it may conclude before 10 p.m. if we finish early. Comments and related material must reach the Docket Management Facility on or before April 1, 2000.

ADDRESSES: The public meeting will be held at the Bachelors Officers' Quarters (B.O.Q.) conference room at the Coast Guard Yard, Building 28A, 2401 Hawkins Point Road, Baltimore, MD 21226–1791.

Because of heightened security considerations on Federal installations, we will require photo identification (a driver's license, merchant mariner's document, or State identification) for admittance to the Coast Guard Yard. Please register in advance of the meeting with Mr. Timothy Farley, Office of Investigations and Analysis (G–MOA), Coast Guard, phone 202–267–1414, e-mail Tfarley@comdt.uscg.mil. For security and organizational purposes, we want to know your name and whether you intend to speak at the meeting. The resulting list will assist security guards at the gate and provide the order of speakers at the meeting. Individuals who do not call in advance may be required to sign in at the gate. Vehicles and possessions are subject to search pursuant to Title 41 of the Code of Federal Regulations, part 101–20.

To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG 1999–6097), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mr. Timothy Farley, Office of Investigations and Analysis (G-MOA), Coast Guard, telephone 202–267–1414, e-mail Tfarley@comdt.uscg.mil; or you

may contact Lieutenant Michael Dreier, Office of Standards, Evaluation and Development (G–MSR), Coast Guard, telephone 202–267–6490, e-mail Mdreier@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation at 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG 1999–6097), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the facility, please enclose a self-addressed, stamped postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of the comments.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Mr. Timothy Farley, phone 202–267–1414, e-mail Tfarley@comdt.uscg.mil, as soon as possible.

Background and Purpose

Under 46 U.S.C. 8503(a) the Secretary of Transportation may require a Federally-licensed pilot to be aboard a self-propelled vessel engaged in foreign trade and operating on the navigable waters of the United States when State law does not require a pilot. 46 U.S.C. 8503(b) provides the Coast Guard the authority to require Federally-licensed pilots on vessels engaged in foreign trade. This authority terminates when the State having jurisdiction establishes a superseding requirement for a State pilot and notifies the Coast Guard of that fact.

Commercial vessels transit the navigable waters of the State of Maryland carrying various types of freight, oil, and hazardous substances and materials, as well as large quantities of bunkers. Under Maryland law [General Statutes of Maryland, § 11–501], every vessel (foreign or domestic) sailing under register must use a State-licensed pilot if it is under the control of a docking master while maneuvering with tug assistance during berthing or unberthing, or shifting within a port. Maryland does not license, establish qualifications for, or regulate the competency of docking masters. Although all docking masters now operating in the Port of Baltimore already hold valid Federal pilots' licenses (or pilotage endorsements on Federal licenses), holding these is voluntary and is as yet neither a State nor a Federal requirement. Anyone may serve as a docking master, and, by law, no one needs to demonstrate proficiency or competency to do so.

We have determined that it is unsafe for certain vessels to undertake intra-port transits, or otherwise navigate in the waters of the State of Maryland, except when under the direction and control of pilots accountable to the State or the Coast Guard. Operating these vessels with docking masters who are either not licensed (or endorsed) as Federal or State pilots or not operating under the authority of pilots' licenses presents an unacceptable risk to human life, property, and the environment.

To ensure accountability, the Coast Guard proposed changes to its licensing regulations in a notice of proposed rulemaking entitled, ''Federal Pilotage for Foreign-Trade Vessels in Maryland'' [October 21, 1999 (64 FR 56720)]. These changes would require persons providing pilotage to operate under the authority of either a valid State or a valid Federal pilot's license. The proposed rule would add a new section to Subpart I of 46 CFR part 15 to require that a foreign-trade vessel be under the direction and control of a Federally-licensed pilot when operating in designated waters of Baltimore Harbor from the Key Bridge to moor, except when under the direction and control of a State-licensed pilot operating under the authority of his or her State license.

The rule would ensure that vessels are navigated by competent, qualified persons, knowledgeable in the local area and accountable to either the State or the Coast Guard. It would also promote navigational safety by increasing the level of accountability and reducing the risk of marine casualties in the waters of Maryland.

Dated: February 2, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–2894 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 012400C]

Western Pacific Fishery Management Council; Notice of Intent; Public Scoping Meetings

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

ACTION: Notice of intent to prepare an EIS; notice of intent to prepare amendments; public scoping sessions; request for comments.

SUMMARY: The Western Pacific Fishery Management Council (Council) announces its intention to prepare an environmental impact statement (EIS) on the Federal management of precious corals in the Western Pacific Region. The scope of the EIS analysis will include all activities related to the conduct of the fisheries and will examine the impacts of precious coral harvest on, among other things, protected species. The Council will hold public scoping meetings and accept written comments to provide for public input into the range of actions, alternatives, and impacts that the EIS should consider.

The Council also announces its intention to develop amendments to the Fishery Management Plan (FMP) for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region, the FMP for Crustacean Fisheries of the Western Pacific Region, and the FMP for Precious Coral Fisheries of the Western Pacific Region. The Council will hold meetings to give the public an opportunity to consider management alternatives and provide comments on these amendments.

DATES: Written comments on the intent to prepare an EIS will be accepted on or before March 15, 2000. Public scoping meeting will be held between February 16 and March 1, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates, times and locations.

ADDRESSES: Written comments on suggested alternatives and potential

impacts should be sent to Kitty Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, and to Dr. Charles Karnella, Administrator, National Marine Fisheries Service, Pacific Islands Area Office, 2570 Dole St., Honolulu, HI 96822. Copies of the documents for the precious corals EIS are available from the Council office. Public scoping meetings will be held in Hawaii and the Commonwealth of the Mariana Islands (CNMI). See **SUPPLEMENTARY INFORMATION** for specific scoping meeting locations and for special accommodations.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 808–522–8220.

SUPPLEMENTARY INFORMATION: Scoping meetings for the precious corals EIS will be held at the locations listed here. A summary of the current Federal management system for precious corals in the western Pacific region will be reviewed during a public scoping hearing. A principal objective of the scoping and public input process is to identify a reasonable set of management alternatives that, with adequate analysis, will sharply define critical issues and provide a clear basis for choice among the alternatives. The intent of the EIS is to present an overall picture of the environmental effects of fishing as conducted under the FMPs. The EIS will include a range of reasonable management alternatives and an analysis of their impacts in order to define issues and provide a clear basis for public comments and for choices among options by the Council.

The EIS will discuss the impacts of potential precious coral harvest on the human environment and consider a range of representative alternative management regulations. Alternatives will be assessed for impacts on essential fish habitat, target and non-target species of fish, discarded fish, marine mammals (Hawaiian monk seals and cetaceans), and other protected species present in the western Pacific ecosystem. In addition, the environmental consequences section will contain an analysis of socio-economic impacts of the fishery on the following groups of individuals: (1) Those who participate in harvesting the fishery resources and other living marine resources; (2) those who process and market the fish and fish products; (3) those who are involved in allied support industries; (4) those who consume fish products; (5) those who rely on living marine resources in the management area, either for subsistence needs or for recreational benefits; (6) those who benefit from non-consumptive uses of living marine resources; (7) those involved in managing and monitoring fisheries; and (8) fishing communities.

The Council is evaluating the need to amend the bottomfish, crustacean and precious corals FMPs to better achieve the management objectives of these FMPs. Currently, no Federal regulations are in place to manage the bottomfish, crustacean and precious coral fishery resources in the EEZ waters surrounding the CNMI. There are also no Federal regulations for the bottomfish and crustacean fisheries for the EEZ waters surrounding the Pacific Remote Island Areas (PRIAs). The amendments will consider a wide range of management alternatives to address data shortfalls and possible impacts from the bottomfish, crustacean, and precious coral fisheries in the PRIAs and the CNMI. The Council seeks to solicit public comment and input on a wide range of management alternatives including, but not limited to, the following: Federal permit and data reporting requirements; limited access; vessel monitoring systems; observer program; closed season; closed areas; gear restrictions; size limits; catch quotas; and prohibitions on the use of destructive fishing techniques, including the use of explosives, poisons, bottomset gill-nets, bottom trawls, and tangle nets.

Dates, Times, and Locations of the Scoping Meetings

The public scoping meetings will be held on:

Wednesday, February 16, 2000, from 6:30–8:30 p.m., Joeten-Kiyu Public Library Conference Room, Saipan, CNMI. Phone the Division of Fish and Wildlife Resources, 670–322–9834, for information;

Thursday, February 24, 2000, from 8:30 a.m–12:00 p.m., 73rd Scientific and Statistical Committee meeting, Council Office Conference Room, Honolulu, HI. Phone the Council Office, 808–522–8220, for information; and

Thursday, March 1, 2000, Hibiscus Ballroom, Ala Moana Hotel, Honolulu, HI. Phone the Council Office, 808–522–8220, for information.

These meetings will be advertised in the local newspapers.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–20 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 3, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–2933 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 65, No. 27

Wednesday, February 9, 2000

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

[TM–00–200]

Notice of Program Continuation; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Agricultural Marketing Service (AMS) is correcting a notice that appeared in the **Federal Register** on January 12, 2000. The notice announces that the Federal-State Marketing Improvement Program (FSMIP) was allocated $1,200,000 in the Federal budget for Fiscal Year 2000; however, pertinent information in the **SUMMARY** and **DATES** sections of the notice was omitted.

FOR FURTHER INFORMATION CONTACT: FSMIP Staff, Transportation and Marketing, Agricultural Marketing Service, U.S. Department of Agriculture, Room 4006 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

SUPPLEMENTARY INFORMATION:

Background

AMS published a notice that appeared in the January 12, 2000 **Federal Register** at 65 FR 1846. The notice announced that the FSMIP was allocated $1,200,000 in the Federal budget for fiscal year 2000. Pertinent information in the **SUMMARY** and **DATES** sections of the notice was omitted. In the **SUMMARY,** a reference to community-based organizations was omitted. In the **DATES** section, reference to a two-round consideration of proposals was not made. Accordingly, this document makes the appropriate corrections to those sections of the notice.

Correction

In FR Doc. 00–714, published on January 12, 2000, on page 1846, first column, the **SUMMARY** and **DATES** sections are corrected to read:

''SUMMARY: Notice is hereby given that the Federal-State Marketing Improvement Program (FSMIP) was allocated $1,200,000 in the Federal budget for FY 2000. Funds remain available for this program. States interested in obtaining funds under this program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State Agencies are eligible to apply for funds, State Agencies are encouraged to involve industry groups and community-based organizations in the development of proposals and the conduct of projects.'' and

''DATES: Funds will be allocated on the basis of two rounds of consideration. Proposals received by February 18, 2000 will be considered during the first round. Proposals which are not selected for funding during the first round and other proposals received by May 1, 2000 will be considered during the second round.''

Dated: February 3, 2000.

Eileen Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 00–2977 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intent To Prepare an Environmental Impact Statement; Fernow Experimental Forest, Tucker County, WV

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service intends to prepare an environmental impact statement (EIS) for proposed research activities on the Fernow Experimental Forest. The purpose of the proposed research is to evaluate the effectiveness of silvicultural tools that include cutting and prescribed burning on central Appalachian forests. The goal of the proposed research is to improve understanding about and management of central Appalachian hardwood forests.

The 4700-acre Fernow Experimental Forest is situated inside the parameters of the Monongahela National Forest in Tucker County, West Virginia. These proposed research activities are in compliance with the Monongahela National Forest Management Plan, which provides overall guidance for management of the area, including direction for management of the Fernow Experimental Forest. Public comment is invited on the scope of the analysis that should be conducted and on the identification of alternatives.

DATES: Comments must be submitted in writing and received by March 27, 2000.

ADDRESSES: Written comments concerning the scope of the proposed research activities should be directed to Dr. Mary Beth Adams, Project Leader and Responsible Official, Timber and Watershed Laboratory, P.O. Box 404, Parsons, WV 26287.

Comments also may be submitted via facsimile to (304) 478–8692 or by e-mail to madams/r9__monong@fs.fed.us. Comments received in response to this notice, including name and address when provided, will be considered part of the public record and will be available for public inspection.

The public may inspect comments received at the Office of the Project Leader, Timber and Watershed Laboratory, Nursery Bottom, Parsons, West Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Beth Adams, Project Leader, Timber and Watershed Laboratory, at (304) 478–2000, ext. 130.

SUPPLEMENTARY INFORMATION:

Background

The charter of the Fernow Experimental Forest is to facilitate ecological research on the central Appalachian forests. The 4700-acre Fernow Experimental Forest (the Forest) is situated inside the parameters of the Monongahela National Forest and is located south of Parsons, West Virginia. The Forest is administered by the Forest Service Northeastern Research Station, Research Work Unit NE–4353, ''Sustainable Forest Ecosystems in the Central Appalachians.'' The Research Work Unit is located at the Timber and Watershed Laboratory in Parsons, West Virginia. The mission of this research unit is: (1) To explain the role of natural and human-induced factors in sustaining central Appalachian forest ecosystems and (2) to provide guidelines for managing central Appalachian forests for a range of

products and benefits while maintaining the productivity and diversity of the soil, water, and forest resources. The goal of the proposed research activities is to improve understanding about and management of central Appalachian hardwood forests.

The Forest Service proposes to continue some research activities begun in the 1950s and to initiate some new research activities in the year 2000. These actions are consistent with the Research Work Unit Description; individual Study Plans; the Monongahela National Forest Land and Resource Management Plan, Management Prescription 8, page 202, Vegetation; and the General Plan for the Fernow Experimental Forest.

The purpose of the research initiated in the 1950s was to study the effects of various silvicultural practices on forest productivity, species composition and diversity, wildlife populations, and ecosystem processes. This research continues and involves the application of experimental treatments, including diameter-limiting cutting on 186 acres, single-tree selection on 229.6 acres, a financial maturity harvesting method based on projected rates of return on investment on 343.4 acres, and small clearcuts on 26 acres.

The proposed new research activities would involve application of silvicultural treatments to stands of trees as part of an ongoing research experiment. The silvicultural treatments involve cutting individual trees, according to the silvicultural prescription, and removing the stems from the stand. Branches and tree tops remain in the stand. Rubber-tired skidders and cable logging systems will be used to remove the trees. Existing skid trails and roads will be utilized. No new permanent roads will be constructed. After completion of silvicultural treatments, roads and decks used in the logging process will be closed.

One of the purposes of the proposed new research activities is to evaluate the effectiveness of prescribed burning as a silvicultural and ecological tool on the central Appalachian forests. An area of 119 acres will be treated with prescribed fire. Research activities that include prescribed fires will be conducted according to State regulations administered by the West Virginia Division of Forestry. A slow-moving fire (1–5 ft/min) that produces high amounts of heat (2–4 ft flame lengths) conducted in the spring is deemed to have the most beneficial effect in improving oak competitiveness and will be used in these research activities. All personnel supervising and working on the fire will have received training in the use of prescribed fire and in fire suppression.

Comments Are Requested

The Forest Service is soliciting comments from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed research activities in:

- Identifying potential issues;
- Identifying issues to be analyzed in depth;
- Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis;
- Identifying potential environmental effects of the proposed activities;
- Identifying and exploring alternatives to the proposed research activities; and
- Determining potential cooperating agencies and task assignments.

The following issues already have been identified:

- Potential impacts to Threatened, Endangered or Sensitive Species;
- Potential impacts on Biodiversity, including concerns about fragmentation of interior habitat, and loss of old growth habitat;
- Sediment impacts on streams from roads, skid trails, and log landings.

Comments received will be considered in preparation of the draft EIS. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 2000. EPA will publish a notice of availability of the Draft EIS in the **Federal Register**. The comment period on the draft will be 45 days from the date the EPA notice appears in the **Federal Register**. Copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment. It is very important that those interested in the management of the Fernow Experimental Forest comment at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

At this early stage, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. (*City of Angoon* v. *Hodel* 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritage, Inc.* v. *Harris,* 490F. Suppl. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The final EIS will be completed in June 2000. In the final EIS, the Forest Service will respond to comments received in response to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The responsible official will document the decision and the rationale for that decision in the Record of Decision. That decision will be subject to Forest Service Administrative Appeal Regulations at 36 CFR part 215.

Dated: January 28, 2000.

Randle G. Phillips,

Deputy Chief, Programs and Legislation.

[FR Doc. 00–2748 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on March 9 and 10, 2000, at the Baker Ranger District, 3165 10th Street, Baker City, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. the first day

and will begin at 8 a.m. and continue until 4 p.m. on the second day. Agenda items to be covered include: (1) Review draft CMP alternatives and, (2) Open Public forum. All meetings are open to the public. Public comments will be received at 1:30 p.m. on March 9.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: February 3, 2000.

Karyn L. Wood,

Forest Supervisor.

[FR Doc. 00–2985 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include Alley Cropping, Constructed Wetland, Firebreak, Forest Site Preparation, Forest Stand Improvement, Forest Trails and Landings, Prescribed Burning, Riparian Forest Buffer, Spring Development, Tree/Shrub Establishment, Tree/Shrub Pruning, Use Exclusion, Windbreak/Shelterbelt Establishment, and Windbreak/Shelterbelt Renovation. These standards are used to convey national guidance when developing Field Office Technical Guide Standards used in the States. NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

DATES: Comments will be received on or before April 10, 2000. T his series of new or revised conservation practice standards will be adopted after the close of the 60-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS–CED in Washington, D.C. Submit individual inquiries and return any comments in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, D.C. 20013–2890. Telephone Number 202–720–5023. The standards are also available and can be downloaded from the Internet at: http://www.ftw.nrcs.usda.gov/practice__stds.html.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed at Washington, DC, on January 27, 2000.

Danny D. Sells,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 00–2863 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Census Bureau.

Title: Pollution Abatement Costs and Expenditures (PACE) Survey.

Agency Form Number(s): MA–200.

OMB Approval Number: 0607–0176.

Type of Request: Reinstatement, with change, of an expired collection.

Burden Hours: 160,000 hours.

Number of Respondents: 20,000.

Average Hours Per Response: 8 hours.

Needs and Uses: The Pollution Abatement Costs and Expenditures (PACE) Survey was conducted annually prior to 1995 but suspended due to Census Bureau budget limitations. The PACE Survey provided measures of the cost to private industry for the Nation's commitment to protecting the environment. This survey is an essential source of data for monitoring the impact of environmental programs on the U.S. economy and responsiveness to these programs. The absence of the data over the past 4 years has highlighted the need for measures of private industry spending on pollution abatement activities. With support from the EPA, the Census Bureau proposes to reinstate this survey.

The survey will collect information similar to that previously collected: Pollution abatement expenditures, operating costs for pollution abatement, each by media, air pollution control, water pollution control and multi-media, and waste disposal. In addition, the survey will include the nature of the costs incurred, distinguishing between prevention and treatment. The survey will include approximately 20,000 establishments selected to represent manufacturing, mining and electric utilities industries defined by the North American Industry Classification System (NAICS) with emphasis on industries most heavily involved in pollution abatement activities. The survey sample will also include representation of establishments in the apparel and textile industry and manufacturing establishments with less than 20 employees. These groups had been excluded from the earlier survey design under the assumption that they contributed little or nothing to the estimates. Representation from these groups will be used to confirm the assumption.

The EPA will use the data to monitor the impact of environmental programs and to estimate cost projections for its regulatory impact analysis for proposed pollution regulations. Capital expenditures for pollution abatement is an important component of total capital expenditures when analyzing investment and productivity at the Bureau of Labor Statistics and the Bureau of Economic Analysis. State and local governments, trade associations, the academic community, and private businesses will use the data to evaluate regional pollution abatement spending, local legislation, and performance of specific industries.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 1, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2963 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2001 Residential Finance Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before April 10, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230, or by e-mail at LEngelme@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Walter L. Busse, U.S. Census Bureau, Housing and Household Economic Statistics Division, Room 1445–3, Washington, DC 20233–8500, and telephone (301)457–3220.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau has conducted the Residential Finance Survey (RFS) every 10 years as part of the decennial census since 1950. The RFS is the only survey designed to collect and produce data about the financing of nonfarm, privately-owned residential properties.

The RFS does the following:

- Collects, tabulates, and presents data for properties, the standard unit of reference for financial transactions related to housing. In most other demographic surveys, the unit of reference is the person, household, or housing unit;
- Provides the only source of information on property, mortgage, and financial characteristics for multi-unit rental properties.; and
- Conducts interviews of property owners and mortgage lenders, resulting in more accurate information on property and mortgage characteristics.

Some uses of the RFS data are:

- As benchmark data for estimates of several economic aggregates prepared by the Bureau of Economic Analysis, such as the gross domestic product (GDP) and the national income accounts;
- As the only source of information on the acquisition, financing, and ownership of multifamily rental properties;
- As source of data for developing benchmark per-unit estimates of rents collected, operating expenses, and capital expenditures on different classes of rental properties;
- As the basis for developing an estimate of the number of age-restricted housing units and other categories of seniors' housing units, and to study how they are financed;
- As data to help the Department of Housing and Urban Development regulate the Government Sponsored Enterprises and to monitor these organizations' progress in reaching established goals, such as to expand housing opportunities for working class and low-income families, and for families in underserved communities;
- As a source of information on the sources and uses of mortgage credit in rural areas and the rates and terms relative to metropolitan areas;
- As a source of data on credit extensions of individuals and on residential investor-property finance;
- As the only source of information on non-traditional sources of mortgage credit, such as individuals, trust funds, and philanthropic organizations;
- As the basis for studying the role second mortgages, mortgage refinancings, and home equity loans play in financing modeling;
- As an excellent and comprehensive source of information on the ability of all Americans to have equal access to mortgage credit; and
- As the basis for strategic planning and business decisions by firms involved with housing or mortgage credit.

We are undertaking several steps to make sure that the content for the 2001 RFS addresses the changes that occurred in the mortgage industry during the 1990s. This includes bringing together a group of primary RFS data users and mortgage finance experts from in and out of government to develop the questionnaire content. We are also conducting cognitive testing with property owners and mortgage lenders to obtain their input on the RFS content and collection procedures, and to improve the validity of the questions asked.

II. Method of Collection

In the RFS, we select a sample of addresses identified in Census 2000. From this sample, we first decide if a property is a homeowner property or a rental property. This determines the type of questionnaire the respondent will complete. A homeowner property is defined as one having fewer than five units where the owner of the property lives in one of the units. A rental property is one with five or more units or a property of fewer than five units with none being owner occupied. Condominium apartments are homeowner properties if the owner lives in the unit and rental properties if the owner does not live in the unit.

Forms

We anticipate using the following four questionnaires to collect data for the 2001 RFS.

- An ''owner seeker'' letter will be mailed to units at basic street addresses having two or more housing units in order to identify the name and address of the owner or the owner's agent and to determine if the property is a homeowner property or a rental property.
- A homeowner questionnaire will be mailed to all addresses with only one unit, to all mobile homes, and to units identified on the ''owner seeker'' letter as having fewer than five units, one of which is owner occupied. If the property is mortgaged, the respondent will be asked to report the person or institution to whom mortgage payments are made.
- A rental and vacant property questionnaire will be mailed to owners or agents of properties with five or more housing units or those with fewer than five units when none is owner occupied as indicated by responses on the ''owner seeker'' letter and the homeowner questionnaire. As with the homeowner questionniare, the respondents are asked to whom mortgage payments are made.
- A lender questionnaire will be mailed to financial institutions, government agencies, firms or individuals to whom mortgage payments are made, as indicated on the homeowner and the rental and vacant

property questionnaires. The questionnaire is designed to collect data on both first and junior (second or third) mortgages, including home equity lines of credit.

Timing

The ''owner seeker'' letters and the first round of the homeowner questionnaires are scheduled for mailout in early 2001. A second mailing of the homeowner questionnaires (those identified by the owner seeker letter) is expected in early spring 2001. The rental and vacant property questionnaires are scheduled for initial mailing in early 2001. The lender questionnaires are to be mailed in two primary cycles, the first in summer 2001 and the second in early fall 2001, with possible additional smaller mailings from follow-up operations.

Enumeration

The RFS is essentially a centralized mail-out/mail-back operation. We will limit our field interviewing for property owners to cases in which the owner was either not identified or failed to respond to the original mailed questionnaires and follow-up letters. Follow-up interviewing of lenders will occur in two stages. For financial institutions, follow-up telephone inquiries will be made. Follow-up for mortgages held by individuals will involve a telephone call and, if necessary, a personal visit by Census Bureau field representatives from the 12 census regional offices.

III. Data

OMB Number: Not available.
Form Number:
D–2900 (Homeowner Questionnaire)
D–2901 (Rental and Vacant Property Qustionnaire)
D–2902 (Lender Questionnaire)
D–2905(L) (Owner Seeker Letter)
Type of Review: Regular submission.
Affected Public: Individual property owners and lending institutions.
Estimated Number of Respondents:
D–2900—35,000 respondents
D–2901—35,000 respondents
D–2902—50,000 respondents
D–2905(L)—210,000 respondents
Estimated Time Per Response:
D–2900 @ 30 minutes/response = 17,500 hours
D–2901 @ 45 minutes/response = 26,250 hours
D–2902 @ 30 minutes/response = 25,000 hours
D–2905(L) @ 2.5 minutes/response = 8,750 hours
Estimated Total Annual Burden Hours: 77,500 hours.
Estimated Total Annual Cost: The only cost to a respondent is the time necessary to respond to this survey. There is no monetary cost to the respondent.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, U.S.C., Section 141 and Section 1113(d) of the Right to Financial Privacy Act (12 U.S.C. Section 3413(d)).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 3, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2962 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

BEA Customer Satisfaction Survey; Proposed Information Collection; Comment Request

SUMMARY: The U.S. Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Interested persons are invited to submit comments on or before April 10, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230, (or via e-mail at LEngelmeier@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Verna M. Learnard, U.S. Department of Commerce, Bureau of Economic Analysis, BE–53, Washington, DC 20230, or by telephone at 202–606–9690.

SUPPLEMENTARY INFORMATION:

I. Abstract

As one of the Nation's leading statistical agencies, the Bureau of Economic Analysis (BEA) provides reliable and consistent measures of economic activity that are essential to intelligent decision making of business people and policy makers and to the efficient operations of financial markets. The purpose of the BEA Customer Satisfaction Survey will be to obtain feedback from customers on the quality of BEA products and services. The results of the information collected will serve to assist BEA in improving the quality of its data products and its methods of dissemination.

II. Method of Collection

The Survey and a cover letter with instructions on how to complete the survey will be mailed to 7,500 potential respondents. BEA will request that responses be returned 30 days after the mailing. The survey will be designed so that all responses are anonymous and therefore eliminates the necessity for recordkeeping of respondents.

III. Data

OMB Number: _____.
Type of Review: New.
Affected Public: Individuals from profit and non-profit organizations and individuals from other Federal, state, and local government agencies.
Estimated Number of Respondents: 7,500.
Estimated Response Time: 15 minutes.
Estimated Total Annual Burden Hours: 1,875.
Estimated Total Annual Cost: The only cost to the respondents is that of their time.
Legal Authority: Executive Order 12862, Section 1(b), of September 11, 1993.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 3, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2961 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–06–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Notice of Open Meeting

The President's Export Council Subcommittee on Encryption (PECSENC) will meet on February 25, 2000, at the Hewlett-Packard Company, Spyglass Room, Building 5, 1501 Page Mill Road, Palo Alto, California, 94304. The meeting will begin at 9:00 a.m. and is scheduled to adjourn at 4 p.m. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Open Session: 9:00 a.m.–4 p.m.

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Update on Bureau of Export Administration initiatives
4. Issue briefings
5. Open discussion

The meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the PECSENC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSENC members, the PECSENC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. & Pennsylvania Ave, NW, Washington, DC 20230.

For more information, contact Ms. Carpenter on (202) 482–2583.

Dated: February 3, 2000.

Brian Nilsson,

Acting Assistant Secretary.

[FR Doc. 00–2860 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–804, C–122–805]

Continuation of Antidumping Duty Order and Countervailing Duty Order: New Steel Rail From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order and countervailing duty order: new steel rail from Canada.

SUMMARY: On December 29, and December 30, 1999, respectively, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty order and countervailing duty order on new steel rail from Canada would likely lead to continuation or recurrence of dumping and a countervailable subsidy (64 FR 73013 (December 29, 1999) and 64 FR 73519 (December 30, 1999), respectively). On January 26, 2000, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order and countervailing duty order on new steel rail from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 4261 (January 26, 2000)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing this notice of the continuation of the antidumping duty order and countervailing duty order on new steel rail from Canada.

DATES: February 9, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

Background

On June 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 23596 and 64 FR 23677, respectively) of the antidumping duty order and countervailing duty order on new steel rail from Canada pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy. The Department notified the Commission of the magnitude of the margin likely to prevail, the net countervailable subsidy, and the nature of the subsidy likely to prevail were the antidumping duty order and countervailing duty order revoked.[1]

On January 26, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order and countervailing duty order would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Scope

The merchandise subject to this antidumping duty order and this countervailing duty order is new steel rail, whether of carbon, high carbon, alloy or other quality steel from Canada. Subject merchandise includes, but is not limited to, standard rails, all main line sections (at least 30 kilograms per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rails (or ''third rail'') and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines, and in industrial applications.

Specifically excluded from the order are light rails (less than 30 kilograms per meter or 60 pounds per yard). Also excluded from the order are relay rails, which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track. As a result of a changed circumstances review in 1996, the antidumping duty

[1] *See Final Results of Expedited Sunset Review: New Steel Rail from Canada,* 64 FR 73013 (December 29, 1999) and *Final Results of Expedited Sunset Review: New Steel Rail from Canada,* 64 FR 73519 (December 30, 1999) .

[2] *See Steel Rails From Canada,* Investigations Nos. 701–TA–297 (Review) and 731–TA–422 (Review), 65 FR 4261(January 26, 2000).

order on new steel rail was partially revoked with regard to 100ARA–A new steel rail, except light rail, from Canada.[3] Also, nominal 60 pounds per yard steel rail is outside the scope of this order.[4]

This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 7302.10.1010, 7302.10.1015, 7302.10.1035, 7302.10.1045, 7302.10.5020, 8548.90.0000.[5] The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty and countervailing duty orders would likely lead to continuation or recurrence of dumping and a countervailable subsidy and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order and countervailing duty order on new steel rail from Canada. The Department will instruct the U.S. Customs Service to continue to collect deposits at the rate in effect at the time of entry for all imports of subject merchandise.

Pursuant to section 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than January 2005.

Dated: February 3, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2974 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See New Steel Rail, Except Light Rail, From Canada; Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews, and Revocation in Part of Antidumping and Countervailing Duty Orders,* 61 FR 11607 (March 21, 1996).

[4] *See New Steel Rail, Except Light Rail, From Canada; Notice of Termination of Changed Circumstances Administrative Reviews and Clarification of Scope Language,* 63 FR 43137 (August 12, 1998).

[5] Per conversation with April Avalone at U.S. Customs on September 7, 1999.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers one manufacturer/exporter of the subject merchandise, and the period of review May 1, 1998 through April 30, 1999.

EFFECTIVE DATE: Febraury 9, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3019 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION: We initiated the review on June 30, 1999 (64 FR 35125) following a request made by the petitioners on May 28, 1999. Section 751(a)(3)(A) of the Act directs the Department to make a preliminary determination within 245 days for each administrative review. The section provides, however, that if it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245-day period to 365 days. Due to the reasons enumerated in the Memorandum from Richard Weible to Joseph A. Spetrini, Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan, Extension of Time Limit for the Preliminary Results, dated January 28, 2000, the Department has determined that it is not practicable to complete this review within the 245-day time limit.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results of the administrative review by 120 days to May 30, 2000.

Dated: January 28, 2000.

Richard O. Weible,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group III.

[FR Doc. 00–2972 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Rescission of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is rescinding the review it initiated on October 1, 1999 of the antidumping duty order on certain cut-to-length carbon steel plate from Mexico (64 FR 53318).

EFFECTIVE DATE: Febraury 9, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Killiam or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–3019 and 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

Background

On August 31, 1999, the sole respondent, Altos de Hornos de Mexico (AHMSA), and the petitioners, Bethlehem Steel Corporation, Geneva Steel, Gulf Lakes Steel, Inc., of Alabama, Inland Steel Industries, Inc., Lukens Steel Company, Sharon Steel Corporation, and U.S. Steel Group (a unit of USX Corporation) requested that the Department conduct an administrative review of subject merchandise exported by AHMSA from Mexico to the United States for the period August 1, 1998 through July 31, 1999. On October 1, 1999, the Department published in the **Federal Register** (64 FR 53318) a notice of initiation of administrative review with respect to AHMSA for that period. The

petitioners withdrew their request for a review on December 21, 1999; AHMSA withdrew its request on December 28, 1999.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because both parties' withdrawals were submitted within the 90-day time limit, we are rescinding this review. We will issue appropriate appraisement instructions directly to the US Customs Service.

This notice serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3)(1999). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Act, 19 CFR 351.213(d)(1) and 19 CFR 351.213(d)(4).

Dated: January 28, 2000.

Richard O. Weible,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group III.

[FR Doc. 00–2975 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethelene Terephthalate, Film, Sheet, and Strip From Korea; Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea. The review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea. The review covers three manufacturers/exporters of the subject merchandise and the period June 1, 1998 through May 31, 1999.

EFFECTIVE DATE: February 9, 2000.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 482–0649, respectively.

Postponement of Preliminary Results of Review

On July 29, 1999, the Department initiated this administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea. (64 FR 41075). The current deadline for the preliminary results is February 29, 2000. We determine that it is not practicable to complete this review within the original time frame. (*See* Memorandum to Joseph A. Spetrini dated February 3, 2000.)

Accordingly, the deadline for issuing the preliminary results of this review is now no later than May 1, 2000. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: February 3, 2000.

Richard Weible,

Acting Deputy Assistant Secretary for AD/CVD Enforcement, Group III.

[FR Doc. 00–2976 Filed 2–8–00; 8:45 am]

BILLING CODE 3519–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012800G]

Marine Mammals; File No. 962–1562

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that The North Gulf Oceanic Society, P.O. Box 15191, Homer, Alaska 99603, has applied in due form for a permit to take North Pacific humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before March 10, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7235).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222–226).

The applicant is requesting authorization to harass, up to 6 times each, up to 500 North Pacific humpback whales (*Megaptera novaeangliae*) annually, over a five year period, during photo-identification studies in Alaska waters.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**,

NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 2, 2000.

Eugene T. Nitta,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–2934 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in Futures and Options on Five Year Agency Notes and Ten Year Agency Notes

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in futures and options on five year agency notes and ten year agency notes. The proposals were submitted under the Commission's 45-day Fast Tract procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before February 24, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME five and ten year agency notes futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st NW, Washington, DC 20581, telephone (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed designation applications were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on March 13, 2000, 45 days after receipt of the proposals. In view of the limited period under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under ''What's New & Pending''.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 3, 2000.

Richard Shilts,

Acting Director.

[FR Doc. 00–2916 Filed 2–8–00; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Request for Approval of a Collection of Information—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of residential garage door operators. The collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Automatic Residential Garage Door Operators (16 CFR part 1211). The Commission will consider all comments received in response to this notice before requesting approval of this extension of a collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than April 10, 2000.

ADDRESSES: Written comments should be captioned ''Residential Garage Door Operators'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR Part 1211, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2226.

SUPPLEMENTARY INFORMATION: In 1990, Congress enacted legislation requiring residential garage door operators to comply with the provisions of a standard published by Underwriters Laboratories to protect against entrapment. The Consumer Product Safety Improvement Act of 1990 (the Improvement Act) (Pub. L. 101–608, 104 Stat. 3110) includes requirements that residential garage door operators

manufactured on or after January 1, 1993, must comply with the entrapment protection provisions in UL Standard 325 in effect on or before January 1, 1992. The entrapment protection requirements of UL Standard 325 are codified as the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR part 1211.

The Office of Management and Budget (OMB) approved the collection of information concerning the Safety Standard for Automatic Residential Garage Door Operators under control number 3041–0125. OMB's most recent approval will expire on April 30, 2000. The Commission now proposes to request an extension of approval without changes of this collection of information.

A. Certification Requirements

The Improvement Act provides that UL Standard 325 shall be considered to be a consumer product safety standard issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058). Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA (15 U.S.C. 2063(b)) authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 14(b) of the CPSA allows firms that are required to issue certificates of compliance to use an independent third-party organization to conduct the testing required to support the certificate of compliance.

Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require establishment and maintenance of records necessary to implement the CPSA or determine compliance with rules issued under the authority of the CPSA. On December 22, 1992, the Commission issued rules prescribing requirements for a reasonable testing program to support certificates of compliance with the Safety Standard for Automatic Residential Garage Door Operators (57 FR 60449). These regulations also require manufacturers, importers, and private labelers of residential garage door operators to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR Part 1211, Subparts B and C.

The Commission uses the information compiled and maintained by manufacturers and importers of residential garage door operators to protect consumers from risks of death and injury resulting from entrapment accidents associated with garage door operators. More specifically, the Commission uses this information to determine whether the products produced and imported by those firms comply with the standard. The Commission also uses this information to facilitate corrective action if any residential garage door operators fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

B. Estimated Burden

The Commission staff estimates that about 22 firms are subject to the testing and recordkeeping requirements of the certification regulations. The staff estimates that each respondent will spend 60 hours annually on the collection of information for a total of about 1320 hours. Using an hourly rate of $13.50, based on 1999 Statistical Abstract data for average all private sector wages, the total industry cost would be about $18,000.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: February 4, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–2918 Filed 2–8–00; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Monday, February 14, 2000, 11:30 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS:

Closed to the Public.

Matter to be Considered:

Compliance Operational Matter (OS# 5756)

The Commission and staff will discuss a compliance operational matter.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: February 7, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–3151 Filed 2–7–00; 2:58 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: National Center for Education Statistics, Department of Education.

ACTION: Notice of dates of submission of state revenue and expenditure reports for fiscal year 1999 and of revisions to those reports.

SUMMARY: The Secretary of Education announces dates for the submission by state educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey) for fiscal year (FY) 1999. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census is the data collection agent for the Department's National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2001 appropriated funds.

DATES: The date on which submissions will first be accepted is March 15, 2000. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 5, 2000.

ADDRESSES: SEAs may mail ED Form 2447 to: Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800.

Alternatively, SEAs may hand deliver submissions by 4 p.m. (Eastern Time) to: Governments Division, Bureau of the Census, 8905 Presidential Parkway, Washington Plaza II, Room 508, Upper Marlboro, MD.

If an SEA's submission is received by the Bureau of the Census after September 5, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.
2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. MacDonald, Chief, Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800. Telephone: (301) 457–1574. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to: Frank Johnson, National Center for Education Statistics, U.S. Department of Education, Washington, DC 20208–5651. Telephone: (202) 219–1618.

SUPPLEMENTARY INFORMATION: Under the authority of section 404(a) of the National Education Statistics Act of 1994 (20 U.S.C. 9003(a)), which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average state per pupil expenditure (SPPE) for elementary and secondary education, as defined in the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 8801(12)).

In addition to using the SPPE data as useful information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including Title I of the Elementary and Secondary Education Act of 1965 as amended by the Improving America's Schools Act of 1994 (Title I), Impact Aid, and Indian Education. Other programs such as the Goals 2000: Educate America Act, the Technology Literacy Challenge Fund, the Education for Homeless Children and Youth Program under Title VII of the Stewart B. McKinney Homeless Assistance Act, the Dwight D. Eisenhower Professional Development Program, and the Safe and Drug-Free Schools and Communities Program make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I allocations.

In January 2000, the Bureau of the Census, acting as the data collection agent for NCES, will mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 15, 2000, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 15, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification. All data, including any revisions, must be submitted to the Bureau of the Census by an SEA not later than September 5, 2000.

Having accurate and consistent information, on time, is critical to an efficient and fair allocation process, as well as the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 5, 2000, as the final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 5, the data may also be too late to be included in the final NCES published dataset.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

Authority: 20 U.S.C. 9003(a).

Dated: February 4, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–2948 Filed 2–8–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–151–A and EA–152–A]

Application To Export Electric Energy; Tractebel Energy Marketing, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Tractebel Energy Marketing, Inc. (TEMI) has applied for renewal of its authority to transmit electric energy from the United States to Mexico and to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before March 10, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and

require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 14, 1997, the Office of Fossil Energy (FE) of the Department of Energy issued Order No. EA–151 authorizing TEMI to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities owned and operated by San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization expired on July 14, 1999.

On August 13, 1997, FE issued Order No. EA–152 authorizing TEMI to transmit electric energy to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company. That two-year authorization expired on August 13, 1999.

On January 13, 2000, TEMI filed two separate applications with FE for renewal of the export authority contained in Order Nos. EA–151 and EA–152. TEMI has requested those authorizations be issued for five year terms and that the international transmission facilities of Long Sault, Inc. be added to the list of authorized export points in the authorization to export to Canada.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on TEMI's request to export to Mexico should be clearly marked with Docket EA–151–A. Comments on the TEMI request to export to Canada should be clearly marked with Docket EA–152–A. Additional copies are to be filed directly with Howard H. Shafferman, Ballard Spahr Andrews & Ingersoll, 601 13th Street, NW, Suite 1000 South, Washington, DC 20005–2205 and Jeff Brattain, Tractebel Energy Marketing, Inc., 1177 West Loop South, Suite 800, Houston, TX 77027.

DOE notes that the circumstances described in these applications are virtually identical to those for which export authority had previously been granted in FE Order EA–151 and FE Order EA–152. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–151 and FE Docket EA–152 proceedings.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, D.C., on February 3, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 00–2921 Filed 2–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, February 22, 2000: 1:00 p.m.—5:00 p.m.

ADDRESSES: Amarillo College, Business Center, 1314 South Polk Street, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1:00—Welcome-Agenda Review-Approval of minutes
1:15—Co-Chair Comments
1:30—Task Force/Subcommittee Reports
2:00—Updates-Occurrence Reports-DOE
2:30—Ex-Officio Reports
3:00—Presentation and Questions and Answers (To Be Decided)
3:45—Groundwater Briefing on Remediation Program
4:15—Public Comments
4:30—Closing Comments
4:45—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 p.m. Monday through Thursday; 7:45 am to 5:00 p.m. on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on February 4, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2920 Filed 2–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–684–001]

Interenergy Sheffield Processing Company, Bear Paw Energy, L.L.C.; Notice of Filing

February 3, 2000.

Take notice that on January 28, 2000, Bear Paw Energy, L.L.C., a Delaware limited liability company, whose mailing address is 3170 17th Street, Suite 2750, Denver, Colorado 80202, filed in Docket No. CP96–684–001, a request seeking that the Section 3 authorization and Presidential Permit held in the name of its predecessor company, Interenergy Sheffield Processing Company, be changed to recognize its company's reorganization and change in its corporate name, all as more fully set forth in the filing which is on file with the Commission and open to public inspection.

Bear Paw Energy, L.L.C. states that in 1997 a Section 3 authorization and Presidential Permit were granted in the above captioned proceeding to Interenergy Sheffield Processing Company (Interenergy Sheffield), a general partnership between Bear Paw Energy Inc. and Interenergy Corporation. These authorizations permitted Interenergy Sheffield, an otherwise non-jurisdictional natural gas gathering and processing system, to construct and operate natural gas facilities at the International Boundary line near Portal, North Dakota, to import gas from Canada. Bear Paw Energy, L.L.C. also states that, in 1998, Bear Paw Energy Inc. became the sole and direct owner of the gathering and processing system and the border crossing facilities. In the present filing, Bear Paw Energy, L.L.C. informs the Commission that, as of January 20, 2000, Bear Paw Energy Inc. was merged into a Delaware limited liability company, with its ultimate name change to Bear Paw Energy, L.L.C. Bear Paw Energy, L.L.C. states that these transactions do not, in any way, alter the operation of the gathering and processing system or the border crossing facilities.

Bear Paw Energy, L.L.C. requests that the Commission modify its records in the above captioned proceeding to reflect the final name change, such that the Section 3 authorization and Presidential Permit previously granted to Interenergy Sheffield will hereafter be in the name of Bear Paw Energy, L.L.C. In the alternative, Bear Paw Energy, L.L.C. requests that a new Section 3 authorization and Presidential Permit be granted in its own name.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before, February 22, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered in determining the appropriate action to be taken, but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 00–2886 Filed 2–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–163–000, CP99–165–000 and CP99–166–000]

Questar Southern Trails Pipeline Company; Notice of Meeting

February 3, 2000.

Take notice that a meeting will be held in the above-docketed proceedings on Thursday, February 24, 2000, at 10: a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The purpose of the meeting is to clarify and ascertain additional information regarding Questar Line 90 Company's request of November 9, 1999, for an opinion from the General Counsel that certain prospective salvage activities related to Line 90 Company's oil pipeline purchased from ARCO Pipe Line Company are nonjurisdictional and will not require prior certificate authorization. Line 90 Company is also concerned that these activities will not prejudice Questar Southern Trails Pipeline Company's pending certificate application in Docket No. CP99–163–000 *et al.* to acquire (from Line 90 Company), convert, and operate the heretofore oil pipeline for the transportation of natural gas in interstate commerce.

Specifically, all of the parties should be prepared for a discussion on the following questions, among others, relating to the requested General Counsel interpretation:

What are the specific activities to be undertaken by Line 90 Company with respect to the oil pipeline and why? Identify specific equipment/facilities.

Would the specific activities, including removal of facilities and equipment, be undertaken regardless of whether the conversion of the oil pipeline to natural gas was planned?

What are the ''environmental remediation obligations'' of ARCO with respect to the subject pipeline, and what is the reason for and nature of Line 90 Company's involvement in such measures? What is ARCO's schedule for all remaining activities associated with the oil pipeline?

Any party, as defined in 18 CFR 385.214, and any participant, as defined in 18 CFR 385.102(b), in the above-captioned proceedings are invited to participate in the meeting. However, no topics other than those pertaining to the requested General Counsel opinion will be considered. For additional information, please contact Dennis Vasapoli (202) 208–0461 or Robert Christin (202) 208–1022, at the Commission.

David P. Boergers,

Secretary.

[FR Doc. 00–2887 Filed 2–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–48–001]

Tennessee Gas Pipeline Company; Notice of Application

February 3, 2000.

Take notice that on January 24, 2000, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP–48–000, to amend its original application (Application) filed in that docket on December 10, 1999. Tennessee states that the purpose of the amendment is to revise that text of the Application and certain exhibits to correct an inadvertent mistake in the rate amounts originally provided. The

rate is changed from a fixed monthly reservation charge of $1,1967 per dekatherm (Dth) and a fixed commodity charge of $.0031 per Dth to a fixed monthly reservation charge of $1.1298 per Dth and a fixed commodity charge of $.0053. Tennessee also states that it seeks to amend certain language in the Application and in an exhibit to the transportation agreement included with the Application in order to clarify the surcharges that it intends to discount under the negotiated rate agreement proposed in the Application. Tennessee requests that the Commission approve the Application as amended by September 1, 2000.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 24, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–2888 Filed 2–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1242–000, et al.]

Cinergy Services, Inc., et al., Electric Rate and Corporate Regulation Filings

February 2, 2000.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER00–1242–000]

Take notice that on January 27, 2000, 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 and UtiliCorp United, Inc.(UtiliCorp).

Cinergy and British are requesting an effective date of January 10, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Cinergy Services, Inc.

[Docket No. ER00–1243–000]

Take notice that on January 27, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Services, Inc. (Cinergy, the Customer).

This service agreement has a yearly firm transmission service with American Electric Power via the Zimmer Generating Station Unit No. 1.

Cinergy and Cinergy, the Customer are requesting an effective date of January 1, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER00–1244–000]

Take notice that on January 27, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Services, Inc. (Cinergy, the Customer).

This service agreement has a yearly firm transmission service with Northern Indiana Public Service Company via the Gibson Unit No. 5 Generating Station.

Cinergy and Cinergy, the Customer are requesting an effective date of February 1, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1245–000]

Take notice that on January 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Supplement No. 21 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of December 28, 1999 to The Dayton Power and Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Public Service Corporation

[Docket No. ER00–1246–000]

Take notice that on January 27, 2000, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Williams Energy Marketing and Trading Co. under its Market-Based Rate Tariff.

Wisconsin Public Service Corporation has requested an effective date of December 30, 1999.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Power & Light Company

[Docket No. ER00–1247–000]

Take notice that on January 27, 2000, Kansas City Power & Light Company (KCPL) tendered for filing nine Service Agreements dated December 20, 1999.

KCPL proposes an effective date of February 1, 2000. These Agreements provide for the rates and charges for Firm Point-to-Point Transmission Service by KCPL for wholesale transactions.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreements are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power a division of Duke Energy Corporation

[Docket No. ER00–1248–000]

Take notice that on January 27, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Clinton Energy Management Services, Inc. for power sales at market-based rates.

Duke requests that the proposed Service Agreement be permitted to become effective on January 20, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER00–1249–000]

Take notice that on January 27, 2000, Virginia Electric and Power Company (Virginia Power) filed an amended Transaction Agreement (Agreement) with Constellation Energy Source, Inc. (CES) pursuant to Virginia Power's Service Agreement with CES under its FERC Electric Tariff, Second Revised Volume No. IV.

Virginia Power requests that the Commission waive its notice of filing requirements to allow the agreement, as amended, to become effective January 1, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Tacoma Energy Recovery Company

[Docket No. ER00–1250–000]

Take notice that on January 27, 2000, Tacoma Energy Recovery Company (Operator), a corporation organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) A ccepting Operator's Rate Schedule FERC No. 1; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations; and (3) granting certain blanket approvals. Operator is an indirect subsidiary of Northern States Power Company.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PG&E Energy Trading—Power, L.P.

[Docket No. ER00–1251–000]

Take notice that on January 27, 2000, PG&E Energy Trading-Power, L.P. (PGET), 7500 Old Georgetown Road, Bethesda, Maryland 20814, filed revisions to its Electric Rate Schedule No. 1 providing for the resale of Firm Transmission Rights pursuant to the Commission's November 10, 1999 Order in Docket No. ER 99–3594–000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Potomac Electric Power Company

[Docket No. ER00–1252–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and: Delmarva Power & Light Company; Dayton Power and Light Company; Rainbow Energy Marketing Corporation and Merchant Energy Group of the Americas, Inc.

An effective date of May 14, 1999 for these service agreements, with waiver of notice, is requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Potomac Electric Power Company

[Docket No. ER00–1253–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and DTE Energy Trading, Inc.

An effective date of June 8, 1999 for this service agreement, with waiver of notice, is requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Potomac Electric Power Company

[Docket No. ER00–1254–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and PG&E Energy Trading—Power, L.P.

An effective date of October 1, 1999 for this service agreement, with waiver of notice, is requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Potomac Electric Power Company

[Docket No. ER00–1255–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and: Cinergy Services, Inc. as agent for and on behalf of The Cincinnati Gas and Electric Company and PSI Energy, Inc. collectively Cinergy Operating Companies.

An effective date of May 6, 1999 for this service agreement, with waiver of notice, is requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER00–1315–000]

Take notice that on January 28, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing two firm Transmission Service Agreements between NSP and NSP Energy Marketing.

NSP requests that the Commission accept the Agreements effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER00–1316–000]

Take notice that on January 28, 2000, Central Power and Light Company (CPL), and West Texas Utilities Company (WTU), tendered for filing a service agreement under the Central and South West Open Access Transmission Tariff with Sharyland Utilities, L.P., (Sharyland).

CPL and WTU seek an effective date of January 1, 2000 for the agreement.

Copies of the filing were served on Sharyland and the Public Utility Commission of Texas.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Central Vermont Public Service Corporation

[Docket No. ER00–1317–000]

Take notice that on January 28, 2000, Central Vermont Public Service Corporation tendered for filing Network Integration Transmission Service Agreements and Network Operating Agreements with Vermont Electric Cooperative, Inc.; Woodsville Fire District Water and Light Department;

Village of Johnson Water and Light Department; Rochester Electric Light and Power Company; Village of Ludlow Electric Light Department; Lyndonville Electric Department; and Village of Hyde Park Water and Light Department for service under Central Vermont's Open Access Transmission Tariff No. 7.

Central Vermont requests that the Commission waive its notice of filing requirements and allow the agreements to become effective as of January 1, 2000.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. PG Power Sales Ten, L.L.C.

[Docket No. ER00–1318–000]

Take notice that, on January 28, 2000, PG Power Sales Ten, L.L.C., tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Energy Corporation Operating Companies

[Docket No. ER00–1319–000

Take notice that on January 28, 2000, Wisconsin Energy Corporation Operating Companies (WEC), tendered for filing a charge for Schedule 2 (Reactive Supply and Voltage Control from Generation Sources Service) of Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Original Volume No. 1. WEC also made an addition to Exhibit C (Methodology to Assess Available Transmission Capacity) to the OATT to clarify that other analytic tools may be used in addition to the cited PTI PSS/E load flow program.

WEC requests an effective date of March 28, 2000.

Copies of the filing have been served on all transmission service customers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Texas-New Mexico Power Company

[Docket No. ER00–1320–000]

Take notice that on January 28, 2000, Texas-New Mexico Power Company (TNP), tendered for filing under TNP's Market-Based Rate Tariff an executed Power Sale Agreement and companion Service Agreement for Negotiated Market-Based Rates with Southwestern Public Service Company (SPS) as the customer.

TNP has requested an effective date of January 1, 2000 for capacity and energy sales by TNP to SPS at market-based rates under these Agreements. Service to be provided under these Agreements is for one year.

A copy of this filing was served upon SPS.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Metropolitan Edison Company

[Docket No. ER00–1321–000]

Take notice that on January 28, 2000, Metropolitan Edison Company (doing business and referred to as GPU Energy), tendered for filing an amendment to the Generation Facility Transmission Interconnection Agreement between GPU Energy and Solar Turbines Incorporated. (Metropolitan Edison Company, Rate Schedule FERC No. 75). The amendment consists of new Schedule 1 of Appendix E, which amends the interconnection agreement by providing for a fee of $576.40 per month to compensate GPU Energy for relaying PJM operating orders.

Copies of the filing were served upon Solar Turbines and regulators in the Commonwealth of Pennsylvania.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Jersey Central Power & Light Company and Metropolitan Edison Company

[Docket No. ER00–1322–000]

Take notice that on January 28, 2000, Jersey Central Power & Light Company and Metropolitan Edison Company (each doing business and hereinafter collectively referred to as GPU Energy), tendered for filing a letter agreement (Agreement) between GPU Energy and PECO Energy (PECO). Under the Agreement, PECO has agreed to accept certain operational and financial responsibilities, including those set forth in the GPU Energy's procedure manuals, associated with PECO acting as the Load Serving Entity for the New Jersey boroughs of Butler, Lavallette, Madison, Pemberton, and Seaside Heights, and the Pennsylvania borough of Middletown.

Copies of the filing were served upon PECO and regulators in the State of New Jersey and the Commonwealth of Pennsylvania.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. New Century Services, Inc.

[Docket No. ER00–1323–000]

Take notice that on January 28, 2000, New Century Services, Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and Black Hills Power and Light Company, which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on January 24, 2000.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. New Century Services, Inc.

[Docket No. ER00–1324–000]

Take notice that on January 28, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and West Texas Municipal Power Agency.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Cleco Utility Group Inc.

Docket No. ER00–1304–000

Take notice that on January 27, 2000 Cleco Utility Group Inc., Transmission services (CLECO), tendered for filing service agreements for short term firm point-to-point transmission service under its Open Access Transmission Tariff with Central and South West Services, Inc., (CSWS).

CLECO requests an effective date of January 20, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Dightom Power Associates Limited Partnerships, FPL Energy, L.L.C., Southern Energy New England, L.L.C. and Southern Energy Kendall, L.L.C. v. ISO New England, Inc.

[Docket No. EL00–40–000]

Take notice that on February 1, 2000, Dighton Power Associates Limited Partnerships, FPL Energy, L.L.C., Southern Energy New England, L.L.C., Southern Energy Kendall, L.L.C., tendered for filing pursuant to Sections 206 and 306 of the Federal Power Act

a complaint against ISO New England, Inc.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Northern Maine Independent System Administrator, Inc.

[Docket No. ES00–17–000]

Take notice that on January 28, 2000, the Northern Maine Independent System Administrator, Inc. (NMISA) submitted an application under Section 204 of the Federal Power Act, requesting authorization to enter into a $1,000,000 revolving line of credit with an effective date of no later than March 1, 2000. NMISA also requests that the Commission waive its competitive bidding or negotiated placement requirements of 18 CFR 34.2.

Comment date: February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2885 Filed 2–8–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30451B; FRL–6487–3]

Burkholderia cepacia Strain Ral-3; Withdrawal of an Application to Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Agrium U.S., Inc., has withdrawn its application to register a pesticide product containing the active ingredient *Burkholderia cepacia* strain Ral-3 (EPA File Symbol 70724–R). The application is withdrawn without prejudice to future filing for registration of products containing *Burkholderia cepacia* strain Ral-3.

FOR FURTHER INFORMATION CONTACT: Denise L. Greenway, c/o Product Manager 91, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone number (703) 308–8263, e-mail address: greenway.denise@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

Although this action only applies to the registrant in question, it is directed to the public in general. Since various individuals or entities may be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30451B. The official record consists of the documents specifically referenced in this action and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. Background Information

EPA issued a notice in the **Federal Register** on March 24, 1998 (63 FR 14114) (FRL–5780–3), which announced the Agrium U.S., Inc. submission of an application to register a pesticide product (EPA File Symbol 70724–R) containing an active ingredient, the microbial pesticide *Burkholderia cepacia* strain Ral-3, an active ingredient not included in any previously registered pesticide product. Subsequently, EPA issued a correction notice in the **Federal Register** on April 15, 1998 (63 FR 18410) (FRL–5783–3) for the microbial pesticide *Burkholderia cepacia* strain Ral-3.

The application was the subject of a joint review with the Pest Management Regulatory Agency of Health Canada, where the application was also withdrawn from further consideration by the applicant.

EPA received comments from the Allegheny University of the Health Sciences, the University of Edinburgh Medical School, Children's Hospital of Oklahoma, the University of British Columbia, and the Cystic Fibrosis Foundation. EPA co-chaired and participated in a symposium entitled, ''*Burkholderia cepacia*–Friend or Foe?,'' at a joint meeting of the American Phytopathological Society (APS) and the Entomological Society of America (ESA). EPA held and participated in an inter-Agency meeting entitled, ''Risk Assessment for Intentional Use of Opportunistic Pathogens,'' with the Food and Drug Administration (FDA), the United States Department of Agriculture (USDA), the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS), the National Institutes of Health (NIH), the National Institute of Environmental Health Sciences, and Health Canada. EPA also participated in several meetings of the International *Burkholderia cepacia* Working Group (IBCWG) and held and participated in a Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) meeting entitled, ''*Burkholderia cepacia:* Risk Assessment of a Biopesticide with Affinities to a Human Opportunistic Pathogen,'' a record of which is

available at http://www.epa.gov/scipoly/sap/1999/index.htm#july.

IV. What Action is the Agency Taking?

EPA is announcing that Agrium U.S., Inc., South Ulster St., Suite 1400, Denver, CO 80237, has withdrawn its application to register a microbial pesticide containing *Burkholderia cepacia* strain Ral-3, as provided for in section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by the Food Quality Protection Act of 1996 (FQPA). *Burkholderia cepacia* strain Ral-3 is an active ingredient not included in any previously registered pesticide product. *Burkholderia cepacia* strain Ral-3 had been proposed as a microbial pesticide for commercial indoor application to seed and/or seedlings of conifers and deciduous trees.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 21, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–2954 Filed 2–8–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50865; FRL–6488–4]

Plant-Pesticide Insect-Protected Soybean Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of application 524–EUP–OR from Monsanto Company, 700 Chesterfield Parkway North, St. Louis, Missouri 63198, requesting an experimental use permit (EUP) for the Cry1Ac protein and the genetic material necessary for its production (Vector PV–GMBT01) in soybean. The Agency has determined that this application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket control number OPP–50865, must be received on or before March 10, 2000.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50865 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0515; and e-mail address: reynolds.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of plant-pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**-Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–50865. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50865 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically* . You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–50865. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Proposed Experimental Programs

The subject program proposes to test and evaluate genetically modified soybean that has been developed to provide control of velvetbean caterpillar (*Anticarsia gemmatalis*), stem borer (*Epinotia aporema*), and soybean looper (*Pseudoplusia includens*). Monsanto Company proposes to plant 66.5 acres of the plant-pesticide in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Pennsylvania, and Tennessee on March 1, 2000. All plantings of soybean containing the Cry1Ac protein under this experimental program will be contained during the experimental program. No portion of the crop will be used for food or feed.

III. What Action is the Agency Taking?

Following the review of the Monsanto Company application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 21, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–2485 Filed 2–8–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6534–4]

Request for Qualifications and Preliminary Proposals for Communications, Outreach and Education

The U.S. Environmental Protection Agency (EPA) is issuing a request for qualifications and preliminary proposals for organizations interested in assisting the Chesapeake Bay Program in its effort to provide the communications, outreach and education components of the Bay Program partnership. Applicants must be a non-profit organization, interstate agency, college or university institution. The organization must have conducted work within the Chesapeake Bay watershed. Note, this is a request for proposals for the benefit of the Chesapeake Bay Program partnership and not for direct benefit to EPA. Funding will be provided to an organization under the authority of the Clean Water Act, Section 117(a) and (b).

An original and 5 copies of proposals must be received by the US EPA, Chesapeake Bay Program by close of business March 3, 2000. The RFP is available at the following web-site: *http://www.epa.gov/r3chespk/* You may also request a copy by calling Robert Shewack at 410–267–9856 or by E-mail at: shewack.robert@epa.gov. All proposals must be received by EPA by close of business March 3, 2000. Any late, incomplete or fax proposals will not be considered.

William Matuszeski,

Director, Chesapeake Bay Program.

[FR Doc. 00–2826 Filed 2–8–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Applicant Background Questionnaire.''

DATES: Comments must be submitted on or before April 10, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to ''Applicant Background Questionnaire.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Add the Following Collection of Information

Title: Applicant Background Questionnaire.

OMB Number: new collection.

Frequency of Response: Occasional.

Affected Public: Potential FDIC employment applicants.

Estimated Number of Respondents: 16,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden: 800 hours.

General Description of Collection: The FDIC Applicant Background Questionnaire will be completed voluntarily by FDIC job applicants who are not currently FDIC employees. Responses to questions on the survey will provide information on gender, age, disability, race/national origin, and the applicant's source of vacancy announcement information. Data will be used by the Office of Diversity and Economic Opportunity and the Personnel Services Branch to evaluate the effectiveness of various recruitment methods used by the FDIC to ensure that the agency meets workforce diversity objectives.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 3rd day of February 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman.

Executive Secretary.

[FR Doc. 00–2903 Filed 2–8–00; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, February 9, 2000, 10:00 a.m., Meeting Open to the Public.

The following items were added to the agenda.

1996 Republican National Convention Committee on Arrangements—Administrative Review of Repayment Determination, Proposed Statement of Reasons (LRA#472).

Express Advocacy Rule (11 CFR 100.22).

Legislative Recommendations, 2000.

DATE AND TIME: Tuesday, February 15, 2000, 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC

STATUS: This Meeting Will Be Closed to the Public

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, February 16, 2000, 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC (Ninth Floor).

STATUS: This Hearing Will Be Open to the Public.

MATTERS BEFORE THE COMMISSION: Notice of Proposed Rulemaking on General Public Political Communications Coordinated with Candidates.

DATE AND TIME: Thursday, February 17, 2000, 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

1996 Democratic National Convention Committee, Inc—Administrative Review of Repayment Determination, Proposed Statement of Reasons (LRA#471).

Advisory Opinion 1999–39: WellPoint Health Networks Political Action Committee by counsel, James A. Sivesind.

Final Rules and Statement of Basis and Purpose Implementing the Electronic Freedom of Information Act Amendments.

Status of Regulations.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–3152 Filed 2–7–00; 2:58 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011688.

Title: Iceland Steamship/Samskip Slot Charter Agreement.

Parties: Iceland Steamship Company Ltd. (Eimskip) Samskip hf.

Synopsis: Under the proposed agreement, Samskip agrees to charter space on Eimskip vessels in the trade between U.S. East Coast ports and Iceland. This agreement replaces the parties' previous agreement that expired on January 31, 2000. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: February 4, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–2939 Filed 2–8–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Logis Services of America, Inc., 3027 Marina Bay Drive, Suite 110, League City, TX 77573, Officers: Louis De Scioli, President (Qualifying Individual), Michael Reed, Secretary

USAS Express Int'l, Inc., 11099 S. La Cienega Blvd., Suite 265, Los Angeles, CA 90045, Officers: Hong S. Kim, Secretary (Qualifying Individual) Young II Choi, President

Vayer L.A., Inc., 11755 Sheldon Street, Sun Valley, CA 91352, Officers: Arik Hezroni, Treasurer (Qualifying Individual), Hasday Aroch, President

Gulf Logistics & Projects Co., Inc., 769 Bradfield Road, Houston, TX 77060, Officer: Jeong Dae Kim, President (Qualifying Individual)

ANA Link, Ltd., 177–25 Rockaway Blvd., Suite 205, Jamaica, NY 11434, Officer: Tal Y. Yo, President (Qualifying Individual)

C.F.L. Freight Service, Inc., 2089 S. Atlantic Blvd., Suite H, Monterey Park, CA 91754, Officers: Po-Hsun Huang, Secretary (Qualifying Individual) Bonnet Fan, President

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Global Caribbean, Inc., 12000 Biscayne Blvd., Suite 106, Miami, FL 33181, Officers: Sandra Rivera, Secretary (Qualifying Individual) Jose Luis Rivera, President

H.L.M. Cargo Corp. d/b/a Sea Line Express, 5567 NW, 72 Avenue, Miami, FL 33166, Officers: Nilo E. Villena, Jr., President (Qualifying Individual) Nilo E. Villena, Sr., Vice President

Dated: February 4, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–2938 Filed 2–8–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Agency Holding the Meeting:

Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, February 14, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3030 Filed 2–4–00; 4:51 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION/OFFICE OF PERSONNEL MANAGEMENT

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The following Standard Form is canceled because of low usage:

Of 5, Inquiry As to Availability.

DATES: Effective February 9, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: January 24, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–2953 Filed 2–8–00; 8:45am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and its Subcommittees

January 15, 2000.

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS that was previously scheduled on February 13–15, 2000, at the Radisson-Barcelo, Washington, D.C. has been rescheduled for March 19–21, 2000. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Monday, March 20, and Tuesday, March 21, and Tuesday, (8:30 a.m. to 6 p.m. on Monday and Tuesday) at the Radisson-Barcelo, 2121 P Street, NW, Washington, D.C. 20037. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's subcommittees, Appropriations, Discrimination, International, Prevention, Prison, Racial Ethnic Populations, Research, and Services Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, DC 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Andrea Hall at (301) 986–4870 no later than February 29, 2000.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council on HIV and AIDS.

[FR Doc. 00–2726 Filed 2–8–00; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates:

9:00 a.m.–5:30 p.m., February 23, 2000
9:00 a.m.–5:00 p.m., February 24, 2000

Place: Conference Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington DC 20201.

Status: Open.

Purpose: The National Committee on Vital and Health Statistics is planning to meet on February 23–24, 2000. The meeting will focus on a variety of health data policy and privacy issues. Department officials will update the Committee on recent activities of

the HHS Data Council and the status of HHS activities in implementing the administrative simplification provisions of Pub. L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Committee also will discuss and take action on its annual report to Congress on the Implementation of HIPAA. In addition, the Committee will discuss a draft of its forthcoming report to HHS on standards for patient medical record information. An export panel will discuss summary measures of population health, and IOM representatives will brief the Committee on the IOM medical errors report. Subcommittee breakout sessions also are planned.

All topics are tentative and subject to change. Prior to the meeting, please check the NCVHS web site, where a detailed agenda will be posted when available.

Contact Person for More Information: Substantive information as summaries of NCVHS meetings and a roster of committee members may be obtained by visiting the NCVHS website (http://ncvhs.hhs.gov) where an agenda for the meeting will be posted when available. Additional information may be obtained by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: February 2, 2000.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 00–2960 Filed 2–8–00; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–2:45 p.m., February 28, 2000.

8:30 a.m.–4:15 p.m., February 29, 2000.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 a.m. and 8:30 a.m. or 12:30 p.m. and 1 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be Discussed: Agenda items will include: an update on the National Vaccine Program Office (NVPO) activities; an update on Unmet Needs Funding; an update on Pandemic Planning; Global Plan of Action for Laboratory Containment of Poliovirus; an update on Polio Eradication; Global Vaccines—White House Initiatives; Emerging Issues in Vaccine Safety; Vaccine Safety and Communication Subcommittee Report; Immunization Coverage Subcommittee Report; Future Vaccines Subcommittee Report; update from the Office of the Assistant Secretary for Health and Surgeon General; Healthy People 2010-Update on Vaccines; Annual Report on the Vaccine Injury Compensation Program; ACIP Annual Report; Budget Status on 317, CBER, Pandemic Influenza and Vaccine Safety Implementation Plan; and an update on Immunization Registries.

Name: Subcommittee on Future Vaccines.

Time and Date: 2:45 p.m.–5:00 p.m., February 28, 2000.

Place: Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: Agenda items will include discussions on the Institute of Medicine Report ''Vaccines for the 21st Century''; CMV Workshop planning; Vaccines for special populations; and Vaccines for chronic diseases.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2:45 p.m.–5 p.m., February 28, 2000.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters to be Discussed: Agenda items will include updates on the Working Group on Adult Immunization Standards; the implementation of NVAC's recommendations on Adult Immunization; the process for Strategies to Sustain Success paper; discussions of Philosophical Exemptions; and discussions on Adolescent Immunization.

Name: Subcommittee on Vaccine Safety and Communication.

Time and Date: 2:45 p.m.–5 p.m., February 28, 2000.

Place: Hubert H. Humphrey Building, Room 325A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: Plans for NVAC Workshop on Risk Communication; Plans for a Workshop on Surveillance for Rare Events; update on Pediatric Standards of Immunization; update on Rotavirus Vaccine.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S D–66, Atlanta, Georgia 30333, telephone 404/687–6672.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 2, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–2900 Filed 2–8–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Training and Technical Assistance Assessment.

OMB No.: New Collection.

Description: This data will be used to assess the Head Start Training and Technical Assistance (T/TA) delivery system. Data collected will provide

information on the quality of services that Head Start Quality Improvement Centers (QICs) provide to Head Start grantees. Respondents will include QIC staff, collaborative partners of QIC organizations, and Head Start grantees. Specifically, site visit interviews will be conducted with QIC Directors and QIC Area Specialists, while telephone interviews will be conducted with QIC Directors, Grantee Directors, and Partner Agencies.

Training and technical assistance are critical in supporting the continuous improvement efforts of Head Start grantee and delegate agencies serving children birth to five and their families. The report of the Advisory Committee on Head Start Quality and Expansion in December 1993 reaffirmed the importance of T/TA and recommended that the Head Start Bureau reassess and design the T/TA system to support program quality and expansion. The Head Start Act of 1994 (Pub. L. 103–252) also emphasized the importance of T/TA and stated that T/TA activities must ensure that needs of local Head Start agencies relating to improving program quality and expansion are addressed to the maximum extent feasible. The Advisory Committee on Services for Families with Infants and Toddlers also stressed the need for ongoing staff training and training programs to ensure that staff are ''cross-trained'' in the areas of child development, family development, and community building.

The assessment is designed to gather information for program management and planning purposes about the kind and quality of services provided by each QIC. Information collected will be used by the Bureau to: (1) Identify the quality of approaches undertaken in each phase of the strategic planning cycle; (2) identify any patterns or changes over time in the delivery of T/TA; and (3) determine the feasibility of future initiatives and funding decisions. The data collected will provide a means for the Head Start Bureau to carry out the Federal role outlined in the Cooperative Agreement establishing the QICs. These data also may be used, in part, to fulfill the Department's requirement to report to Congress on the Head Start program under the Government Performance and Results Act (GPRA).

Respondents: Head Start Partner Agencies and Head Start Quality Improvement Centers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
QIC Director, Site Visit Interview	28	30	.1	84
QIC Area Specialist, Site Visit Interview	116	19	.16	353
QIC Director, Telephone Interview	28	8	.19	42
Head Start Partner, Agency Telephone Interview	112	11	.09	112
Grantee Director, Telephone Interview	256	18	.11	512

Estimated Total Annual Burden Hours: 1103.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the Title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 1, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–2663 Filed 2–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Provision of Services in Interstate Child Support.

Enforcement: Standard Forms.

OMB No.: 0970–0085.

Description: Pub. L. 104–193, The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 amended 42 U.S.C. 666 to require State Child Support Enforcement (CSE) programs to enact the Uniform Interstate Family Support Act (UIFSA) into State law by January 1, 1998. To ensure standardization among the States, section 311(b) of UIFSA requires the States to use standard interstate forms, as mandated by Federal law. 45 CFR 303.7 requires CSE programs to transmit child support case information on standard interstate forms when referring cases to other States for processing. The forms, which promote uniformity and standardization, and expiring and we are taking this opportunity to make minor revisions to them to, among other things, reflect the UIFSA is now the law for all 54 CSE programs.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Transmittal #1	54	10,861.20	.42	246,332.02
Transmittal #2	54	2,715.30	.08	11,730.01
Transmittal #3	54	543.05	.17	4,985
Uniform Petition	54	5430.60	.12	35,190.29
Gen Testimony	54	6,516.72	.33	116,127.95
Affidavit/Paternity	54	2715.30	.25	36,656.55
Locate Data Sheet	54	375	.08	1,620
Notice/Control Order	54	8,145.75	.17	74,777.98
Registration Statement	54	7,168.39	.17	65,805.82
Estimate Total Annual Burden Hours				593,226

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 3, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–2865 Filed 2–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: April 2000 Current Population Survey Supplement on Child Support.

OMB No.: 0992–0003.

Description: Collection of these data will assist legislators and policymakers in determining how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be removed from the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey	47,000	1	.0241	1,136

Estimated Total Annual Burden Hours: 1,136.

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by April 1, 2000. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Bob Sargis at (202) 401–6465 or e-mail at rsargis@acf.dhhs.gov.

Comments and questions about the information collection described above should be directed to the following by April 1, 2000: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW, Washington, DC 20503, (202) 395–7316.

Dated: February 3, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–2866 Filed 2–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

ACTION: Notice.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 9, 2000, 8 a.m. to 4:30 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sandra L. Titus or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the best way to develop drugs for the treatment of the various psychiatric and behavioral disturbances that are frequently associated with Alzheimer's disease and other dementias. In particular, the presentations and discussions will focus on the problem of how to identify, define, and name the clinical entities that fall under this broad category of disorders. This is a major regulatory issue because the failure to adequately define specific disorders in this area could lead to misleading labeling. As background information for this meeting, FDA has provided an issues paper at http://www.fda.gov/ohrms/dockets/dockets/00n–0088/00n–0088.htm) that describes in detail the regulatory issues and concerns and proposes how this question might be addressed. This paper is intended to serve as a stimulus for others in the community of clinicians, academicians, and pharmaceutical sponsors to articulate and submit alternative positions in response to this question. Interested persons may submit written statements by February 17, 2000. Written statements submitted by the above date will be made available on FDA's website identified above. In addition to submitting written statements, interested persons are invited to make presentations of up to 10 minutes in an expanded open public session at the March 9, 2000, meeting. Those persons interested in making a presentation should follow the procedures given in the *''Procedure''* section below.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the Dockets Management Branch, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. These submissions should contain Docket No. 00N–0088, and should be received by February 17, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 12:30 p.m. Additional time may be allocated for oral presentations. Time allotted for each presentation may be limited to 10 minutes. Those desiring to make formal oral presentations should notify the contact person before February 17, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 28, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–2861 Filed 2–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0084]

Draft Guidance for Industry on Special Protocol Assessment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Special Protocol Assessment.'' This draft guidance is intended to provide guidance for industry on procedures that will be adopted by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) to evaluate issues related to the adequacy (e.g., design, conduct, analysis) of certain proposed studies.

DATES: Submit written comments on the draft guidance and the collection of information provisions by April 10, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX: 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400; or Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a draft guidance for industry entitled ''Special Protocol Assessment.'' The draft guidance is intended to provide guidance for industry on procedures that will be adopted by CDER and CBER to evaluate issues related to the adequacy (e.g., design, conduct, analysis) of certain proposed studies. This draft guidance describes procedures for sponsors to request

special protocol assessment and for the agency to act on such requests.

The Prescription Drug User Fee Act of 1992 (PDUFA) (Public Law 102–571) was reauthorized in November 1997 as part of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Public Law 105–115). In conjunction with the reauthorization of PDUFA, FDA agreed to specific performance goals (PDUFA goals) for activities associated with the development and review of products in human drug applications as described in section 735(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379g) (PDUFA products). The PDUFA goals are summarized in ''PDUFA Reauthorization Performance Goals and Procedures,'' an enclosure to a letter dated November 12, 1997, from the Secretary of the U.S. Department of Health and Human Services, Donna E. Shalala, to Senator James M. Jeffords. The PDUFA goals for special protocol assessment and agreement provide that, upon request by a sponsor, FDA will evaluate within 45 days of receipt certain protocols and issues relating to the protocols to assess whether their design is adequate to meet scientific and regulatory requirements identified by the sponsor. Three types of protocols are eligible for this special protocol assessment under the PDUFA goals: (1) Animal carcinogenicity protocols, (2) final product stability protocols, and (3) clinical protocols for phase 3 trials whose data will form the primary basis for an efficacy claim if the trials had been the subject of discussion at an end-of-phase 2/pre-phase 3 meeting with the review division or if the division is otherwise aware of the developmental context in which the protocol is being reviewed and the questions are being answered. These protocols for phase 3 clinical trials may relate to efficacy claims that will be part of an original new drug application (NDA) or biologics license application (BLA) or that will be part of an efficacy supplement to an approved NDA or BLA.

Section 119(a) of the Modernization Act amends section 505(b) of the act (21 U.S.C. 355(b)). Section 505(b)(4)(B) of the act directs FDA to meet with sponsors and applicants, provided certain conditions are met, for the purpose of reaching agreement on the design and size of clinical trials intended to form the primary basis of an effectiveness claim in a marketing application submitted under section 505(b) of the act or section 351 of the Public Health Service Act (42 U.S.C. 262) (the PHS Act). Such marketing applications include NDA's, BLA's, and efficacy supplements to approved NDA's and BLA's.

The procedures and policies described in this draft guidance are designed to implement section 505(b)(4)(B) of the act and the PDUFA goals for special protocol assessment and agreement.

This draft Level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on special protocol assessment in CDER and CBER. 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 submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The draft 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.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Special Protocol Assessment

Description: FDA is issuing a draft guidance on agency procedures to evaluate issues related to the adequacy of certain proposed studies. The draft guidance describes procedures for sponsors to request special protocol assessment and for the agency to act on such requests. The draft guidance provides information on how the agency will interpret and apply provisions of the Modernization Act and the specific PDUFA goals for special protocol assessment associated with the development and review of PDUFA products.

The draft guidance describes two collections of information: (1) The submission of a notice of intent to request special protocol assessment of a carcinogenicity protocol, and (2) the submission of a request for special protocol assessment.

A. Notification for a Carcinogenicity Protocol

As described in the draft guidance, a sponsor interested in agency assessment of a carcinogenicity protocol should notify the appropriate division in CDER or CBER of an intent to request special protocol assessment at least 30 days prior to submitting the request. With such notification, the sponsor should submit relevant background information so that the agency may review reference material related to carcinogenicity protocol design prior to receiving the carcinogenicity protocol. The agency is currently drafting a separate guidance describing the type of information that would be appropriate to submit before requesting carcinogenicity protocol assessment.

B. Request for Special Protocol Assessment

In the draft guidance, CDER and CBER ask that a request for special protocol assessment be submitted as an amendment to the investigational new drug application (IND) for the underlying product and that it be submitted to the agency in triplicate with Form FDA 1571 attached. The agency also suggests that the sponsor submit the cover letter to a request for special protocol assessment via

facsimile to the appropriate division in CDER or CBER. Agency regulations (21 CFR 312.23(d)) state that information provided to the agency as part of an IND is to be submitted in triplicate and with the appropriate cover form, Form FDA 1571. An IND is submitted to FDA under existing regulations in part 312 (21 CFR part 312), which specifies the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of investigational drugs and biological products. The information collection requirements resulting from the preparation and submission of an IND under part 312 have been estimated by FDA and the reporting and recordkeeping burden has been approved by OMB until December 31, 1999, under OMB control number 0910–0014. In the **Federal Register** of May 6, 1999 (64 FR 24402), FDA published a notice requesting comments on the burden estimates for the information collection requirements in part 312. The notice also requested an extension of OMB approval for this information collection.

FDA suggests that the cover letter to the request for special protocol assessment be submitted via facsimile to the appropriate division in CDER or CBER to enable agency staff to prepare for the arrival of the protocol for assessment. The agency recommends that a request for special protocol assessment be submitted as an amendment to an IND for two reasons: (1) To ensure that each request is kept in the administrative file with the entire IND, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking data bases. Use of the information in the agency's tracking data bases enables the appropriate agency official to monitor progress on the evaluation of the protocol and to ensure that appropriate steps will be taken in a timely manner.

CDER and CBER have determined and the draft guidance recommends that the following information should be submitted to the appropriate Center with each request for special protocol assessment so that the Center may quickly and efficiently respond to the request:

1. Questions to the agency concerning specific issues regarding the protocol; and

2. All data, assumptions, and information needed to permit an adequate evaluation of the protocol, including: (1) The role of the study in the overall development of the drug; (2) information supporting the proposed trial, including power calculations, the choice of study endpoints, and other critical design features; (3) regulatory outcomes that could be supported by the results of the study; (4) final labeling that could be supported by the results of the study; and (5) for a stability protocol, product characterization and relevant manufacturing data.

1. Description of Respondents

A sponsor, applicant, or manufacturer of a drug or biologic product regulated by the agency under the act or section 351 of the PHS Act who requests special protocol assessment.

2. Burden Estimate

Table 1 of this document provides an estimate of the annual reporting burden for requests for special protocol assessment. The procedures for requesting special protocol assessment that are set forth in the draft guidance have not been previously described by the agency, although the PDUFA goals and the requirements of section 505(b)(4)(B) of the act have been in effect since October and November 1998, respectively, as follows:

a. *Notification for a carcinogenicity protocol.* Based on data collected from the review divisions and offices within CDER and CBER, including the number of carcinogenicity protocols submitted for review in the first half of fiscal year (FY) 1999 and the number of IND's for new molecular entities that were received by the agency per year over the last 5 years, CDER and CBER anticipate that approximately 30 respondents will notify the agency of an intent to request special protocol assessment of a carcinogenicity protocol. The agency further estimates that the total annual responses, i.e., the total number of notifications that will be sent to CDER and CBER, will be 60, based on data collected from the offices within CDER and CBER. Therefore, the agency estimates that there will be approximately two responses per respondent. The hours per response, which is the estimated number of hours that a respondent would spend preparing the notification and background information to be submitted in accordance with the draft guidance, is estimated to be approximately 8 hours. While FDA has not finalized the separate guidance describing background information that should be submitted with notification of a carcinogenicity protocol for assessment, the agency anticipates that it will take respondents approximately 8 hours to gather and copy articles and study reports that are relevant to the carcinogenicity protocol. Therefore, the agency estimates that respondents will spend 480 hours per year notifying the agency of an intent to request special protocol assessment of a carcinogenicity protocol.

b. *Requests for special protocol assessment.* Based on data collected from the review divisions and offices within CDER and CBER, including the number of requests for special protocol assessment in the first half of FY 1999, the number of IND's for new molecular entities that were received by the agency per year over the past 5 years, the number of sponsors who have submitted protocols for agency review in the past and in the first half of FY 1999, and the number of end-of-phase 2/pre-phase 3 meetings that occur between respondents and the agency per year, FDA anticipates that 70 respondents will request special protocol assessment per year. The total annual responses are the total number of requests for special protocol assessment that are submitted to CDER and CBER in 1 year. Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that it will receive approximately 180 requests for special protocol assessment per year. Therefore, the agency estimates that there will be approximately 2.57 responses per respondent. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for special protocol assessment, including the time it takes to gather and copy questions to be posed to the agency regarding the protocol and data, assumptions, and information needed to permit an adequate evaluation of the protocol. Based on estimates provided by the regulated industry and on the agency's experience in requesting similar information, FDA estimates approximately 15 hours on average would be needed per response. Therefore, FDA estimates that 2,700 hours will be spent per year by respondents requesting special protocol assessment. Overall, FDA anticipates that respondents will spend 3,180 hours per year to participate in the programs described in the draft guidance.

FDA estimates the burden of this collection of information as follows:

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Notification and Requests	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Notification for Carcinogenicity Protocols	30	2.0	60	8	480
Requests for Special Protocol Assessment	70	2.57	180	15	2,700
Total					3,180

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 1, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–2982 Filed 2–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1085–N]

RIN 0938–AJ79

Medicare Program; Update of Ambulatory Surgical Center Payment Rates Effective for Services on or after October 1, 1999

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

ACTION: Notice.

SUMMARY: This notice implements section 1833(i)(2)(C) of the Social Security Act, which mandates an inflation adjustment to Medicare payment amounts for ambulatory surgical center (ASC) facility services during the years when the payment amounts are not updated based on a survey of the audited costs incurred by ASCs.

EFFECTIVE DATE: The payment rates contained in this notice are effective for services furnished on or after October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Cereghino, (410) 786–4645.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance program (Part B) include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and are performed on an inpatient basis in a hospital but that also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC), in a critical access hospital. (Under section 4201(c)(1) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1997, the term ''rural primary care hospital'' is replaced with ''critical access hospital'' applicable to services furnished on or after October 1, 1997.) To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and 42 CFR 416.25, which set forth basic requirements for ASCs.

Generally, there are two elements in the total charge for a surgical procedure: A charge for the physician's professional services for performing the procedure, and a charge for the facility's services (for example, use of an operating room). Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures. ASC facility services are subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, Medicare pays participating ASCs 80 percent of the prospectively determined rate for facility services, adjusted for regional wage variations. This rate is intended to represent our estimate of a fair payment that takes into account the costs incurred by ASCs generally in providing the services that are furnished in connection with performing the procedure. Currently, this rate is a standard overhead amount that does not include physician fees and other medical items and services (for example, durable medical equipment for use in the patient's home) for which separate payment may be authorized under other provisions of the Medicare program.

We have grouped procedures into nine groups for purposes of ASC payment rates. The ASC facility payment for all procedures in each group is established at a single rate adjusted for geographic variation. The rate is a standard overhead amount that covers the cost of services such as nursing, supplies, equipment, and use of the facility. (For an indepth discussion of the methodology and rate-setting procedures, see our **Federal Register** notice published on February 8, 1990, entitled ''Medicare Program; Revision of Ambulatory Surgical Center Payment Rate Methodology'' (55 FR 4526).)

Statutory Provisions

Section 1833(i)(2)(A) of the Act requires the Secretary to review and update standard overhead amounts annually. Section 1833(i)(2)(A)(ii) requires that the ASC facility payment rates result in substantially lower Medicare expenditures than would have been paid if the same procedure had been performed on an inpatient basis in a hospital. Section 1833(i)(2)(A)(iii) requires that payment for insertion of an intraocular lens (IOL) include an allowance for the IOL that is reasonable and related to the cost of acquiring the class of lens involved.

Under section 1833(i)(3)(A), the aggregate payment to hospital outpatient departments for covered ASC procedures is equal to the lesser of the following two amounts:

- The amount paid for the same services that would be paid to the hospital under section 1833(a)(2)(B) (that is, the lower of the hospital's reasonable costs or customary charges less deductibles and coinsurance).
- The amount determined under section 1833(i)(3)(B)(i) based on a blend of the lower of the hospital's reasonable costs or customary charges, less deductibles and coinsurance, and the amount that would be paid to a free-standing ASC in the same area for the same procedures.

Under section 1833(i)(3)(B)(i), the blend amount for a cost reporting period is the sum of the hospital cost proportion and the ASC cost proportion. Under section 1833(i)(3)(B)(ii), the hospital cost proportion and the ASC cost proportion for portions of cost reporting periods beginning on or after January 1, 1991 are 42 and 58 percent, respectively.

Section 13531 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993)

(Pub. L. 103–66), enacted on August 10, 1993, prohibited the Secretary from providing for any inflation update in the payment amounts for ASCs determined under section 1833(i)(2)(A) and (B) of the Act for fiscal years (FYs) 1994 and 1995. Section 13533 of OBRA 1993 reduced the amount of payment for an IOL inserted during or subsequent to cataract surgery in an ASC on or after January 1, 1994, and before January 1, 1999, to $150.

Section 141(a)(1) of the Social Security Act Amendments of 1994 (SSAA 1994) (Public Law 103–432), enacted on October 31, 1994, amended section 1833(i)(2)(A)(i) of the Act to require that, for the purpose of estimating ASC payment amounts, the Secretary survey not later than January 1, 1995, and every 5 years thereafter, the actual audited costs incurred by ASCs, based upon a representative sample of procedures and facilities.

Section 141(a)(2) of SSAA 1994 added section 1833(i)(2)(C) to the Act to provide that, beginning with FY 1996, there be an application of an inflation adjustment during a fiscal year in which the Secretary does not update ASC rates based on survey data of actual audited costs. Section 1833(i)(2)(C) of the Act provides that ASC payment rates be increased by the percentage increase in the consumer price index for urban consumers (CPI–U), as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved, if the Secretary has not updated rates during a fiscal year, beginning with FY 1996.

Section 141(a)(3) of SSAA 1994 amended section 1833(i)(1) of the Act to require the Secretary to consult with appropriate trade and professional organizations in reviewing and updating the list of Medicare-covered ASC procedures.

Section 141(b) of SSAA 1994 requires the Secretary to establish a process for reviewing the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for IOLs with respect to a class of new-technology IOLs. A notice of proposed rulemaking was published in the **Federal Register** on June 16, 1999, entitled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers' (BPD–3831–F) (64 FR 32198).

Section 4555 of the BBA amends section 1833(i)(2)(C) of the Act to require, in each of the fiscal years 1998 through 2002, that the percentage increase by which ASC rates are to be adjusted be reduced (but not below zero) by 2.0 percentage points.

We published our last ASC payment rate update notice on October 1, 1998 (63 FR 52663). In this notice, we explained that the current rates were frozen and we stated the comment period for proposed rule (HCFA–1885–P) published in the **Federal Register** June 12, 1998 entitled ''Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Surgical Procedures for Ambulatory Surgical Centers Effective October 1, 1998'' would be extended to November 13, 1998. We further extended the comment period for this proposed rule in **Federal Register** notices published January 12, 1999, March 12, 1999, and July 6, 1999. The comment periods have been running concurrently with those of another proposed rule addressing a prospective payment system (PPS) for hospital outpatient services published September 8, 1998 (63 FR 47552).

HCFA–1885–P proposes to update the criteria for determining which surgical procedures can be appropriately and safely performed in an ASC, makes additions and deletions from the current list of procedures based on the revised criteria, rebases the ASC payment rates using cost, charge, and utilization data collected by a 1994 survey of ASCs, refines the ratesetting methodology that was implemented by a final notice published on February 8, 1990 in the **Federal Register**, and requires that ASC payment, coverage and wage index updates be implemented annually on January 1 rather than having these updates occur randomly throughout the year.

II. Provisions of This Notice

As previously stated, during years in which the Secretary has not otherwise updated ASC rates based on a survey of actual audited costs, section 1833(i)(2)(C) of the Act requires application of an inflation adjustment equal to the percentage increase in the CPI–U as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved, reduced (but not below zero) by 2.0 percentage points in each of the fiscal years 1998 through 2002. (The CPI–U is a general index that reflects prices paid by urban consumers for a representative market basket of goods and services.)

Based on estimates prepared by Data Resources, Inc./McGraw Hill, the forecast rate of increase in the CPI–U for the fiscal year that ends March 31, 2000 is 2.8 percent. Reducing the CPI–U factor by 2.0 percent results in an adjustment factor of 0.8 percent. Increasing the ASC payment rates currently in effect by 0.8 percent results in the following schedule of rates that are payable for facility services furnished on or after October 1, 1999:

Group 1—$317
Group 2—$425
Group 3—$486
Group 4—$600
Group 5—$683
Group 6—$794 (644 + 150)
Group 7—$949
Group 8—$934 (784 + 150)

ASC facility fees are subject to the usual Medicare deductible and copayment requirements. The allowance for an IOL that is part of the payment rates for group 6 and group 8 remains $150.

A ninth payment group allotted exclusively to extracorporeal shockwave lithotripsy (ESWL) services was established in the notice with comment period published December 31, 1991 (56 FR 67666). The decision in *American Lithotripsy Society* v. *Sullivan,* 785 F. Supp. 1034 (D.D.C. 1992), prohibits payment for these services under the ASC benefit at this time. ESWL payment rates were the subject of a separate **Federal Register** proposed notice, which was published October 1, 1993 (58 FR 51355).

We will continue to use the inpatient hospital PPS wage index to standardize ASC payment rates for variation due to geographic wage differences in accordance with the ASC payment rate methodology published in the February 8, 1990 notice. The inpatient PPS wage index final rule published on July 30, 1999 (64 FR 41490), for implementation on October 1, 1999, will be used to adjust the ASC payment rates announced in this notice for facility services furnished on or after October 1, 1999.

III. Regulatory Impact Analysis

A. Introduction

This notice implements section 1833(i)(2) of the Act, which mandates an inflation adjustment to Medicare payment amounts for ASC facility services during the years in which the payment amounts are not updated based on a survey of the actual audited costs incurred by ASCs.

Actuarial estimates of the cost of updating the ASC rates by 0.8 percent are as follows:

PROJECTED ADDITIONAL MEDICARE COSTS
[In millions*]

FY 2000	$10
FY 2001	10
FY 2002	10
FY 2003	10

PROJECTED ADDITIONAL MEDICARE COSTS—Continued

[In millions*]

FY 2004	10

*Rounded to the nearest $10 million.

The BBA is considered in the estimate, including the PPS for hospital outpatient services, which will be implemented in the mid-2000, and the formula-driven overpayment elimination effective October 1, 1997.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, most ASCs and hospitals are considered to be small entities either by non-profit status or by having resources of $5 million or less annually.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Although we believe that this notice will not have a significant impact on a substantial number of small rural hospitals, it may have a significant impact on a substantial number of ASCs. Therefore, we believe that a regulatory flexibility analysis is required for ASCs. In addition, we are voluntarily providing a brief discussion of the impact this notice may have on all hospitals.

1. Impact on ASCs

Section 1833(i)(2)(C) of the Act requires that for fiscal years 1998 through 2002, we automatically adjust ASC rates for inflation during a fiscal year in which we do not update ASC payment rates based on survey data by a CPI–U factor reduced (but not below zero) by 2.0 percent. Therefore, we are updating the current ASC payment rates, which were published in our October 1, 1997 **Federal Register** notice (63 FR 8462), by incorporating the projected rate of change in the CPI–U for the 12-month period ending March 31, 2000 minus 2.0 percentage points. There are other factors, however, that affect the actual payments to an individual ASC.

First, variations in an ASC's Medicare case mix affect the size of the ASC's aggregate payment increase. Although we uniformly adjusted ASC payment rates by the CPI–U forecast for the 12-month period ending March 31, 2000, we did not adjust the IOL payment allowance that is included in the payment rate for group 6 and group 8 because OBRA 1993 froze the amount of payment for an IOL furnished by an ASC at $150 for the period beginning January 1, 1994 through December 31, 1998. Therefore, because the net adjustment for inflation for procedures in group 6 is 0.63 percent and for group 8 is 0.64 percent, ASCs that perform a high percentage of the IOL insertion procedures that comprise these groups may expect a somewhat lower increase in their aggregate payments than ASCs that perform fewer IOL insertion procedures.

A second factor determining the effect of the change in payment rates is the percentage of total revenue an ASC receives from Medicare. The larger the proportion of revenue an ASC receives from the Medicare program, the greater the impact of the updated rates in this notice. The percentage of revenue derived from the Medicare program depends on the volume and types of services furnished. Since Medicare patients account for as much as 80 percent of all IOL insertion procedures performed in ASCs, an ASC that performs a high percentage of IOL insertion procedures will probably receive a higher percentage of its revenue from Medicare than would an ASC with a case mix comprised largely of procedures that do not involve insertion of an IOL. For an ASC that receives a large portion of its revenue from the Medicare program, the changes in this notice will likely have a greater influence on the ASC's operations and management decisions than they will have on an ASC that receives a large portion of revenue from other sources.

In general, we expect the rate changes in this notice to affect ASCs positively by increasing the rates upon which payments are based.

2. Impact on Hospitals and Small Rural Hospitals

Section 1833(i)(3)(A) of the Act mandates the method of determining payments to hospitals for ASC-approved procedures performed in a hospital outpatient setting. The Congress believed some comparability should exist in the amount of payment to hospitals and ASCs for similar procedures. The Congress recognized, however, that hospitals have certain overhead costs that ASCs do not and allowed for those costs by establishing a blended payment methodology. For ASC procedures performed in an outpatient setting, hospitals are paid based on the lower of their aggregate costs, aggregate charges, or a blend of 58 percent of the applicable wage-adjusted ASC rate and 42 percent of the lower of the hospital's aggregate costs or charges. According to statistics from the Office of Strategic Planning within HCFA, 12 percent of Medicare payments to hospitals by intermediaries is attributable to services furnished in conjunction with ASC-covered procedures.

We would not expect an ASC rate increase in every instance to keep pace with actual hospital cost increases, although we would fully recognize cost increases resulting from inflation alone to the extent that the blended payment methodology includes aggregate hospital costs. The weight of the ASC portion of the blended payment amount, which would reflect the ASC rate increase, is offset to a degree when hospital costs significantly exceed the ASC rate. Another element that would eliminate the effect of the ASC rate increase on hospital outpatient payments is the application of the lowest payment screen in determining payments. Applying the lowest of costs, charges, or a blend can result in some hospitals being paid entirely on the basis of a hospital's costs or charges. In those instances, the increase in the ASC rates will have no effect on hospital payments. The number of Medicare beneficiaries a hospital serves and its case-mix variation would also influence the total impact of the new ASC rates on Medicare payments to hospitals. Based on these factors, we have determined, and we certify that this notice will not have a significant impact on a substantial number of small rural hospitals. Therefore, we have not prepared a small rural hospital impact analysis.

We have reviewed this notice under the threshold criteria of Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64 FR 43255). The Executive Order is effective November 2, 1999, which is 90 days after the date of this Order. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

IV. Waiver of 30-Day Delay in the Effective Date

We ordinarily publish notices, such as this, subject to a 30-day delay in the effective date. However, if adherence to this procedure would be impracticable, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. The provisions of this

notice are effective for services furnished on or after October 1, 1999. These provisions will increase payment rates to ASCs by 0.8 percent (before applying the wage index), in accordance with section 1833(i)(2)(C) of the Act, as amended by the BBA. As a practical matter, if we allowed a 30-day delay in the effective date of this notice, ASCs would be unable to take timely advantage of the increase in payment rates contained in this notice. Moreover, we believe a delay is impracticable and unnecessary because as explained earlier, the statute provides that ASC payment rates be increased by the percentage increase in the CPI–U if the Secretary has not updated rates during a fiscal year, beginning with FY 1996. Therefore, we find good cause to waive the delay in the effective date.

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

(Sections 1832(a)(2)(F) and 1833(i) (1) and (2) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F) and 1395l(i) (1) and (2)); 42 CFR 416.120, 416.125, and 416.130)

(Catalog of Federal Domestic Assistance Programs No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 6, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Dated: October 25, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 00–2959 Filed 2–8–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice Regarding HRSA Grant Requirement—Participation in the 340B Drug Pricing Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing its decision to withdraw the proposal to impose a grant award requirement that would have required HRSA grantees listed in section 340B of the Public Health Service Act and Federally Qualified Health Center (FQHC) Look-Alikes to participate in the 340B Drug Pricing Program or provide good cause for non-participation. Instead of the proposed grant requirement, HRSA will add a statement to the Notice of Grant Award (NGA) concerning the need for grantees to determine the appropriateness of their drug purchasing practices under applicable cost principles.

FOR FURTHER INFORMATION CONTACT: Captain Robert Staley, the Office of Drug Pricing, Bureau of Primary Health Care, Health Resources and Services Administration, 10th Floor, East West Towers, 4350 East-West Highway, Bethesda, MD 20814; Phone (800) 628–6297; Fax (301) 594–4982.

SUPPLEMENTARY INFORMATION: The proposed grant requirement for eligible HRSA grantee and FQHC Look-Alike participation in the 340B Drug Pricing Program was announced in the **Federal Register** at 63 FR 56656 on October 22, 1998. A period of 60 days was established to allow interested parties to submit comments. HRSA received 21 comments. In light of the concerns expressed about the potential adverse impact of the proposed grant requirement, HRSA has decided not to institute the requirement at this time. Instead, HRSA will implement another administrative option to increase participation in the 340B Drug Pricing Program: a statement in the HRSA Notice of Grant Award (NGA) encouraging those grantees not participating in the 340B Program to determine whether their drug purchasing practices meet Federal requirements regarding reasonable and cost effective purchasing. (*See* 42 CFR part 50, subpart E, and OMB Circulars A–122 and A–87 regarding cost principles). If grantees can obtain drugs through the Drug Pricing Program at lower cost, it would be reasonable to take advantage of such cost savings. This policy will be implemented during the fiscal year (FY) 2000 grant award cycle.

Dated: January 3, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–2862 Filed 2–8–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 10, 2000.
Time: 4:30 PM to 7 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 16, 2000.
Time: 1 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, Washington, DC 20036.
Contact Person: John Bishop, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 1.
Date: February 21–22, 2000.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.
Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Bacteriology and Mycology Subcommittee 1.
Date: February 21–22, 2000.
Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd, Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Timothy J. Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 22–23, 2000.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Joanne T. Fujii, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: February 22, 2000.

Time: 8:30 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 22, 2000.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23–24, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

Name of Committee: Pathophysiologial Sciences Initial Review Group, Lung Biology and Pathology Study Section.

Date: February 23–24, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: St. James Preferred Residence, 950 24th St., NW, Washington, DC 20037.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–0696.

Name of Committee: Cardiovascular Sciences Initial Review Group, Cardiovascular Study Section.

Date: February 23–24, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212, johnsong@csr.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 1.

Date: February 23–24, 2000.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Martin L. Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 2.

Date: February 23–25, 2000.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavillion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23–24, 2000.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–8367.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23, 2000.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6701, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23, 2000.

Time: 3:00 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23, 2000.

Time: 5:00 PM to 7:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sooja K. Kim, PhD, Chief, Nutritional and Metabolic Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Nutrition Study Section.

Date: February 24–25, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Geriatrics and Rehabilitation Medicine.

Date: February 24–25, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific

Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: The Westin Fairfax Hotel, 2100 Massachusetts, Ave., NW, Washington, DC 20008.
Contact Person: Nancy Hicks, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Biochemical Sciences Initial Review Group, Physiological Chemistry Study Section.
Date: February 24–25, 2000.
Time: 8:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arilington, VA 22202.
Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.
Name of Committee: Cell Development and Function Initial Group, Cell Development and Function 3.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Metabolic Study Section.
Date: February 24–25, 2000.
Time: 8:30 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W. Washington, DC 20007
Contact Person: Krish Krishnan, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 2.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW, Washington, DC 20037.
Contact Person: Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Genetic Sciences Initial Review Group, Genome Study Section.
Date: February 24–25, 2000.
Time: 8:30 AM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7808, Bethesda, MD 20892, 301–435–1045. coraroc@csr.nih.gov.

Name of Committee: Cell Development and Function Initial Review Group, International and Cooperative Projects Study Section.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Sandy Warren, MPH, DMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 435–1019.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavillion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Michael A. Lang, PhD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Samuel Rawlings, PhD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

Name of Committee: Immunological Sciences Initial Review Group, Allergy and Immunology Study Section.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.
Contact Person: Eugene M. Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, The Chevy Chase Pavilion, 4300 Military Road NW, Wisconsin at Western Avenue, Washington, DC 20015.
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 9:00 AM to 5:00 PM.
Agenda: To provide concept review of proposed grant applications.
Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW, Washington, DC 20036.
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 9:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.
Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Bio-Organic and Natural Products Chemistry Study Section.
Date: February 24–25, 2000.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, radtkem@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24, 2000.
Time: 11:00 AM to 12:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed Husian, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–26, 2000.

Time: 7:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93,878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2915 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Dietary and Hormonal Determinants of Cancer in Women.

Date: February 9–11, 2000.

Time: 7:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Best Western Boston—The Inn at Longbeach Medic, 342 Longwood Avenue, Boston, MA 02115.

Contact Person: Christopher L. Hatch, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8044, Bethesda, MD 20892 (301) 496–4964.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2907 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Memorial Sloan Kettering Cancer Gene Therapy Program.

Date: February 8–10, 2000.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Fitzpatrick Manhattan Hotel, 687 Lexington Avenue, New York, NY 10022.

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301/496–7978.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2908 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Mechanism of Human Bladder Carcinogenesis.

Date: February 28–March 1, 2000.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton Huntington Hotel & Spa, 1401 South Oak Knoll Ave, Passadena, CA 91106.

Contact Person: Michael B Small, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2909 Filed 2–08–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board (NCAB), February 15, 2000, 9:00 AM to February 16, 2000, 12:00 PM, National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, Maryland 20892, which was published in the **Federal Register** on January 28, 2000, 65 FR 4563.

In lieu of a face-to-face meeting, the NCAB will now convene by way of a telephone conference call on Wednesday, February 16, 2000, between the hours of 10:00 AM to 12;15 PM.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to observe the open portion of the telephone conference call and need special assistance, such as sign language interpretation or other reasonable accommodation, should notify the contact person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below.

Name of Committee: National Cancer Advisory Board.

Date: February 16, 2000 (Teleconference).

Open: February 16, 10:00 a.m. to 11:40 a.m.

Agenda: Approval of December 1999 meeting minutes; annual approval of operating guidelines and delegation of authority; Director's Report; other business of the Board.

Closed: February 16, 2000, 11:45 a.m. to Adjournment.

Agenda: Review of Grant Applications.

Place: Building 31 C, Wing, 6 Floor Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8022, Bethesda, MD 20892–8327, (301) 496–5147.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cencer Control, National Institutes of Health, HHS)

Dated: February 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2911 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Population Research Subcommittee.

Dates: March 9–10, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: American Inn, 8130 Wisconsin Avenue Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD Health Scientist Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2910 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 18, 2000.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gerald E. Calderone, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2912 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: March 9, 2000.

Time: 12:30 PM to 2:30 PM.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2913 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel RFA ES00–002: The Role of the Environment in Parkinson's Disease.

Date: March 1–3, 2000.

Time: 7 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS-South Campus, Building 101, Conference Room B, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PHD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.141, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: February 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2914 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in March 2000.

The Drug Testing Advisory Board meeting will be open from 8:30 a.m. until 10:15 a.m. on March 13, 2000. The open session will include a roll call, an HHS update, a DOT update, and a brief review of alternative specimen testing. A public comment period will be scheduled during the open session. If anyone needs special accommodations for persons with disabilities please notify the Contact listed below.

The Drug Testing Advisory Board meeting will be closed from 10:15 a.m. on March 13, 2000, until 3:30 p.m. on March 14, 2000, because it involves the review of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App.2, § 10(d).

An agenda for the open session of this meeting and a roster of board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Drug Testing Advisory Board

Meeting Date: March 13–14, 2000

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815

Open: March 13, 2000; 8:30 a.m.–10:15 a.m.

Closed: March 13, 2000; 10:15 a.m.–4:30 p.m.

Closed: March 14, 2000; 8:30 a.m.–3:30 p.m.

Contact: Donna M. Bush, PhD., Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031.

Dated: February 2, 2000.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–2981 Filed 2–8–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. We have included a copy of the information collection requirement in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and

explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before April 10, 2000.

ADDRESSES: Send your comments on the requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Room 222 ARLSQ, 1849 C Street, NW, Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, and related forms, contact Rebecca A. Mullin at (703) 358–2287 or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We plan to submit a request to OMB to renew approval of the collection of information for special use permit applications on national wildlife refuges in Alaska. We are requesting a 3-year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Title: Special Use Permit Applications on National Wildlife Refuges in Alaska.

Approval Number: 1018–0014.

Service Form Number: 3–2001.

Description and use: The National Wildlife Refuge System Improvement Act of 1997 that amends the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668 dd–ee) requires that we authorize economic privileges on any national wildlife refuge by permit only when the activity will not be incompatible with the purposes for which the refuge was established. The Alaska National Interest Lands Conservation Act (ANILCA) provides for the disposition and use of a variety of federally owned lands in Alaska. Section 1307 of ANILCA contains two provisions concerning persons and entities who we are to give special rights and preferences with respect to providing ''visitor services'' on certain lands under the administration of the Secretary of the Interior (Secretary), in this context, units of the National Wildlife Refuge System. The term, ''visitor services,'' is defined in section 1307 as ''* * * any service made available for a fee or charge to persons who visit a conservation system unit, including such services as providing food, accommodations, transportation, tours and guides, excepting the guiding of sport hunting and fishing.'' Other sections of ANILCA allow the Secretary to permit uses on national wildlife refuges in Alaska under certain conditions. Specifically, section 1303 of ANILCA states that we will issue no special use permits unless the permit applicant provides certain items of information.

We will provide the permit applications as requested by interested Alaska citizens. We will use information provided on the required written forms and/or verbal applications to ensure that the applicant is eligible for non-competitively awarded permits, or in the case of competitively awarded permits, the most qualified applicant to receive benefits of a refuge permit. In the case of ''1307'' permits, we will use the information to determine whether the applicant is: a member of a Native Corporation; a local resident; engaged in adequately providing visitors services on or before January 1, 1979; or eligible to receive Cook Inlet Region rights.

We make provision in our general refuge regulations for public entry for specialized purposes, including economic activities such as the operation of guiding and other visitor services on refuges by concessionaires or cooperators under appropriate contracts or legal agreements (found in 50 CFR 25.61) or special use permits (found in 50 CFR parts 26.22(b) and 26.25). These rules provide the authorities and procedures for selecting permittees on Alaska refuges, the vast majority of which are providers of services and facilities to the public. We will issue permits for a specific period as determined by the type and location of the use or visitor service provided.

Frequency of Collection: On occasion.

Description of Respondents: Individuals and households; Business and other for-profit; Not-for-profit institutions; Farms; and State, local or Tribal governments.

Total Annual Burden Hours: (see table below).

INFORMATION COLLECTION BURDEN ESTIMATE

Type of permit	Competitive respondents	Non-competitive respondents
Visitor Services:		
Hunting and Fishing	50	160
Completion time	30 hours	1.5 hours
Annual burden hours	1,500 hour	240 hours
Total annual burden hours: 1,740.		
Visitor Services:		
General	2.	
Completion time	40 hours.	
Annual burden hours: 80.		
Combined Annual Burden:		
Number of responses: 212.		
Average burden per response: 8.6 hours.		
Annual burden: 1,820 hours.		

We invite comments concerning this renewal on (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) The accuracy of our estimate of the burden of the 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. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: February 1, 2000.

Paul R. Schmidt,

Acting Assitant Director for Refuges and Wildlife.

[FR Doc. 00–2809 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice, information collection.

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We will submit a request to OMB to renew its approval of the collection of information for the Federal Subsistence Hunt Application and Permit, Designated Hunter Permit Application and Report, and Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application. We are requesting a 3-year term of approval of this new information collection activity. Pursuant to our request for OMB approval of this new information collection, we invite comments on (1) whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions used, and (3) ways to enhance the quality, utility, and clarity of the information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before April 10, 2000.

ADDRESSES: Harvest Data Coordinator, Alaska Subsistence Office, 1011 East Tudor Road, Anchorage, Alaska 99503. Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Charles Miller, Alaska Subsistence Office, 907/786–3888 or Rebecca Mullin, Service Information Collection Clearance Officer 703/358–2287.

Title: Federal Subsistence Hunt Application and Permit and Designated Hunter Permit Application and Permit.

OMB Approval Number: 1018–0075.

Service Form Number(s): 7–FW 1 and 7–FW 2.

Abstract: The Alaska National Interest Lands Conservation Act (ANILCA) and Fish and Wildlife Service regulations, found in 50 CFR 100, require that persons engaged in taking fish and wildlife must comply with reporting provisions of the Federal Subsistence Board. The harvest activity must be reported. In many cases, a special permit is required for the rural resident to be able to participate in special hunts. The harvest information is needed in order to evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. Once harvest success information is evaluated, the Federal Subsistence Board utilizes this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence hunters without adversely impacting the health of existing wildlife populations. The Federal Subsistence Hunt Application and Permit also provides a mechanism to allow Federal subsistence users the opportunity to participate in special hunts that are not available to the general public but are provided for by Title VIII of ANILCA. Both reports provide for the collection of the necessary information; however, the Designated Hunter Report is unique in that it allows the reporting of the harvest of multiple animals by a single hunter who is acting for others. The Designated Hunter Application and Permit also serves as a special permit allowing qualified subsistence users to harvest fish or wildlife for others. The collection of information is needed prior to the expiration of time periods established under 5 CFR 1320, and is essential to the missions of the Fish and Wildlife Service and the Federal Subsistence Board. Without this information public harm would occur as a result of the Service's inability to set subsistence seasons and harvest limits to meet users' needs without adversely impacting the health and the animal population.

Frequency: On occasion.

Title: Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application.

OMB Approval Number: (not yet assigned).

Service Form Number(s): 7–FW3.

Abstract: Under the Alaska National Interest Lands Conservation Act (ANILCA) allows the taking of fish and wildlife on public lands in Alaska for subsistence use. In order to take fish and wildlife in public lands for subsistence uses, users must possess and comply with the provisions of any pertinent permit, harvest tickets, or tags required by the State, or Federal permits, harvest tickets or tags as required by the Federal subsistence board (Board). All Alaskans who are residents of rural areas or communities are eligible to participate in subsistence taking of that stock or population under the regulations in 50 CFR 100. Information on the fisherman, qualified subsistence users fished for, the fish/shellfish harvested, and the location of harvest is needed by the board in making recommendations on subsistence use. Once harvest success information is evaluated, the Federal Subsistence Board utilizes this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence fisherman without adversely impacting the health of existing fish/shellfish populations. The Federal Subsistence Hunt Application and Permit also provides a mechanism to allow Federal subsistence users the opportunity to participate in special fishing opportunities that are not available to the general public but are provided for by Title VIII of ANILCA.

Description of Respondents: Individuals and households.

Estimated Completion Time: The reporting burden is estimated to be .25 hours or 15 minutes each.

Annual Responses: 5,200 (Federal Subsistence Hunt Application and Permit); 700 (Designated Hunter Permit Application and Report); 1,000 (Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application).

Total Annual Burden Hours: 1,725 hours.

Dated: February 2, 2000.

Thomas H. Boyd,

Acting Chairman, Federal Subsistence Board.

[FR Doc. 00–2901 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Impact Statement.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and an Environmental Impact Statement (EIS) for Nisqually National Wildlife Refuge, Thurston and Pierce Counties, Washington. The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations to advise other agencies and the public of our intentions.

DATES: Submit comments on or before March 10, 2000.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Nisqually National Wildlife Refuge, 100 Brown Farm Road, Olympia, Washington, 98516.

Submit electronic mail comments to: FW1Public__Comments__Nisqually@fws.gov. See Submitting Comments under **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic commenting.

FOR FURTHER INFORMATION CONTACT: Refuge Manager Jean Takekawa at (360) 753–9467 (see **ADDRESSES** section for mailing address).

SUPPLEMENTARY INFORMATION:

Background

During the Environmental Assessment development process, a further determination was made that an EIS should be prepared to address NEPA requirements for the development of the CCP. A previous notice to prepare a CCP was published in the **Federal Register** (62 FR 52764–52765, Oct. 9, 1997).

It is Service policy to have all lands within the National Wildlife Refuge (NWR) System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Nisqually NWR was established in 1974, ''* * * for use as an inviolate sanctuary, or for any other management purposes, for migratory birds'' (16 U.S.C. 715d). A CCP is needed to update the 1978 Nisqually NWR Conceptual Plan and facilitate potential changes in habitat management and public uses, with full public participation. The major issues to be addressed in the CCP include habitat protection and enhancement, boundary expansion and completion of the Refuge, riparian and tidal restoration, control of invasive and exotic vegetation, future flooding, compatibility of secondary uses, public access and accessibility, fishing, and waterfowl hunting.

Starting in 1996, issues, goals, and other comments on the CCP were submitted by persons and organizations involved in the scoping process including: the Washington Department of Fish and Wildlife; Ft. Lewis; the Nisqually Indian Tribe; Thurston and Pierce Counties; members of national, state, and local conservation organizations; neighboring landowners; and other interested citizens. Comments and concerns received are being used to draft alternatives.

Five planning updates have been mailed out to approximately 600 addresses. The first two updates soliciting comments were mailed in August and November 1996. The third update, which announced the public open houses, was mailed in November 1997. Comments received were used to develop goals, key issues, and habitat management strategies that were presented at public open houses in the fall of 1997. In addition, more than 600 issues workbooks were mailed or distributed at the open houses. The workbook, offered people a chance to provide input on the CCP, draft Refuge goals, and four main issues, including: (1) Changing the mix of habitat types at the Refuge; (2) trail access and configuration; (3) waterfowl hunting; and (4) Refuge expansion and land protection. Planning update number four, mailed in April 1998, summarized the comments received from the workbook. Update number five was mailed in December 1998, and summarized the results of three workshops which focused on: public use; grasslands; and estuarine and freshwater wetlands restoration and management. Copies of these planning updates may be requested from the Refuge.

Submitting Comments

With the publication of this notice, the public is encouraged to send written comments. Comments already received are on record and need not be resubmitted. All comments received from individuals on a draft EIS become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, Council on Environmental Quality's NEPA regulations 40 CFR 1506.6(f), and other Service and Department policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the author's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

You may submit comments by sending electronic mail (e-mail) to: FW1Public__Comments__Nisqually@fws.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. On the e-mail message title line, please note that your message is in response to the Nisqually NWR Draft CCP and Draft EIS.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, and Service policies and procedures for compliance with those regulations. We estimate that the Draft CCP and Draft EIS will be available by Summer 2000.

Dated: January 28, 2000.

Thomas Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–2871 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE022454–0

Applicant: The Nature Conservancy, Michigan Chapter, East Lansing, Michigan; Helen Taylor, State Director

The applicant requests a permit for the purpose of determining management strategies for the Karner blue butterfly (*Lycaeides melissa samuelis*) in southwestern Newaygo County, Michigan. The applicant proposes to complete the following activities which may take the Karner blue butterfly: (1) Control and eliminate invasive alien plants, particularly spotted knapweed (*Centaurea maculosa*), by the initiation of a proposed burn regime, hand-pulling and spot-burning, (2) research and monitoring of the species to determine the impacts of the management regime described above, and (3) to expand and restore suitable habitat for occupation by the species. Take (kill, harass) is expected to occur in association with proposed activities. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5350); FAX: (612/713–5292).

Dated: February 3, 2000.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–2986 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for Construction of a Raised Boardwalk and Improvements to Wildlife Viewing Areas at Dyke Marsh Wildlife Preserve

AGENCY: National Park Service, Interior.

ACTION: Availability of the Environmental Assessment for the proposed construction of a raised boardwalk and improvements to wildlife viewing areas at Dyke Marsh Wildlife Preserve (Dyke Marsh).

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service announces the availability of an Environmental Assessment for the proposed construction of a raised boardwalk and improvements to wildlife viewing opportunities at Dyke Marsh Wildlife Preserve, within the George Washington Memorial Parkway (Parkway). The Environmental Assessment examines several alternatives for the specific location, size, and configuration of the boardwalk. The National Park Service is soliciting comments on this Environmental Assessment. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act (NEPA).

DATES: The Environmental Assessment will remain available for public comment 30 days from the date of publication in the **Federal Register**. Written comments should be received no later than March 10, 2000.

ADDRESSES: Comments on this Environmental Assessment should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. The Environmental Assessment will be available for public inspection Monday through Friday, 8:00 a.m. through 4:00 p.m. at GWMP Headquarters, Turkey Run Park, McLean, VA, on the National Park Service Website *www.nps.gov/gwmp/Dmcons.html* and at several libraries in Alexandria, Fairfax and Arlington, Virginia.

SUPPLEMENTARY INFORMATION: The National Park Service proposes to construct a raised boardwalk and viewing platform at the end of the ''Haul Road'' trail in Dyke Marsh, now called Dyke Marsh trail, an area that is currently difficult to access because of persistent wet conditions. The intent of the proposed raised boardwalk is to provide better access and viewing opportunities than the current proliferation of informal social trails currently afford, and to encourage visitor use patterns that are more consistent with protection of the area's sensitive ecosystem. Specifically, the proposed action aims to:

- Provide enhanced opportunities to view wildlife and the environs of Dyke Marsh by improving access to the area, and affording a slightly elevated vantage point from which visitors may view wildlife and enjoy the surroundings.
- Enhance the protection of the area's natural resources by providing appropriate facilities (*i.e.,* a raised boardwalk and interpretive waysides) that encourage visitor use patterns and activities that are consistent with responsible management of the Dyke Marsh ecosystem.
- Provide for increased educational opportunities and public understanding of Dyke Marsh and wetland ecology.

The proposed action is based on longstanding observations by National Park Service staff, general park visitors, and members of the Friends of Dyke Marsh. The current trail system neither provides adequate access to the marsh, nor is appropriate for the protection of vegetation and wildlife, including migratory and nesting bird species. While the Dyke Marsh trail provides reasonably good access to a point somewhat beyond the existing wooden footbridge, beyond that point the trail simply degenerates into a network of poorly defined, muddy social trails, many of which are inundated at high tide. While the social trails suggest a desire by visitors to be able to access the area, it is clear that there is no well defined or officially provided trail to meet that need. The existing conditions are insensitive to protection of vegetation and wildlife, and encourage the inappropriate and unmanaged development of more social trails. In addition, tidal fluctuations effectively limit opportunities to access some of the most scenic and interesting portions of the marsh, since much of the area is inundated or excessively muddy much of the time.

Increasingly, Dyke Marsh serves as a venue for environmental education and science programs for local school systems. The Parkway's expanding Parks-As-Classrooms program, as well as a multi-park science oriented program brings elementary and high school aged students to Dyke Marsh for educational programs. Construction of the boardwalk and viewing platform would enhance educational opportunities by making the marsh more easily accessible and improving wildlife viewing opportunities.

All interested individuals, agencies, and organizations are urged to provide comments on the Environmental Assessment. The National Park Service in making a final decision regarding this matter will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Truesdell, (703) 289–2530.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 00–2883 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of major changes to a system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes major changes to a notice describing a system of records managed by the Bureau of Reclamation. The system of records notice ''Individual Records of Issue, BOR–11'' is being revised and renamed ''Identification/Security Cards, WBR–11.'' The system description is published in its entirety below.

DATES: This action will be effective without further notice on March 10, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Bureau of Reclamation, Attn: Mr. Casey Snyder, D–7924, Privacy Act Officer, PO Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: Ms. Rayleen Cruz, Manager, Property and Office Services at (303) 445–2023.

SUPPLEMENTARY INFORMATION: The original system of records notice ''Individual Records of Issue, BOR–11,'' was published in the **Federal Register** on February 22, 1985, (50 FR 7391). The original system of records notice also covered Government parking spaces and keys issued, which are now covered under ''Employee Administrative Records, DOI–58.

Murlin Coffey,

Manager Property and Office Services.

INTERIOR/WBR–11

SYSTEM NAME:

Identification/Security Cards.

SYSTEM LOCATION:

All Bureau of Reclamation (Reclamation) offices or facilities which manage an identification (ID)/security system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have access to Reclamation's buildings and facilities. These include, but are not limited to, the following: Current and former agency employees and contractors, persons authorized to perform or to use services provided by Reclamation (*e.g.,* credit unions, fitness centers, etc.), volunteers, and visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on current and former agency employees and contractors may include the following data fields: Name; Social Security Number (or other personal identifier); date of birth; signature; image (photograph); hair color; eye color; height; weight; organization/office of assignment; telephone number of emergency contact; date and time of entry; time of exit; security access category; number of ID/security cards issued; and ID/security card issue date, expiration date, and serial number.

Records maintained on all other individuals covered by the system may include any or all of the following data: Name; Social Security Number (or one of the following: driver's license number, ''Green Card'' number, Visa/Passport number, or other personal identifier); date and time of entry; time of exit; purpose for entry; agency point of contact; security access category; number of ID/security cards issued; and ID/security card issue date, expiration date, and serial number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 40 U.S.C. 486; 44 U.S.C. 3101; Presidential Memorandum on Upgrading Security at Federal Facilities, June 28, 1995.

PURPOSE(S):

(1) To ensure the safety and security of Reclamation's buildings, facilities, and occupants. (2) To verify that all persons entering the buildings are authorized to enter.

(3) To track and control ID/security cards issued to persons entering Reclamation buildings or facilities. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Disclosures outside Reclamation may be made:

(1) To security service companies that provide monitoring and maintenance support for the system. (2) To the Federal Protective Service and appropriate Federal, State, and local law enforcement agencies to investigate emergency response situations or to investigate and prosecute the violation of law, statute, rule, regulation, order, or license. (3) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains. (4) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information. (5) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license. (6) A congressional office in response to an inquiry to that office by the individual to whom the records pertain.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, microfiche, or computer files.

RETRIEVABILITY:

Records are retrievable by name; Social Security Number (or other personal identifier); image (photograph); organization/office of assignment; agency point of contact; security access; category; date and time of entry; time of exit; and ID/security card issue date, expiration date, and serial number.

SAFEGUARDS:

The records are maintained in accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records relating to persons covered by the system are retained in accordance with General Records Schedule 18, Item No. 17. Unless retained for specific ongoing security investigations, records are disposed of in accordance with appropriate Reclamation, Departmental, and General Records Schedules.

SYSTEM MANAGER AND ADDRESS:

Manager, Property and Office Services (D–7900), Reclamation Service Center, PO Box 25007, Denver, Colorado 80225–0007.

NOTIFICATION PROCEDURES:

Individuals requesting notification of the existence of records on themselves should address their request to the appropriate administrative office or facility of Reclamation in which the individual is (or was) employed, the office or facility maintaining the records, or the system manager listed above. The request must be in writing and signed by the requester (see 43 CFR 2.60).

RECORD ACCESS PROCEDURES:

Individuals requesting access to records maintained on themselves should address their request to the appropriate administrative office or facility of Reclamation in which the individual is (or was) employed, the office or facility maintaining the records, or the system manager listed above. The request must be in writing and signed by the requester (see 43 CFR 2.63).

CONTESTING RECORDS PROCEDURES:

A petition for amendment must be in writing and signed by the requester. It should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals covered by the system, supervisors, and designated management officials.

[FR Doc. 00–2905 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 11, 2000 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–864–867 (Preliminary)(Certain Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 14, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3021 Filed 2–4–00; 4:30 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 15, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–302 and 731–TA–454 (Review)(Fresh and Chilled Atlantic Salmon from Norway)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 24, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3022 Filed 2–4–00; 4:25 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing: Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; New Collection COPS Problem-Solving Management Survey.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by February 11, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

During the first 60 days of this same period a regular review of this information/collection is also being undertaken. In addition to comments and/or questions pertaining to this pending request for emergency approval, written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**.

Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the emergency approval request, estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave., NW, Washington, DC 20530–0001; Attention: Karen Beckman. Additionally, comments may be submitted to COPS via facsimile to 202–633–1386, Attention: Karen Beckman. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy

Clearance Officer, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Problem-Solving Management Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS PPSE/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Captains, Chiefs, Detectives/Sergeants, and Crime Analysts from 75 large police agencies that have received COPS 1999 School Based Partnership Grants will be asked to respond (approximately 300). The Problem-Solving Management Survey will collect basic information about the capacity of police agencies to prioritize problems, their knowledge of agency resources, and their understanding of problem-solving information as it relates to problem-oriented policing.

The COPS office will use the information collected to identify the information necessary for police executives to effectively utilize resources as it relates to problem-solving and to examine existing problem-oriented policing tracking systems for the purpose of identifying best practices in problem-solving management. Data from the surveys will be used to produce a final Problem-Solving Knowledge Management Model. A brochure and video of the Problem-Solving Knowledge Model will assist agencies in problem prioritization, and the allocation of resources in support of problem-oriented policing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by telephone to approximately 300 position-specific law enforcement officials within 75 large police agencies who have been awarded COPS 1999 School Based Partnership Grants. The four specific positions that will be questioned in each agency are Captains, Chiefs, Detectives or Sergeants, and Crime Analysts. Administrative preparation and survey completion will take approximately 0.75 hours per respondent (there is no record burden for this collection).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 225 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: February 3, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–2898 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration;

By Notice dated August 17, 1999, and published in the **Federal Register** on August 27, 1999, (64 FR 46953), B.I. Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basis classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methadone (9250)	II
Levo-alphacetylmethadol (9648)	II

The firms plans to bulk manufacture the listed controlled substances for formulation into finished pharmaceuticals.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of B.I. Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 30, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–2873 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 56226), Glaxo Wellcome, Inc., Attn: Jeffrey A. Weiss, 1011 North Arendell Avenue, PO Box 1217, Zebulon, North Carolina 27597–2309, made application to the Drug Enforcement Administration to be registered as an importer of Remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The remifentanil is being imported for the production of Ultiva dosage forms and for research and new product development.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and 952(a), and determined that the registration of Glaxo Wellcome, Inc. to import remifantanil is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 4, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–2874 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 6, 1999, Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of dihydromorphine (9145), a basic class of controlled substance listed in Schedule I.

Mallinckrodt, Inc. plans to isolate dihydromorphine as a step in a multistep synthesis of hydromorphone.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (April 10, 2000).

Dated: January 28, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–2872 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Community Restorative Justice Outcomes/Measurements and Evaluation

AGENCY: U.S. Department of Justice, National Institute of Corrections.

ACTION: Solicitation for a Cooperative Agreement—Community Restorative Justice Outcomes/Measurements and Evaluation.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY 2000 for a cooperative agreement to establish and develop ''community restorative justice'' performance outcome, measurement and evaluation protocols. This solicitation if for phase I and II of a ''three-phase'' project.

Background/Purpose: Restorative Justice has emerged as a critical issue for the future of Criminal Justice Systems. Because it is new it requires a unique set of skills, competencies and perspectives from corrections agencies and other justice professionals. Victims and citizens have become increasingly frustrated with the justice system with a belief that the justice system does not represent their interest and does not provide them any value in terms of enhanced public safety, quality of life in communities, and a legitimate voice and role in the justice process. Restorative and community oriented practices show promise for being more responsive to victims and communities, and holding offenders accountable for understanding the harmful impact of their behavior, and for repairing the harm that they have caused. Many activities and efforts have taken place over the past four years to assist agencies in developing and implementing systems, protocols and practices related to Restorative Justice. Likewise, the effectiveness and evaluation of these new systems and programs has come into question and has become a central issue among professionals and criminal justice agencies. In some instances, restorative justice programs have been evaluated against traditional measures that focus exclusively on offender recidivism. Proponents argue that restorative justice is a radically different paradigm and so too needs to be our measures and methods of evaluating restorative justice. It is also argued that restorative justice is more than just a certain program (mediation, conferencing, boards, restitution, etc.), rather it is an operating framework driven and grounded by different values and principles. It requires us to look beyond offender focused measures and adopt measures that account not only for impact on offenders, but also on victim health and satisfaction, community safety and vitality, community problem-solving capacity and other variables grounded in these new set of principles and values. By identifying a host of new, or non-traditional evaluation measures to evaluate restorative justice initiatives, agencies will be able to evaluate the relative effectiveness of restorative justices initiatives, and defend and make informed decisions on the purpose and use of such initiatives and programs. Additionally, the project will assist criminal justice agencies in evaluating the effective design and implementation of restorative justice programs.

Project Goal and Objectives: The goal of this project is to provide criminal justice agencies the capability to evaluate the design, implementation, and impact of programs and initiatives being conducted under auspices of community and restorative justice.

The objective of this project are to:

1. Identify outcome and impact measures to evaluate the effectiveness of restorative justice programs and initiatives.
2. Identify process measures to guide and evaluate the implementation of restorative justice programs.
3. Develop an evaluation methodology for the collection and analysis of restorative justice data.
4. Design and create a tool(s) and protocols incorporating restorative measures that agencies can use to evaluate the both the process (implementation) and the outcome/impact of restorative justice programs.
5. Produce a document for wide dissemination in the criminal justice field on restorative justice measures and evaluation using the results from the first four objectives.
6. Develop and deliver a pilot training curriculum for correctional practitioners on the use restorative justice evaluation measures, tools and protocols.

Scope of Work Deliverables

Phase I: The desired outcome and product for Phase I is ''the identification of specific process, outcome and impact measures for evaluating restorative justice programs and initiatives.'' Intended work activities include assembly of a focus/work group to participate in the identification of restorative measures.

Phase II: The desired outcome and deliverables for Phase II is the ''actual design and development of an evaluation tool/instrument and protocol, the pilot application and revision of the tool at two jurisdictional sites, and the development of a document for broad public dissemination containing the results from phase I and II activities.'' The process tool should take the form of an inventory (or checklist) consisting of measurable items that can provide direction and feedback on the extent to which programs and initiatives are more or less restorative in their design and implementation. The site used in a pilot application of the evaluation design must be inclusive of a publicly funded correctional agency as a primary administrator of the program or initiative being evaluated, and shall be subject to consideration and approved by the NIC project coordinator. The document should provide correctional

and other criminal justice professionals a theoretical and conceptual framework, a practical and empirical methodology, and a practical set of tools and protocols for both a process and impact evaluation of restorative justice programs and initiatives. This document shall provide a basis for Phase III of the project, a training curriculum development and pilot delivery in restorative justice evaluation techniques. It is the intent that based on satisfactory completion of Phase I and II products and outcomes, the approval of a cooperative agreement proposal for phase III (development and delivery of a training curriculum) and the availability of funds, an award will be made to the successful applicant from this solicitation for the third phase of the project.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum total of $41,000 ($17,000 for Phase I and $24,000 for Phase II, and includes direct and indirect costs). Project activity for both phases must be completed within 8 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Academy Division. All products from this funding effort will be in the public domain and available to interested agencies through the National Institute of Corrections.

Eligibility To Apply: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. Eastern time on Thursday, March 30, 2000. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and Further Information: Requests for the application kit should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 159, 202–307–3106, ext. 159, or email: jevens@bop.gov. A copy of this announcement and application forms may also be obtained through the NIC web site: http://www.nicic.org (click on ''What's New'' and ''Cooperative Agreements''). All technical and/or programmatic questions concerning this announcement should be directed to Mike Dooley at the NIC Academy, 1960 Industrial Circle, Longmont, CO 80501, or by calling 800–995–6429 or 303–682–0382, ext. 132, or by E-mail via *mdooley@bop.gov.*

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 00A14 This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Catalog of Federal Domestic Assistance Number: 16.602.

Dated: January 31, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–2891 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[00–016]

Proposed Information Collection Activity; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). Information collection is required to ensure proper use of and disposition of rights to inventions made in the course of, and data developed under NASA contracts.

DATES: All comments should be submitted on or before April 10, 2000.

ADDRESSES: All comments should be addressed to Mr. Paul A. Boellner, Code Q, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of review: Extension.

Need and Uses: NASA employees and contractors can voluntarily and confidentially report to an independent agent, any safety concerns or hazards pertaining to any NASA program or project, which have not been resolved through the normal process.

Affected Public: Federal Government.

Number of Respondents: 75.

Responses Per Respondent: 1.

Annual Responses: 75.

Hours Per Request: ¼ hr.

Annual Burden Hours: 19 hrs.

Frequency of Report: As needed.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–2868 Filed 2–8–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [00–017]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before March 10, 2000.

ADDRESSES: All comments should be addressed to Mr. Karl Beisel, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Security Requirements for Unclassified Information Technology.

OMB Number: 2700-Type of Review: New.

Need and Uses: NASA must safeguard its unclassified Information Technology hardware, software and data. Respondents will be NASA contractors and subcontractors involved in IT.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Responses Per Respondent: 2.

Estimated Annual Responses: 400.

Estimated Hours Per Request: 470 hrs.

Estimated Annual Burden Hours: 188,000.

Frequency of Report: Semi-annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–2869 Filed 2–8–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received pursuant to the Antarctic Conservation Act of 1978. This is the required notice.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications on or before March 10, 2000. The permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Joyce Jatko, Environmental Officer, at the above address or (703) 306–1032.

SUPPLEMENTARY INFORMATION: Raytheon Polar Services Company, a business unit of Raytheon Technical Services Company, is in the phase-in period for assuming responsibility for the contract to provide operations support to the United States Antarctic Program. As part of that support, Raytheon personnel will be required to engage in activities that require permitting under the Antarctic Conservation Act. Five separate permit applications have been submitted, as follows:

1. Entry into Antarctic Specially Protected Area 113, Litchfield Island, Arthur Harbor, Palmer Archipelago, for inspection and re-supply of the survival cache;

2. Entry into Antarctic Specially Protected Area 137, Northwest White Island, McMurdo Sound, for access to and maintenance of Black Island INMARSAT transmitting and receiving equipment;

3. Entry into Antarctic Specially Protected Area 128, Western Shore of Admiralty Bay, King George Island, for movement of personnel and supplies to and from the U.S. research station known as Copacabana;

4. Taking associated with removing penguins, seals and skuas from McMurdo Station and associated airfields to ensure safety of operations and protection of the animals;

5. Taking associated with removing penguins, seals and other birds from the Palmer Station pier to ensure safety of operations and protection of the animals.

The permit applicant is: Raytheon Polar Services Company, 16800 E. CentreTech Parkway, Aurora, CO 80011–9646. The proposed duration of each permit is from April 1, 2000 through March 31, 2005.

Joyce A. Jatko,

Acting Permit Officer.

[FR Doc. 00–2926 Filed 2–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modifications Issued Under the Antarctic Conservation Act of 1978, Public Law 95–541

SUMMARY: The National Science Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Public Law 95–541).

FOR FURTHER INFORMATION CONTACT: Joyce Jatko, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

DESCRIPTION OF PERMIT AND MODIFICATION: On September 25, 1998, the National Science Foundation issued a permit (ACA #99–010) to Dr. Rennie S. Holt after posting a notice in the August 27, 1998 **Federal Register**. No public comments were received. A request to modify the permit was posted in the **Federal Register** on December 23, 1999. No public comments were received. The modification, issued by the Foundation on January 27, 2000, allows for tooth extraction from up to 100 adult Antarctic fur seals (Arctocephalus gazella) per year for age determination. The tooth extractions will be taken from animals already captured for other permitted procedures. This is part of an ongoing study of Antarctic fur seals by the U.S. Antarctic Marine Living Resources (AMLR) Program.

LOCATION: Cape Shirreff, Livingston Island (ASPA #149), the South Shetland Islands, Antarctic Peninsula.

DATES: January 10, 2000–April 1, 2001.

Joyce Jatko,

Acting Permit Officer.

[FR Doc. 00–2925 Filed 2–8–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request.

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* ''Reports Concerning Possible Non-Routine Emergency Generic Problems''.

2. *Current OMB approval number:* 3150–0012.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Nuclear power plant and materials applicants and licensees.

5. *The number of annual respondents:* 203 (103 reactor licensees: 100 materials licensees).

6. *The number of hours needed annually to complete the requirement or request:* 43,260 (420 hours per reactor licensee respondent); 10,000 (100 hours per materials licensee respondent).

7. *Abstract:* NRC is requesting approval authority to collect information concerning non-routine, emergency generic problems which would require prompt action from NRC to preclude potential threats to public health and safety.

Submit, by April 10, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated

collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html).

The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 2nd day of February 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2928 Filed 2–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 60—''Disposal of High-Level Radioactive Wastes in Geologic Repositories''.

2. *Current OMB approval number:* 3150–0127.

3. *How often the collection is required:* The information need only be submitted one time.

4. *Who is required or asked to report:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository.

5. *The number of annual respondents:* Two.

6. *The number of hours needed annually to complete the requirement or request:* An average of 40 hours per response for consultation requests, 80 hours per response for license application review participation proposals, and 1 hour per response for statements of representative authority. The total burden for all responses is estimated to be 242 hours.

7. *Abstract:* Part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository. Representatives of States or Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. On February 22, 1999, the Commission proposed to modify its generic criteria for disposal of spent nuclear fuel and high-level radioactive wastes in geologic repositories at 10 CFR part 60 to make clear that they will not apply, nor be the subject of litigation, in any NRC licensing proceeding for a repository at Yucca Mountain (64 FR 8639). Information collection requirements applicable to the licensing of a geologic repository at Yucca Mountain were proposed at that time, in 10 CFR part 63, and will be issued later this year.

Submit, by April 10, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 2nd day of February , 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2931 Filed 2–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Comment on the Allegations Program Under the New Regulatory Oversight Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has proposed significant revisions to its process for overseeing the safety performance of commercial nuclear power plants that include the inspection, assessment, and enforcement program. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a method for consistently determining the appropriate regulatory actions in response to varying levels of safety performance. The NRC also has a long established allegation program to provide a mechanism for individuals to identify safety and regulatory issues directly to the NRC. The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens as to the functioning of the allegation process under the new reactor regulatory oversight program. The NRC staff will consider comments it receives in determining how the agency will pursue structuring the allegation program under the new reactor oversight process. At the conclusion of

the public comment period, the NRC will schedule a public meeting to be held at the NRC Headquarters at 11545 Rockville Pike, Rockville, Maryland, to discuss the comments and options for revising the allegation program.

DATES: The comment period expires April 10, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail. Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC. 20555. Electronic comments may be submitted via email to: NRCREP@NRC.gov

Copies of the Commission Paper dated November 23, 1999, entitled, ''Impact of Changes to the Inspection Program for Reactors on Implementing the Allegation Program'' (SECY–99–273) may be obtained at the following web site: http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html. The Commission's direction to the staff may be obtained at: http://www.nrc.gov/NRC/COMMISSION/SRM/index.html. Information on the revised reactor oversight process may be obtained at: http://www.nrc.gov/NRR/OVERSIGHT/index.html.

Additional information on the inspection pilot program may be obtained from the NRC's Public Document Room at 2120 L St., NW, Washington, DC 20003–1527, telephone 202–634–3272.

FOR FURTHER INFORMATION CONTACT: Edward Baker, Agency Allegation Advisor, or Carl Mohrwinkel, Assistant Agency Allegation Advisor, Mail Stop: O–5 E7, Office of the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone Mr. Baker at 301–415–8529, or Mr.Mohrwinkel at 301–415–1293.

SUPPLEMENTARY INFORMATION:

Background

To encourage individuals to identify safety concerns, the allegation program includes provisions to protect the identity of the individual, to provide timely resolution of the issue(s), and to communicate the staff's understanding of the issue(s), status of the staff's review, and ultimate resolution of the issue(s) in a timely manner. For individuals who do not want the licensee or employer to know they raised an issue to the NRC, the agency's policy is to take all reasonable measures to protect the identity of the individual. Under the current program, an allegation is defined as ''A declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established.'' Historically, the staff has interpreted this definition very broadly and not set a threshold for placing issues in the allegation program, as long as the issues involve an area regulated by the NRC, were not already known by the staff to be true or valid, and were not covered by another process, *e.g.,* petitions processed under Section 2.206 of Title 10 of the Code of Federal Regulations (2.206 petitions).

In developing the revised reactor oversight process, the staff integrated the use of performance indicators and inspections. Using a risk-informed approach, the staff was able to focus the baseline inspection program on inspecting risk-significant areas that are not adequately covered by performance indicators. The overall objective of the program is to assure licensee performance meets the objectives for each of the associated cornerstones of safety. Within the baseline inspection program there are three basic types of inspection. Inspections are (1) used to verify performance in areas that are not measured by a performance indicator, (2) augment the information provided by performance indicators that do not sufficiently measure performance in a cornerstone area, and (3) verify the accuracy and completeness of the data used as the basis for performance indicators used to fully measure performance of a cornerstone area. The end result is that the scope of activities being inspected is more clearly defined and risk informed. There is also less flexibility within the baseline inspection program to inspect issues that emerge from allegations if they do not relate to a stated inspectable area objective.

Conducting an inspection or an evaluation to quickly resolve a safety significant allegation is consistent with the risk informed approach of the revised reactor oversight process. However, the allegation program's emphasis on timely resolution places a similar, and only slightly lesser, burden on the staff for timely resolution of issues with less safety or risk significance. For these issues, staff resolution is driven by the timeliness goal, which was established to be responsive to the alleger, rather than being risk-informed. For those allegations requiring inspection, this often results in revising inspection schedules or scheduling additional inspections to meet the timeliness goal, when the safety or risk significance associated with the issue doesn't warrant that kind of response, even if the issue is assumed to be valid. For those allegations that are referred to other agencies or to licensees for evaluation and response back to the NRC, this may result in redirecting resources from work activities involving higher safety or risk significance in order to meet NRC's requested response date.

Another consequence of implementing the baseline inspection program is that there is a greater potential the reactor licensees will know when an inspection is allegation-related. For allegations that involve issues outside the inspectable areas or are reviewed during inspections that were not on the inspection schedule, it is likely that the licensee or employer will question why the staff is conducting the inspection, unless there has been an event that warrants a reactive inspection. While the staff intends to continue its policy of not informing the licensee when inspections are allegation-related, it is likely the licensee or employer will be able to determine when that is the case. This may increase the potential that a licensee or employer will be able to identify who submitted an allegation to the NRC, based on the area being inspected and its similarity to issues previously raised within the licensee's organization. As a result, individuals may be less inclined to provide safety or regulatory issues to the NRC or they may provide issues to the NRC without first raising the issue internally. Neither of these outcomes is desirable.

Scope of the Public Comment Period and Questions

This public comment period will focus on obtaining industry and public views on the allegation program as it may exist under the new oversight process. To assist respondents the following questions are included as a guide. Comments should be as specific as possible and the use of examples is encouraged.

- Which of the four Options contained in the Commission paper will strike the best balance between the

efficient use of agency resources and the need for allegers to feel the NRC will address their issue(s) and protect their identity, if they so desire?

• Does one of the Options for implementing the allegation program provide more adequate assurance that the NRC can be more certain that through information provided by allegers, plants are being operated safely?

• Does one of the Options for implementing the allegation program under the new oversight process enhance public confidence by increasing the predictability, consistency, clarity and objectivity of the NRC's allegation process?

• Does one of the Options for implementing the allegations program under the new oversight process improve the efficiency and effectiveness of the regulatory process focusing agency resources on those issues with the most safety significance?

• Does one of the Options for implementing the allegation program under the new oversight process reduce unnecessary regulatory burden on licensees?

• What Options, beyond those stated in the Commission paper, should be considered?

• Should the Commission implement any changes in the allegation program for all reactor licensees or should any changes be implemented in a pilot program before being implemented at all reactor facilities?

Dated at Rockville, Maryland, this 3rd day of February 2000.

For the Nuclear Regulatory Commission.

Edward T. Baker III,

Agency Allegations Advisor, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2929 Filed 2–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22]

Private Fuel Storage, L.L.C., Independent Spent Fuel Storage Installation, Skull Valley Indian Reservation, Tooele County, UT; Notice of Intent To Cooperate in the Preparation of an Environmental Impact Statement

Private Fuel Storage, L.L.C. (PFS or the applicant) proposes to construct and operate an independent spent fuel storage installation (ISFSI) at the reservation of the Skull Valley Band of Goshute Indians, which is bordered on all sides by Tooele County, Utah. The proposed Private Fuel Storage Facility (PFSF) would be constructed on an 820-acre site that would store spent nuclear fuel (SNF) received from commercial U.S. nuclear power plants. The applicant proposes to transport SNF from the reactor sites to the PFSF via rail. Currently the rail line stops approximately 25 miles north of the proposed site. The applicant has proposed the following two methods to transport the SNF the last 25 miles:

(1) Construct an intermodal transfer facility on land managed by the U.S. Department of Interior's Bureau of Land Management (BLM). At the intermodal transfer facility, SNF would be transferred from rail to heavy/haul vehicles for transport to the site via Skull Valley Road, or

(2) Construct a rail line on the western side of Skull Valley, along the base of the Cedar Mountains. The rail line would be constructed on land managed by BLM.

Of the two methods identified above, construction of the rail line is the applicant's preferred approach.

The project as proposed, requires approval from four Federal agencies, the U.S. Nuclear Regulatory Commission (NRC), the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and BLM, and the Surface Transportation Board (STB). The applicant must obtain a license from NRC, a right-of-way (ROW) from BLM for either the proposed rail line or the proposed intermodal transfer facility, approval from BIA for a proposed lease agreement between the Skull Valley Band of Goshute Indians and PFS, and approval from the STB to construct the proposed rail line.

On June 20, 1997, pursuant to 10 CFR part 72, PFS submitted an application to NRC for a license to receive, possess, store, and transfer SNF at an ISFSI to be constructed and operated on the Reservation of the Skull Valley Band of Goshute Indians. A notice of consideration of issuance of an NRC materials license for the proposed PFSF and notice of opportunity for hearing were published in the **Federal Register** on July 31, 1997 (62 FR 41099). By letter dated August 28, 1998, PFS submitted a revision to its application for an NRC license to reflect its proposal to construct and utilize a rail line over public lands managed by BLM for the transportation of SNF to its site.

The applicant executed a lease agreement with the Skull Valley Band of Goshute Indians to permit construction and operation of its proposed facility on the Skull Valley Band Reservation. On May 23, 1997, BIA conditionally approved the lease agreement, contingent upon the completion of an Environmental Impact Statement (EIS), the inclusion of mitigation measures identified in the Record of Decision, and the issuance of an NRC license to construct, maintain, and operate the PFSF. The lease includes 820 acres of land where the PFSF is proposed to be located, a 202-acre utility and road ROW from the Skull Valley Road to the PFSF, and a buffer zone adjacent to the PFSF to the south and east, including five sections of land (one section of land consists of one square mile or 640 acres).

By letter dated August 28, 1998, PFS applied to BLM for a ROW to construct a rail line and related facilities for a distance of approximately 32 miles on the western side of Skull Valley, along the base of the Cedar Mountains from Skunk Ridge, Utah, to the PFSF. PFS also applied for a separate ROW to construct and operate an intermodal transfer facility 1.8 miles west of the intersection of Interstate 80 and Skull Valley Road. The rail line would traverse land that is included within the BLM Pony Express Resource Management Plan (RMP). The current Pony Express RMP does not allow for major ROWs such as a rail line in this area, and the PFS proposal would, therefore, require an amendment to the RMP prior to granting the requested ROW. BLM published a notice of intent to prepare a RMP amendment in the **Federal Register** on April 15, 1999 (64 FR 18633).

On January 5, 2000, PFS filed an application with STB to construct and operate the proposed rail line from Skunk Ridge, Utah, to the proposed storage facility. The application was filed in STB Finance Docket No. 33824, *Great Salt Lake & Southern Railroad, L.L.C.—Construction and Operations in Tooele County, Utah.*

The National Environmental Policy Act of 1969 requires all Federal agencies to consider the environmental impacts of their actions. Because the NRC, BIA, BLM, and STB required actions for the construction and operation of the PFSF are related, the agencies have agreed to cooperate in the preparation of an EIS. In preparing the EIS, NRC will serve as the lead agency, and BLM, BIA, and STB will serve as cooperating agencies.

NRC published a notice of intent to prepare an EIS and conduct a scoping process in the **Federal Register** on May 1, 1998 (63 FR 24197). As a part of the scoping process, a public scoping meeting was conducted on June 2, 1998, in Salt Lake City, Utah. The scoping process also provided interested parties with an opportunity to provide written comments. At the conclusion of that

initial scoping process, NRC issued a scoping report in September 1998.

NRC's initial scoping process was based on the description of the PFSF contained in the applicant's submittal of June 20, 1997, which did not include the proposed rail line on public land administered by BLM. This rail line proposal was submitted to NRC on August 28, 1998, as an amendment to the PFS application. Similarly, BIA's conditional approval of the proposed lease agreement was issued prior to the applicant's proposal of the rail line.

As a result of the applicant's August 28, 1998, revision of its transportation proposal, NRC, BIA, and BLM determined that additional scoping meetings should be conducted. Additional scoping meetings were held on April 29, 1999, in Salt Lake City, and Tooele City, Utah. The meetings were noticed in the **Federal Register** on April 14, 1999 (64 FR 18451). Primarily, the scoping meetings focused on environmental issues associated with the rail line proposed in the applicant's August 28, 1998, license application amendment, the request for issuance of a ROW over public lands managed by BLM, and environmental concerns associated with the proposed lease agreement that may not have been addressed in the NRC's initial scoping process. In addition, interested parties were also provided the opportunity to submit written comments. Following the additional scoping meetings and comment period, a supplemental scoping report was issued in November 1999.

Although STB was not identified as a cooperating agency during the scoping process, the environmental issues related to its federal action (*i.e.,* approving the construction and operation of the proposed rail line) were discussed during the scoping process. STB has determined that these scoping activities provided sufficient opportunity for the public to comment on the proposed action and the scope of the EIS. Interested parties will have an opportunity to provide comments on the draft EIS.

Dated at Rockville, Maryland, this 27th day of January 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–2930 Filed 2–8–00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 14, 2000, through January 28, 2000. The last biweekly notice was published on January 26, 2000 (65 FR 4268).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve 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 amendment 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. The basis for this proposed determination for each amendment request is shown below.

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 before action is taken. 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 Review and Directives Branch, Division of Freedom of Information and Publications 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 6D22, 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 a hearing and petitions for leave to intervene is discussed below.

By March 10, 2000, 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 electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). 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 a 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 a 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: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of 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 which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Dated of amendments request: January 25, 2000.

Description of amendments request: The proposed amendment requests a revision to the definition of Response Time Testing (RTT) for the Reactor Protective System (RPS) and Engineered Safety Features Actuation System (ESFAS). The revision allows use of either an allocated sensor response time or a measured sensor response time for pressure sensors used in channels of RPS and ESFAS. The request is based on Combustion Engineering NPSD–1167, Revision 1, ''Elimination of Pressure Sensor Response Time Testing Requirements—CEOG Task 1070.''

Basis for proposed no significant hazards consideration determination: 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. The proposed licensing basis change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the safety analysis report.

This change to the licensing basis does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same Reactor Protective System and Engineered Safety Features Actuation System instrumentation is being used; the time response allocations/modeling assumptions in Updated Final Safety Analysis Report Chapter 14 analyses remain the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the Updated Final Safety Analysis Report. Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

2. The proposed licensing basis change does not create the possibility of a new or different kind of accident from any accident previously evaluated in the safety analysis report.

This change does not alter the performance of the pressure and differential pressure sensors used in the plant protection systems. These sensors will still have their response time verified before they are placed in operational service and after any maintenance to them that could affect their response time. Changing the method of periodically verifying instrument response for certain sensor (assuring equipment

operability) from time response testing to calibration, use of actual data, and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the sensor response characteristic. Implementation of the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed licensing basis change does not involve a significant reduction in margin of safety.

The total Reactor Protective System and Engineered Safety Features Actuation System response time assumed in the safety analysis is not affected by this change. The periodic system response time verification method for selected pressure and differential pressure sensors is modified to allow the use of allocated data based on actual test results or other verifiable response time data. Verification methods and calibration tests assure that any degradation sufficient to significantly affect sensor response time will be detected before the total system response time exceeds that defined in the safety analysis. Therefore, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant 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 amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Marsha Gamberoni, Acting.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Dated of amendment request: November 18, 1999.

Description of amendment request: The proposed amendment would remove license condition 3.H, ''Long Term Program,'' from Facility Operating License DPR–35 for the Pilgrim Nuclear Power Station.

Basis for proposed no significant hazards consideration determination: 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) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. No physical changes to the facility will occur as a result of this amendment. Work activities will continue to receive the appropriate level of review in accordance with Pilgrim procedures and practices. The organizational structure and processes that control and manage these activities ensure activities are prioritized and performed in a manner consistent with plant safety. The proposed amendment removes an administrative burden that is no longer required.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No changes to the physical design and operation of the plant will occur as a result of this amendment. The processes by which activities are planned, prioritized, and controlled are not affected. The appropriate level of technical review and management oversight will continue to be performed in accordance with existing procedures and practices to ensure activities are performed in a manner consistent with plant safety.

(3) The proposed amendment does not involve a significant reduction in a margin of safety. As stated earlier, no changes to the physical design and/or operation of any plant systems will occur as a result of this amendment; therefore, there is no reduction in any margins of safety. Work activities will continue to receive the appropriate technical review and management oversight to ensure activities are prioritized and performed in a manner consistent with plant safety. The proposed amendment removes an administrative burden that is no longer required.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: W. S. Stowe, Esquire, Entergy Nuclear Generation Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Dated of amendment request: November 29, 1999

Description of amendment request: The proposed amendment would relocate the requirements associated with the high-steam-generator-level trip functions of the Reactor Protective System from the Technical Specifications to the Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: 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:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The Steam Generator Level—High function of the RPS [Reactor Protection System] is not credited in any accident analyses nor does it correspond to any TS [Technical Specification] Safety Limit. The high-level function acts to protect the Main Turbine from excessive moisture carryover during feedwater transient events. Protection of the Main Turbine is not required to adequately assure continued reactor safety or the health and safety of the public. Although this function may also serve to limit water intrusion into the main steam lines and consequential overcooling events, its role in this capacity is insignificant, as it does not directly act to secure feedwater from the steam generators. This Steam Generator Level—High function acts only to isolate the Main Turbine from the steam generators by causing a reactor trip, which in turn actuates a turbine trip. This function does not meet any of the criterions listed in 10 CFR 50.36(c)(2) (ii) for inclusion into the technical specifications for ANO–2 [Arkansas Nuclear One, Unit 2], and, therefore, may be excluded from the TSs. Since no changes are made that affect the current operation of this function during its relocation to the ANO–2 TRM [Technical Requirements Manual], and because this function is not credited in any accident analyses, no increase in the probability or consequences of an accident previously evaluated is evident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes relocate affected TS requirements associated with the Steam Generator Level—High Functions of the RPS from the ANO–2 TSs to the ANO–2 TRM. Future revisions to the setpoints and values associated with this function will be established within the requirements of 10 CFR 50.59 to ensure that excessive moisture carryover is prevented in order to protect the turbine and steam line loads. The Steam Generator Level—High Trip setpoint is not credited in any accident analyses and performs only an equipment protection function. The setpoint continues to protect the Main Turbine from damage and preserves operating margin to accommodate excessive feedwater flow prior to trip.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The Steam Generator Level—High Trip setpoint is not credited in any accident analyses and performs only an equipment protection function. The setpoint continues to protect the Main Turbine from damage and preserves operating margin to accommodate excessive feedwater flow prior to trip. In addition, turbine failure has been previously evaluated at ANO–2 as not to be a significant threat to the health and safety of the public.

Events that may result from water intrusion into the main steam lines have been previously evaluated and found not to rely upon the Steam Generator Level—High Trip function. The relocation of the requirements associated with the Steam Generator Level—High function from the TSs to the ANO–2 TRM does not change the current values and requirements. Since no technical change in the setpoint or allowable value is proposed by this submittal and because the Steam Generator Level—High function does not meet any of the four criterion of 10 CFR 50.36(c)(2)(ii), no significant change to the margin of safety is evident.

Therefore, this change does *not* involve a significant reduction in the margin of 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.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Dated of amendment request: November 29, 1999 .

Description of amendment request: The proposed amendment would revise selected Technical Specifications (TSs), Bases, and portions of the Safety Analysis Report (SAR) to maintain consistency with the transient and accident analyses which evaluated the impact of the replacement steam generators (SGs) that are being used for Cycle 15 operation. TS changes are proposed for the Reactor Protection System (RPS) and Engineered Safety Features Actuation System (ESFAS) low pressurizer pressure setpoints, the RPS and ESFAS low SG pressure setpoints, the RPS and ESFAS low SG level setpoints, the reactor coolant flow rate limit, and the high linear power trip setpoints with inoperable main steam safety valves (MSSVs). SAR changes would support the new TS values and would also include small increases in calculated offsite radiological doses using newer, more conservative methods, for some non-loss-of-coolant accident events. The doses would remain within the 10 CFR Part 100 acceptance criteria. The proposed amendment would also make changes to the TSs and Bases that are not directly related to the replacement SGs. These changes would revise the allowed outage time of the MSSVs in Modes 1 and 2 to allow up to 12 hours to reduce the high linear power level-high trip setpoint when one or more MSSVs are inoperable, and would revise the action statement in Mode 3 to maintain at least two MSSVs operable on each SG.

Basis for proposed no significant hazards consideration determination: 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:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed changes to the ANO–2 [Arkansas Nuclear One, Unit 2] TSs are analytically based which change setpoints and procedure limits. No physical modifications are required as a result of the proposed changes. The RPS/ESFAS setpoint changes provide functionally equivalent protection with the RSGs [replacement steam generators] as the previous setpoint values provided with the OSGs [original steam generators]. Proposed changes in regard to RCS [reactor coolant system] flow rate and High Linear Power Trip setpoints associated with conditions where MSSVs are inoperable represent appropriate restrictions that have resulted from the various analyses performed in support of RSG installation. An Emergency Core Cooling System (ECCS) performance analysis was performed to demonstrate conformance to 10 CFR 50.46 for operation with RSGs. For the large break Loss of Coolant Accident (LOCA), the most limiting single failure of the ECCS [is no failure to the ECCS]. The small break LOCA analysis was reanalyzed using the existing Supplement 2 Model (S2M) of the ABB CENP [ABB Combustion Engineering Nuclear Power] small break LOCA evaluation model. The analysis was performed for 0.03 ft^2, 0.04 ft^2, and 0.05 ft^2 in the reactor coolant pump (RCP) discharge leg. The results of both analyses demonstrate continued conformance to the ECCS acceptance criteria of 10 CFR 50.46. Non-LOCA analyses intended to confirm the Chapter 15 events in the ANO–2 SAR were also performed. The analyses were performed considering the proposed Safety Limits and the Limiting Safety Settings of the TSs and were confirmed to be bounding for the affected safety analyses. The results of the non-LOCA analyses indicate that operation with the RSGs in service is acceptable. As a result of the analyses and evaluations performed in support of the RSGs, the ANO specific safety parameters and regulatory limits are protected. Therefore, the proposed TS changes will not significantly increase the probability of an accident previously analyzed.

Loss of Coolant Accidents (LOCAs) and non-LOCA safety analyses supporting the proposed changes have been performed and have demonstrated conformance with all applicable Licensing Basis acceptance criteria. Although calculated radiological doses using newer, more conservative methods increase for some non-LOCA events (requiring a revision to Chapter 15 of the SAR), the results are within the acceptance criteria of 10 CFR 100. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes to the ANO–2 TSs are analytically based and require changing plant setpoints and procedural limits. No physical modifications are required as a result of the proposed changes. The RPS/ESFAS setpoint changes provide functionally equivalent protection with the RSGs as the previous setpoint values provided with the OSGs. Proposed changes in regard to RCS flow rate and High Linear Power Trip setpoints associated with conditions where MSSVs are inoperable represent appropriate restrictions that have resulted from the various analyses performed in support of RSG installation. The additional 8 hours provided for reducing the High Linear Power Level trip setpoints is acceptable due to the low probability of an event occurring within this period, based on operating experience which indicates such a time period is reasonable to complete the changes, and to provide consistency with the RSTS [Revised Standard Technical Specifications]. Therefore, the proposed TS changes will not create the possibility of a new or different kind of accident than previously analyzed.

A review of both LOCA and non-LOCA events was performed which confirms that existing licensing basis methodologies have been considered and that a new accident event has not been created.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

LOCA and non-LOCA safety analyses supporting the proposed changes have been performed and have demonstrated conformance within applicable acceptance criteria. With the increased size of the RSGs and the change in design characteristics, the bases for the setpoints in the ANO–2 TSs are affected. However, based on the new analyses and evaluations conducted in support of this license amendment, the new TS setpoints provide adequate margin to protect established safety and regulatory limits. Although calculated offsite radiological doses increase slightly for some non-LOCA events documented in Chapter 15 of the ANO–2 SAR, the increases are not considered to be significant in that the results remain within the 10 CFR 100 acceptance criteria.

Therefore, this change does not involve a significant reduction in the margin of 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.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Dated of amendment request: July 29, 1999, as supplemented by letters dated August 8 and August 24, 1999 (NPF–38–220).

Description of amendment request: The proposed change modifies Technical Specifications (TS) 3.8.1.1 and associated Bases by extending the Emergency Diesel Generator allowed outage time from 72 hours to ten days. Additionally, this proposed change adds Section 6.16, ''Configuration Risk Management Program'' to the Administrative Controls of the TS.

Basis for proposed no significant hazards consideration determination: 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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The emergency diesel generators (EDGs) are backup alternating current power sources designed to power essential safety systems in the event of a loss of offsite power. EDGs are not an accident initiator in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The EDGs provide backup power to components that mitigate the consequences of accidents. The proposed changes to allowed outage times (AOTs) do not affect any of the assumptions used in deterministic safety analyses.

In order to fully evaluate the EDG AOT extension, probabilistic safety analysis methods were utilized. The results of these analyses indicate no significant increase in the risk of an accident previously evaluated. These analyses are detailed in CE NPSD–996, Combustion Engineering Owners Group ''Joint Applications Report for Emergency Diesel Generators AOT Extension.''

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.8.1.1 ACTION b does not affect the probability or the consequences of an accident.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: The proposed change does not change the design or configuration of the plant. No new method of plant operation is involved.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The proposed changes do not affect the Technical Specification limiting conditions for operation or their bases which support the deterministic analyses used to establish the margin of safety. Evaluations used to support the requested Technical Specification changes have been demonstrated to be either risk neutral or risk beneficial depending on precise plant conditions. These evaluations are detailed in CE NPSD–996.

Therefore, the proposed change will not involve a significant reduction in a margin of 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.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Dated of amendment request: July 29, 1999, as supplemented by letter dated August 24, 1999 (NPF–38–221).

Description of amendment request: The proposed change modifies Technical Specifications (TS) 3.6.2.1 to extend the allowable outage time to seven days for one Containment Spray System (CSS) train inoperable. A new ACTION has been added to provide a shutdown requirement for the inoperability of two CSSs. Additionally, the APPLICABILITY is being changed to provide an end state of MODE 4. Associated TS Bases changes are included.

Basis for proposed no significant hazards consideration determination: 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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The Containment Spray System (CSS) is part of the Containment Depressurization and Cooling System. Inoperable CSS components are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

The CSS system is primarily designed to mitigate the consequences of a Loss of Coolant Accident (LOCA) or Main Steam Line Break (MSLB). These proposed changes do not affect any of the assumptions used in the deterministic LOCA or MSLB analyses. Hence the consequences of accidents previously evaluated do not change.

In order to fully evaluate the CSS AOT [Allowed Outage Time] extension, probabilistic safety assessment (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. These analyses are detailed in report CE NPSD–1045, ''Modifications To The Containment Spray System, and Low Pressure Safety Injection System Technical Specifications.''

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.6.2.1 does not affect the probability or the consequences of an accident.

Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. Allowing an extended AOT or changing the APPLICABILITY does not increase the probability that a failure leading to an analyzed event will occur. The CSS components are passive until an actuation signal is generated. This change does not increase the failure probability of the CSS components. As such, the probability of occurrence for a previously analyzed accident [is] not significantly increased.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: The proposed change does not change the design or configuration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, and the setpoints at which protective or mitigative actions are initiated are unaffected by this change. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change

will only provide the plant some flexibility in the AOT and chang[es] the APPLICABILITY. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The proposed changes do not affect the limiting conditions for operation or their bases used in the deterministic analysis to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrate that the changes involve no significant increase in risk. These evaluations are detailed in report CE NPSD–1045. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are adversely impacted by the proposed change. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating a transient event. The proposed change, which allows operation to continue for up to 7 days with components inoperable in one CSS train, is acceptable based on the remaining CSS components providing 100% of the required CSS flow. The reduced potential for a self-induced plant transient resulting from unit shutdown required for a second inoperable CSS train is minimized. Therefore, the change does not involve a significant reduction in the margin of safety, and is offset by minimizing the potential for a self-induced plant transient.

Therefore, the proposed change will not involve a significant reduction in a margin of 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.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 18, 1999.

Description of amendment request: The proposed change modifies Technical Specification (TS) 3.6.2.2 Limiting Condition for Operation to allow Waterford Steam Electric Station, Unit 3 to operate with two independent trains of containment cooling, consisting of one cooler per train, operable during modes 1, 2, 3, and 4. Associated changes to the TS Bases have been proposed.

Basis for proposed no significant hazards consideration determination: 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. Will the operation of the facility in accordance with these proposed changes involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: The proposed change to Technical Specification (TS) 3.6.2.2 reduces the number of Containment Fan Coolers (CFC) from two to one required to be operable in each train of the Containment Cooling System for modes 1, 2, 3, and 4. This change does not create any new system interactions and has no impact on operation or function of any system or equipment in a way that could cause an accident. The CFCs are not an initiator of any events nor affect any accident initiators of any events analyzed in Chapter 15 of the UFSAR [Updated Final Safety Analysis Report]. Therefore this change will not impact the probability of occurrence of an accident.

The results of the reanalysis of the limiting Loss of Coolant Accident (LOCA) and Main Steam Line Break (MSLB) accidents show that the consequences of an accident previously evaluated are not increased by the change in the required number of operable CFCs. The limiting accidents affected by the proposed changes are identified below:

The peak containment pressure following the limiting LOCA (Double Ended Hot Leg Slot Break with minimum safety injection flow) was determined to be 35.2 psig [pounds per square inch, gauge] as compared to the current licensing basis limiting LOCA (Double Ended Suction Leg Slot Break with minimum safety injection flow) peak pressure of 43.1 psig.

The peak containment pressure at 24 hours following the start of the limiting LOCA (Double Ended Discharge Leg Slot Break with minimum safety injection flow) and the operation of one containment spray train and one partially flooded CFC operable was determined to be 15.5 psig with a peak pressure of 33.27 psig as compared to the current licensing basis of 14.9 psig with a peak pressure of 42.9 psig. The current licensing basis limiting LOCA is the Double Ended Suction Leg Slot Break with maximum safety injection flow and the operation of one containment spray train and two operable CFCs.

The peak containment pressure following the limiting MSLB (102% power with failure of one containment heat removal train consisting of one containment spray pump and one CFC operable) was determined to be 42.68 psig as compared to the current licensing basis peak pressure of 42.9 psig. The current licensing basis limiting MSLB is 75% power with the failure of one train of containment heat removal system consisting of one containment spray train and two operable CFCs.

The peak containment equipment qualification temperature following the limiting MSLB (102% power with the failure of one MSIV to close) was determined to be 397.4 °F as compared to the current licensing basis peak temperature of 409.1 °F. The current licensing basis limiting MSLB is 102% power with two CFCs per train operable and the failure of one train of containment spray.

These values above demonstrate that the containment design basis pressure and equipment qualification temperature of 44 psig and 413.5 °F, respectively, are not exceeded and the containment pressure at 24 hours after start of the limiting LOCA is less than 50% of the peak pressure.

The results of the containment response analysis discussed above satisfy the following NRC Staff Standard Review Plan (SRP) section 6.2.1.1.A guidance document acceptance criteria for a PWR [Pressurized Water Reactor] dry containment.

The peak calculated containment pressure following a Loss of Coolant Accident (LOCA) or Main Steam Line Break (MSLB) should be less than the containment design pressure.

To satisfy the requirements of GDC [General Design Criteria] 38 to rapidly reduce the containment pressure, the containment pressure should be reduced to less than 50% of the peak calculated pressure for the design basis LOCA within 24 hours after the postulated accident.

Thus, revising the containment cooling system TS to require only one operable CFC per train results in acceptable containment response and therefore, will not adversely impact the consequences of accidents previously evaluated.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will the operation of the facility in accordance with these proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed change to reduce the number of operable Containment Fan Coolers (CFC) from two to one in each train of the Containment Cooling System for modes 1, 2, 3, and 4 does not alter the operation of the CFCs. Although only one of the two CFCs per train is required to be operable, the manner in which the CFCs perform their safety function is not changed. All four CFCs (two per train) will be maintained operable to the extent possible to provide the greatest defense in depth and operating flexibility.

This proposed change does not involve a change in plant design, nor does it involve any potential initiating events that would create any new or different kind of accident. This proposed change does not alter the way in which the plant is operated in a manner that would create a new or different accident. Therefore, since no hardware modifications will be made, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will the operation of the facility in accordance with these proposed changes involve a significant reduction in a margin of safety?

Response: The proposed change revises TS 3.6.2.2, Containment Cooling System. This change revises the required number of fan coolers from two fan coolers per train to one fan cooler per train. As described in the containment depressurization and cooling

system Technical Specification Bases, the containment cooling system is designed to maintain the post accident containment peak pressure below its design value of 44 psig. The system is also designed to reduce the containment pressure by a factor of [two] from its post-accident peak within 24 hours.

The analyses that have been performed to support this Technical Specification change have shown that the peak containment pressure remains below 44 psig, the 24-hour containment pressure is less than half the peak pressure, and the containment peak temperature remains below the maximum temperature of 413.5 °F provided in the Bases for Technical Specifications 3.6.2.1 and 3.6.2.2. In comparison of the current safety margins to the safety margins that would exist if the proposed changes were in effect, the results of the analyses, illustrated below, show an increase in the margin of safety for containment pressure and equipment qualification temperature following the associated limiting LOCA and MSLB.

The peak containment pressure following the limiting LOCA was determined to be 35.2 psig as compared to the current licensing basis limiting LOCA peak pressure of 43.1 psig.

The peak containment pressure at 24 hours following the start of the limiting LOCA was determined to be 15.5 psig with a peak pressure of 33.27 psig as compared to the current licensing basis of 14.9 psig with a peak pressure of 42.9 psig.

The peak containment pressure following the limiting MSLB was determined to be 42.68 psig as compared to the current licensing basis peak pressure of 42.9 psig.

The peak containment equipment qualification temperature following the limiting MSLB was determined to be 397.4 °F as compared to the current licensing basis peak temperature of 409.1 °F.

This proposed change does not adversely impact a margin of safety, involve a change in plant design, or have any affect on the plant protective barriers. Therefore, the proposed change will not involve a significant reduction in the margin of safety.

The Nuclear Regulatory Commission 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.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 13, 1999.

Description of amendment request: The licensee proposes to change the license to delete an expired license condition and to make some editorial and administrative changes to correct or clarify the license.

Basis for proposed no significant hazards consideration determination: 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. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. In addition, the proposed changes do not affect the manner in which the plant responds in normal operation, transient or accident conditions nor do they change any of the procedures related to operations of the plant. The proposed changes do not alter or prevent the ability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative and editorial in nature and only correct, update and modify the Operation License.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature and only correct, update and clarify the Seabrook Station Operating License. The proposed changes do not modify the facility nor do they modify the manner in which the plant will be operated nor do they affect the plant's response to normal, transient or accident conditions. The changes do not introduce a new mode of plant operation. The plant's design basis are not revised and the current safety analyses will remain in effect and the plant will continue to be operated in accordance with the existing Technical Specifications. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes are administrative and editorial changes to the Seabrook Station Operating License that do not revise the Technical Specifications or the bases for the Technical Specifications. The safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits as specified in the Technical Specifications are not revised nor is the plant design or its method of operation revised by the proposed changes. Since there will be no changes to the physical design or operation of the plant, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Omaha Public Power District, Docket No 50–285, For Calhoun Station, Unit No. 1, Washington County, Nebraska.

Date of amendment request: March 18, 1998.

Description of amendment request: The proposed amendment would revise the Technical Specifications 2.15(4) and 2.15(5) to identify (1) all indication functions and control functions required for the alternate (remote) shutdown system (alternate shutdown panel and auxiliary feedwater panel), (2) panel locations of the functions, and (3) the number of channels required.

Basis for proposed no significant hazards consideration determination: 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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications Section 2.15(4) and 2.15(5) identify functions, instruments, and controls along with their location and the number of required channels. The new Technical Specifications section addresses the regulatory requirements for equipment required for Alternative and Dedicated Shutdown Capability per 10 CFR Part 50 Appendix R. It will ensure that proper Limiting Conditions for Operation are entered for equipment or functional inoperability. There are no physical alterations being made to the Alternate Shutdown Panel and the Auxiliary Feedwater Panel or related systems. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not result in any physical alterations to the Alternate Shutdown Panel or the Auxiliary Feedwater Panel, or any plant configuration, systems, equipment, or operational characteristics. There will be no changes in operating modes, or safety limits, or instrument limits. With the proposed changes in place, Technical Specifications retain requirements for the Alternate Shutdown Panel and the Auxiliary Feedwater Panel. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes clarify the regulatory requirements for the Alternative and Dedicated Shutdown Capability as defined by 10 CFR Part 50, Appendix R. The proposed changes will not alter any physical or operational characteristics of the Alternate Shutdown Panel and the Auxiliary Feedwater Panel and their associated systems and equipment. Therefore, the proposed changes do not involve a reduction in a margin of 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.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: November 29, 1999.

Description of amendment request: The amendment would adopt the ''Standard Test Method for Nuclear Grade Activated Carbon'' for charcoal filter laboratory testing with certain exceptions.

Basis for proposed no significant hazards consideration determination: 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 the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The adoption of the new test method and acceptance criteria of ASTM [American Society for Testing and Materials] D3803–1989, with the exceptions as identified in the Technical Specifications, for activated charcoal filters does not involve any modifications to the plant, will not require changes to how the plant is operated nor will it affect the operation of the plant. Adoption of these provisions ensures compliance with the new test standard of ASTM D 3803–1989. Adoption of new test method will not cause an accident and therefore cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The adoption of the new test method and acceptance criteria of ASTM D 3803–1989, with the exceptions as identified in the Technical Specifications, for activated charcoal filters does not involve any modifications to the plant, will not require changes to how the plant is operated nor will it affect the operation of the plant. Adoption of new test method will not cause an accident and therefore cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed license amendment involve a significant reduction in a margin of safety?

Response: The proposed license amendment does not involve a significant reduction in a margin of safety. The use of outdated test protocols or inappropriate test conditions can lead to an overestimation of the charcoal filters' ability to adsorb radioiodine following an accident. The adoption of the new test method and testing criteria of ASTM D 3803–1989, with the exceptions as identified in the Technical Specifications, for activated charcoal filters would ensure at least a safety factor of two is maintained. Thus, the proposed change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni, Acting.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 19, 1999.

Description of amendment request: The proposed amendment would revise Sections 4.7.A and 4.11.B of the Appendix A Technical Specifications (TSs) to the James A. FitzPatrick Operating License to adopt the surveillance test methods and performance criteria detailed in NRC Generic Letter 99–02 for laboratory testing of nuclear-grade charcoal. The proposed amendment also would reduce the minimum allowable Standby Gas Treatment System (SGTS) and Control Room Emergency Ventilation Air Ventilation Supply System (CREVASS) charcoal filter efficiencies specified in the TSs to those assumed in the updated radiological dose calculations.

Basis for proposed no significant hazards consideration determination: 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:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92(c) since it would not:

(1) Involve an increase in the probability or consequences of an accident previously evaluated.

These changes are not modifications to the plant. They will not require changes to how the plant is operated, nor will they affect the operation of the plant.

Changes to these test methods will not cause an accident and therefore cannot increase the probability of an accident.

Calculated radiological doses increase as a result of reductions in assumed charcoal efficiencies, but remain within regulatory limits. Radiological doses at the site boundary and low population zone are less than 25 percent of 10 CFR 100 criteria. Post-accident doses to control room operators are also within regulatory limits.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes are not modifications to the plant, nor will they require changes to how the plant is operated. Changes to these test methods will not cause an accident, and therefore cannot create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety.

Evidence has been presented which contend that activated charcoal testing performed to test standards other than ASTM [American Society for Testing and Materials] D3803–1989 may be inaccurate and may overestimate its adsorption capabilities. The adoption of ASTM D3803–1989 charcoal performance standards and plant-specific test parameters ensures adequate safety margins.

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.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni, Acting.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 20, 1999.

Description of amendment request: This application for an amendment to the James A. FitzPatrick Technical Specifications (TS) proposes a change to the Main Steam Isolation Valve (MSIVs) closure scram setpoint. The proposed amendment changes the MSIV closure scram Trip Level Setting from ≤10% to ≤15% valve closure.

Basis for proposed no significant hazards consideration determination: 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. The proposed change will not significantly increase the probability or consequences of any previously evaluated accidents.

This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change to the MSIV scram trip setpoint from 90% open to 85% open results in the MSIV closure scram event having a slight delay in the initiation of the reactor scram. The MSIV scram event is not an accident initiator and will not increase the probability or consequence of any accident previously evaluated. An evaluation of events concluded that the MSIV direct scram remains a relatively low consequence event and has no effect on any operating limits. The limiting event analyzed for the reactor vessel overpressure event in the James A. FitzPatrick Updated Final Safety Analysis Report (UFSAR) is the MSIV closure terminated by a high neutron flux scram, which does not take credit for the MSIV closure valve position scram. In addition, an evaluation of the Main Steam Line Break outside containment event concludes that there is no impact on PCT [Peak Clad Temperature] or break flow and that the results presented in the UFSAR are bounding. An evaluation of the impact on containment was also made. The containment response is evaluated for much more severe events such as a Loss of Coolant Accident (LOCA) or stuck open Safety Relief Valve (SRV), thus the change in MSIV scram setpoint has no impact on the containment analysis. Therefore, changing the MSIV closure scram setpoint from 90% open to 85% open does not significantly increase the probability or consequences of any previously evaluated accidents.

2. The proposed change will not create the possibility of a new or different kind of accident.

This proposed change to the MSIV scram trip setpoint from 90% open to 85% open results in the MSIV closure scram event having a slight delay in the initiation of the reactor scram, and does not introduce a new or different kind of accident previously analyzed. An evaluation of the event determined that the MSIV closure scram remains a relatively low consequence event and has no effect on any operating limits. The limiting event analyzed for the reactor vessel overpressure event in the UFSAR is the MSIV closure terminated by a high neutron flux scram, which does not take credit for the MSIV closure valve position scram. The proposed change will not create the possibility of a new or different kind of accident.

3. The proposed change will not involve a significant reduction in a margin of safety.

This proposed change to the MSIV scram trip setpoint from 90% open to 85% open results in the MSIV closure scram event having a slight delay in the initiation of the reactor scram. An evaluation of the event determined that the MSIV closure scram remains a relatively low consequence event and has no effect on any operating limits. In addition, an evaluation of the Main Steam Line Break outside containment event concludes that there is no impact on PCT or break flow and that the results presented in the UFSAR are bounding. An evaluation of the impact on containment was also made. The containment response is evaluated for much more severe events such as a LOCA or stuck open SRV, thus the change in MSIV scram setpoint has no impact on the containment analysis. Changing the MSIV valve position scram setpoint from ≤10% to ≤15% of valve closure will allow the limit switches to be positioned such that both scram and indicating limit switches can be coordinated and provide accurate and reliable valve position indication in the control room. Therefore, changing the MSIV closure scram setpoint from 90% open to 85% open does not involve a significant reduction in a margin of safety and provides a net benefit to plant operations.

The proposed change will not increase the probability or consequences of any previously analyzed accident, introduce any new or different kind of accident previously evaluated, or significantly reduce existing margin to safety. Therefore, the proposed license amendment will not involve a significant hazards consideration.

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.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni, Acting.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia.

Date of amendment request: August 30, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification 5.2.2 in order to raise the level of the approval authority for deviations from the guidelines provided to minimize unit staff overtime.

Basis for proposed no significant hazards consideration determination: 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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed license amendment would strengthen the administrative controls that permit plant personnel to work beyond those limits outlined in the TS's. As a result, there will be greater scrutiny on the amount of overtime being utilized to perform safety-related function. Therefore, it has been determined that operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

There will be no physical changes to the systems, components or structure of the facility as a result of this proposed license amendment. The initial assumptions of the design accident analyses will be unaffected. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

This amendment raises the administrative level of management approval required for overtime in excess of the limits outlined in the TS. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of 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.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders,

NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: October 4, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification 5.5.6, ''Prestressed Concrete Containment Tendon Surveillance Program,'' to incorporate three exceptions to Regulatory Guide (RG) 1.35, Revision 2, 1976. The exceptions concern the number of tendons detensioned, inspection of concrete adjacent to vertical tendons, and the time during which areas adjacent to tendons are inspected.

Basis for proposed no significant hazards consideration determination: 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 the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change only clarifies TS requirements for the containment tendon surveillance program. The proposed clarification has been previously reviewed and approved by the NRC staff with Amendments 23 and 4, and is consistent with current regulatory guidance. As such, the proposed change is essentially administrative in nature. The containment tendon surveillance program has no impact on the probability of any accident initiators, and it will continue to ensure containment structural integrity. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed change only clarifies TS requirements for the containment tendon surveillance program. The proposed clarification has been previously reviewed and approved by the NRC staff with Amendments 23 and 4, and is consistent with current regulatory guidance. As such, the proposed change is essentially administrative in nature. Plant design and operation will not be changed, and no other safety related or important to safety equipment is affected by the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety.

No. The proposed change only clarifies TS requirements for the containment tendon surveillance program. The proposed clarification has been previously reviewed and approved by the NRC staff with Amendments 23 and 4, and is consistent with current regulatory guidance. As such, the proposed change is essentially administrative in nature. The containment prestressing system will continue to perform its function to ensure containment structural integrity. Therefore, the proposed change does not involve a significant reduction in a margin of 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.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: June 25, 1999 (TS 98–016).

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) and TS Bases to reflect application of the Westinghouse generic Best Estimate Large Break Loss-of-Coolant Accident Analysis methodology using the WCOBRA/TRAC computer code.

Basis for proposed no significant hazards consideration determination: 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:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve use of the Best Estimate Large Break loss-of-coolant accident (LOCA) analysis methodology and associated technical specification changes. Accumulator water level set points will be revised from [greater than or equal to] 7717 gallons and [less than or equal to] 8004 gallons to [greater than or equal to] 7630 gallons and [less than or equal to] 8000 gallons to provide the plant with an increased operating range. The plant conditions assumed in the analysis, including the accumulator water level instrumentation changes, are bounded by the design conditions for all equipment in the plant.

Therefore, there will be no increase in the probability of a LOCA. The consequences of a LOCA are not being increased, since it is shown that the emergency core cooling system (ECCS) is designed so that its calculated cooling performance conforms to the criteria contained in 10 CFR 50.46, Paragraph b. The small break LOCA analysis assumes only a nominal accumulator water level which is the same nominal value assumed in this analysis, therefore, the small break LOCA analysis is unaffected by the increase in the accumulator range. Also, the increased safety analysis range in accumulator water volume (+/−15 cubic feet) has an insignificant effect on the containment related analyses.

The post-LOCA containment sump boron calculation assumes a minimum accumulator volume which bounds (is smaller than) the 1005 cubic feet (7518 gallons) value supported by the Best Estimate Large Break LOCA analysis. Also, the hot leg switchover calculation models a maximum accumulator volume which is not bounded by the 1095 cubic feet (8191 gallons) maximum value supported by the Best Estimate Large Break LOCA analysis. However, an evaluation concludes that the Watts Bar hot leg switchover time is unaffected by the difference in maximum volumes.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new modes of plant operation are being introduced by the new analysis or by the changes in instrumentation setpoints for accumulator water level. The parameters assumed in the analysis are within the design limits of existing plant equipment. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

It has been shown that the analytic technique used in the analysis realistically describes the expected behavior of the WBN Unit 1 reactor system during a postulated loss of coolant accident. Uncertainties have been accounted for as required by 10 CFR 50.46. The physical setpoint changes to accumulator water level instrumentation are bounded by the uncertainty evaluation addressing accumulator water level. A sufficient number of loss of coolant accidents with different break sizes, different locations, and other variations in properties have been considered to provide assurance that the most severe postulated LOCAs were evaluated. It has been shown by the analysis that there is a high level of probability that all criteria contained in 10 CFR 50.46, Paragraph b are met.

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.

Attorney for licensee: General Counsel, Tennessee Valley Authority,

400 West Summit Hill Drive, ET l0H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 14, 1999.

Description of amendment request: This proposed change would revise the Vermont Yankee (VY) Technical Specifications (TS) by relocating the procedural details of the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM). The TS would also be revised to relocate procedural details associated with solid radioactive wastes to the Process Control Program (PCP). In addition, the TS definition for ''solidification'' would be relocated to the VY Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: 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. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components to perform their intended safety function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents.

Implementation of programmatic controls for RETS already in TS will assure that the applicable regulatory requirements pertaining to the control of radioactive effluents will continue to be maintained. Since there are no changes to previous accident analysis, the radiological consequences associated with these analyses remain unchanged.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated. The proposed changes have no impact on component or system interactions. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for Vermont Yankee.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

There is no impact on equipment design or operation, and there are no changes being made to the TS-required safety limits or safety system settings that would adversely affect plant safety as a result of the proposed changes. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents. A comparable level of administrative controls will continue to be applied to those specifications being relocated to the ODCM, PCP, or TRM.

Therefore, the proposed changes do not involve a significant reduction in a margin of 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.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: October 28, 1999, as supplemented December 21, 1999.

Description of amendment request: The proposed changes will remove the operability and surveillance requirements of Technical Specifications (TS) Section 3/4.6.4.3, ''Waste Gas Charcoal Filter System'' from the TS and relocate them to the Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: 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:

A waste gas decay tank rupture is highly unlikely, as the waste gas decay tanks are designed and constructed to stringent quality control standards, are provided with pressure relief valves to prevent overpressurization, are missile-shielded by installation below grade, and have their gaseous contents controlled to prevent potentially explosive mixtures. The entire gaseous content of the waste gas decay tank is assumed to be released to the atmosphere as a ground-level release * * *. The waste gas charcoal filter system is not credited for any mitigation of the release in the accident analysis for a waste gas decay tank rupture. In addition, the releases associated with a waste gas decay tank rupture are bounded by the existing LOCA [loss-of-coolant accident] releases. Specifically, operation of the North Anna Power Station in accordance with the proposed Technical Specification changes will not:

[1.] Involve a significant increase in the probability or consequences of an accident previously evaluated.

Relocating the operability and surveillance requirements for The Waste Gas Charcoal System to the TRM [Technical Requirements Manual] does not change the operation of the plant. The plant and the radioactive gas waste system will not be operated differently. No new accident initiators are established as a result of the proposed changes. Therefore, the probability of occurrence is not increased for any accident previously evaluated.

Relocating the operability and surveillance requirements for The Waste Gas Charcoal Filter to the TRM does not [a]ffect the gaseous releases to the environment, which are controlled by the ODCM [Offsite Dose Calculation Manual]. Additionally, no credit for these filters is taken in the accident analysis for Waste Gas Decay Tank rupture. Therefore, there is no increase in the consequences of any accident previously analyzed.

[2.] Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the operation of the plant. The gaseous waste systems will not be operated differently as a result of the proposed changes. No new accident or event initiators are created moving the operability and surveillance requirements for The Waste Gas Charcoal Filter to the TRM. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type.

[3.] Involve a significant reduction in the margin of safety as defined in the bases on any Technical Specifications.

The proposed changes have no effect on any safety analyses assumptions. The waste gas charcoal filters are not used to mitigate the consequence[s] [of] a Waste Gas Decay Tank rupture. The accident analysis assumes total release of the radioactiv[ity] in the Waste Gas Decay Tank in the accident analysis. Therefore, the proposed changes do not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch Jr.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Dated of amendment request: November 29, 1999.

Description of amendment request: The proposed changes will modify the Technical Specifications in Section 4.7.7.1 for the Control Room Emergency Habitability System and Section 4.7.8.1 for the Safeguards Area Ventilation System. The changes will require laboratory testing of the charcoal filter carbon to be consistent with American Society for Testing and Materials (ASTM) Standard D3803–1989.

Basis for proposed no significant hazards consideration determination: In 10 CFR 50.92 three criteria are provided to determine whether a proposed license amendment involves a significant hazards consideration. No significant hazards consideration is involved if operation of the facility with the proposed amendment 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:

Virginia Electric and Power Company has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed changes for the North Anna Units 1 and 2 and determined that a significant hazards consideration is not involved. The proposed Technical Specification changes adopt the nuclear-grade charcoal testing requirements of ASTM D3803–1989 and do not affect the design or operation of the plant. The changes also do not involve any physical modification to the plant or result in a change in a method of system operation. The adoption of the 1989 edition of ASTM D3803 provides assurance that testing of nuclear-grade activated charcoal of ventilation systems is being performed with a suitable standard to ensure that charcoal adsorbers are capable of performing their required safety function and that the regulatory requirements regarding onsite and offsite dose consequences continue to be satisfied. The changes do not create an unreviewed safety question.

(a) The proposed changes modify surveillance testing requirements and do not affect plant systems or operation and therefore do not increase the probability or the consequences of an accident previously evaluated. The proposed surveillance requirements adopt ASTM D3803–1989 as the laboratory method for testing samples of the charcoal adsorber in response to NRC's Generic Letter 99–02. This method of testing charcoal adsorbers has been approved by the NRC as an acceptable method for determining methyl iodide removal efficiency. Since the charcoal adsorbers are used to mitigate the consequences of an accident, the more accurate the test, the better assurance we have that we remain within our accident analysis assumptions. The laboratory test acceptance criteria contain a safety factor to ensure that the efficiency assumed in the accident analysis is still valid at the end of the operating cycle. There is no change in the method of plant operation, system performance or system design. (b) The proposed changes do not create the possibility of an accident or malfunction of a different type than any evaluated previously.

The proposed changes modify surveillance testing requirements and do not impact plant systems or operations and therefore do not create the possibility of an accident or malfunction of a different type than evaluated previously. The proposed surveillance requirements adopt ASTM D3803–1989 as the laboratory method for testing samples of the charcoal adsorber. This change is in response to NRC's request in response to their Generic Letter 99–02. There is no change in the method of plant operation or system design. There are no new or different accident scenarios, transient precursors, nor failure mechanisms that will be introduced.

(c) The proposed changes modify surveillance test requirements and do not impact plant systems or operations and therefore do not significantly reduce the margin of safety. The revised surveillance requirements adopt ASTM D3803–1989 as the laboratory method for testing samples of the charcoal adsorber. The 1989 edition of this standard imposes very stringent requirements for establishing the capability of new and used activated carbon to remove radio-labeled methyl iodide from air and gas streams. The results of this test provide a more conservative estimate of the performance of nuclear-graded activated carbon used in all nuclear power plant HVAC [heating, ventilation, and air conditioning] systems for the removal of radioiodine. The laboratory test acceptance criteria contain a safety factor to ensure that the efficiency assumed in the accident analysis is still valid at the end of the operating cycle.

This analysis demonstrates that the proposed amendment to The North Anna Units 1 and 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch Jr.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dated of amendment request: April 11, 1996, as supplemented April 6, 1998, March 22 and July 29, 1999 (PCN–460).

Brief description of amendment request: The proposed amendments would revise the San Onofre Units 2 and 3 Technical Specification (TS) related to the containment isolation valves. Specifically, the licensee proposed a revision to TS 3.6.3 to extend the completion times for Section D.1 and D.2 valves from 4 hours to the applicable limiting condition for operation time pertaining to the engineered safety feature system in which the valve is installed.

Dated of publication of individual notice in **Federal Register:** January 19, 2000 (65 FR 2993), as corrected January 26, 2000 (65 FR 4265).

Expiration date of individual notice: February 18, 2000.

Southern California Edison Company, et al., Docket Nos.50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: January 2, 1998, as supplemented December 13, 1999 (PCN–482).

Brief description of amendment request: The proposed amendments would revise the San Onofre Units 2 and 3 Technical Specification (TS) relating to the Auxiliary Feedwater (AFW) System. Specifically, the licensee proposed to revise TS 3.7.5 to add a note that states: ''The steam driven AFW pump is OPERABLE when running and controlled manually to support plant start-ups, plant shut-downs, and AFW pump and valve testing.''

Date of publication of individual notice in **Federal Register***:* January 19, 2000 (65 FR 2991), as corrected January 26, 2000 (65 FR 4265).

Expiration date of individual notice: February 18, 2000.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: January 11, 1999, as supplemented November 29, 1999 (PCN–499).

Brief description of amendment request: The proposed amendments would revise the San Onofre Units 2 and 3 Technical Specification (TS) 3.7.6, ''Condensate Storage Tank (CST T–121 and T–120)'' to change the minimum inventory of water maintained in the condensate storage tank (T–120) from 280,000 gallons to 360,000 gallons during plant operation Modes 1, 2 and 3.

Date of publication of individual notice in **Federal Register***:* January 18, 2000 (65 FR 2648).

Expiration date of individual notice: February 17, 2000.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: September 28, 1999.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement 3.7.6.2 ''Component Cooling Water (CCW) System'' to change the CCW pump automatic start actuation signal basis from Engineered Safety Feature Actuation Signal to Loss-of-Power Diesel Generator.

Date of issuance: January 21, 2000.

Effective date: January 21, 2000.

Amendment No.: 186.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register***:* November 3, 1999 (64 FR 59798).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 2000.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: May 11, 1999, as supplemented June 3 and July 28, 1999.

Brief description of amendment: This amendment deletes from the Defueled Technical Specifications (DTS) subsection 1.16, ''SITE BOUNDARY,'' Figure 5.1–1, the Big Rock Point (BRP) Site Map, and DTS 5.1.1 paragraph numbering and removes certain site-specific information from DTS 5.1, which describes the BRP site. The amendment also makes editorial changes to DTSs 6.6.2.5. g, h, and j, and 6.6.2.6.b. because of the changes associated with DTSs 1.16 and 5.1 and Figure 5.1–1 described above. Most of the information removed or deleted from the DTSs can be found in the BRP Final Hazards Summary Report.

Date of Issuance: January 13, 2000.

Effective Date: January 13, 2000, to be implemented within 45 days from date of issuance. Implementation includes incorporation of the site boundary information, as discussed in the staff's safety evaluation enclosed with this amendment, into the next Final Safety Analysis Report (*i.e.* the updated Final Hazards Summary Report for the Big Rock Point Nuclear Plant) update in accordance with the schedule in 10 CFR 50.71(e).

Amendment No.: 121.

Facility Operating License No. DPR–6. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 16, 1999 (64 FR 32288).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: April 5, 1999 as supplemented by letters dated May 27, July 6, October 7, and November 22, 1999.

Brief description of amendments: The amendments revised the Technical Specifications to incorporate Topical Report DPC–NE–3005–P, ''Thermal Hydraulic Transient Analysis Methodology.''

Date of Issuance: January 18, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–309; Unit 2–309; Unit 3–309.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 30, 1999 (64 FR 35202), November 3, 1999 (64 FR 59801).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 18, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina.

Date of application of amendments: September 29, 1999.

Brief description of amendments: The amendments revise the Containment Inservice Inspection Program Technical Specifications related to the containment leakage testing program and the pre-stressed concrete containment tendon surveillance program.

Date of Issuance: January 18, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—310; Unit 2—310; Unit 3—310.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 17, 1999 (64 FR 62707).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 18, 2000.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 16, 1999.

Brief description of amendment: The license amendment revises the River Bend Station Technical Requirements Manual, Section TR 3.9.14, and adds a temporary exception to the current prohibition for travel of loads in excess of 1200 pounds over fuel assemblies in the spent fuel storage pool. The exception allows the licensee to move the spent fuel pool (SFP) watertight gates, which separate the SFP from the cask and lower transfer pools, in order to perform repairs on the gates and watertight seals prior to the end of Refueling Outage 9. Updated Safety Analysis Report (USAR) Sections 9.1.2.2.2 and 9.1.2.3.3 are also changed to reflect the proposed exception.

Date of issuance: January 13, 2000.

Effective date: The license amendment is effective as of its date of issuance and shall be implemented in the next periodic update to the USAR and TRM in accordance with 10 CFR 50.71(e). Implementation of the amendment is the incorporation into the USAR and TRM update, the changes to the description of the facility as described in the licensee's application dated December 16, 1999, as supplemented by letters dated December 21, 1999, and January 10, 2000, and evaluated in the staff's Safety Evaluation attached to this amendment.

Amendment No.: 108.

Facility Operating License No. NPF–47: The amendment revises the Technical Requirements Manual and Updated Safety Analysis Report.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (64 FR 71511 dated December 21, 1999). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 20, 2000, but indicated that if the Commission made a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final NSHC determination are contained in a Safety Evaluation dated January 13, 2000.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 2000.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: December 16, 1999

Brief description of amendment: The proposed change would amend Technical Specification 4.18.5.b to allow tube 110/60 to remain in service through the current operating cycle (cycle 16) with two axial indications that have potential through-wall depths greater than the plugging limit. The axial indications are located in the roll transition region and are contained within the upper tubesheet.

Date of issuance: January 13, 2000.

Effective date: As of the date of issuance.

Amendment No.: 203.

Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (64 FR 73080 dated December 29, 1999). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 28, 2000, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final NSHC determination are contained in a Safety Evaluation dated January 13, 2000.

Attorney for Licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc.,Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: July 20, 1998, as supplemented by letter dated June 29, 1999.

Brief description of amendment: The amendment incorporates the Technical Specification changes necessary for implementation of the Boiling Water Reactor Owners' Group Reactor Stability Long-Term Solution, Enhanced Option 1–A.

Date of issuance: January 19, 2000.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No: 141.

Facility Operating License No. NPF–29: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register***:* August 25, 1999 (64 FR 46432).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 19, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: October 12, 1999.

Brief description of amendments: The amendments would revise the Technical Specifications (TSs) Surveillance Requirement 4.6.2.2.d for the spray additive system to relocate the details associated with the acceptance criteria and test parameters to the associated TSs Bases. Additionally, certain administrative text format changes were made.

Date of issuance: January 19, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 240 and 221.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 3, 1999 (64 FR 59804).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 19, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 11, 1998, as supplemented by letters dated January 14, and August 5, 1999.

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to revise TS 6.8.4f., ''Containment Polar and Turbine Building Cranes,'' to control the operation of the containment polar cranes in jet impingement zones during Modes 1, 2, 3, and 4.

Date of issuance: January 12, 2000.

Effective date: January 12, 2000.

Amendment Nos.: Unit 1–137; Unit 2–137.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 21, 1999 (64 FR 19561).

The August 5, 1999, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 12, 2000.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: September 29, 1999, as supplemented December 7, 1999.

Brief description of amendment: This amendment revises the Technical Specifications to allow, on a one-time basis only, the Power Authority of the State of New York to extend the allowed out-of-service time for the Residual Heat Removal Service Water (RHRSW) System from 7 days to 11 days. This amendment is only applicable during installation of Modification 99–095 to the ''A'' RHRSW Strainer.

Date of issuance: January 28, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 259.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 20, 1999 (64 FR 56532).

The December 7, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 25, 1999.

Brief description of amendments: The amendments authorize the licensee to perform single-cell charging of operable safety-related batteries by using non-Class 1E single-cell battery chargers, with proper electrical isolation. The single-cell chargers would be used to restore individual cell float voltage to the normal TS limit.

Date of issuance: January 24, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 226 and 207.

Facility Operating License Nos. DPR–70 and DPR–75.: Amendments revised the licenses.

Date of initial notice in **Federal Register:** September 22, 1999 (64 FR 51349).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 24, 2000.

No significant hazards consideration comments received: No.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: June 28, 1999.

Brief description of amendment: The amendment revises the Ginna Station Improved Technical Specifications associated with the Reactor Coolant System Leakage Detection Instrumentation.

Date of issuance: January 19, 2000.

Effective date: January 19, 2000.

Amendment No.: 76.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 11, 1999 (64 FR 43778)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 19, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 19, 1999, as supplemented by letter dated November 1, 1999.

Brief description of amendments: The amendments revised the Technical Specifications Surveillance Requirement (SR) 3.3.5.2 and associated Bases to allow the loss of voltage and degraded voltage trip setpoints to be treated as ''nominal'' values.

Date of issuance: January 19, 2000

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 111—Unit 1; 89—Unit 2.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 1, 1999 (64 FR 67340).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 19, 2000.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 8, 1999, as supplemented November 9, 1999.

Brief description of amendments: The amendments revised Technical Specification 3/4.8.1, ''A.C. Sources, Operating,'' and associated Bases, by deleting the 18-month surveillance to subject the standby diesel generator to inspections in accordance with procedures prepared in conjunction with its manufacturer's recommendations. The surveillance requirements have been relocated to the Technical Requirements Manual.

Date of issuance: January 14, 2000.

Effective date: January 14, 2000, to be implemented within 30 days.

Amendment Nos.: Unit 1—121 ; Unit 2—109

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 1, 1999 (64 FR 67341).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 2000.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 8, 1999, as supplemented by letter dated November 9, 1999.

Brief description of amendments: The amendments revised Technical Specification (TS) 3/4.8.1, ''A.C. Sources, Operating,'' and associated Bases, by eliminating the requirement for accelerated testing of the standby diesel generators and the associated reporting requirements. The TS Index was also revised to reflect these changes.

Date of issuance: January 14, 1999.

Effective date: January 14, 1999.

Amendment Nos.: Unit 1—122 ; Unit 2—110.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 3, 1999 (64 FR 59806).

The November 9, 1999, supplement provided additional clarifying information that was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 2000.

No significant hazards consideration comments received: No

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: October 21, 1999.

Brief description of amendment: The amendment corrects two textual errors and changes the designation of a referenced figure.

Date of Issuance: January 11, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 183.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 17, 1999 (64 FR 62717).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 11, 2000.

For the Nuclear Regulatory Commission.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 2nd day of February 2000.

For the Nulcear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2835 Filed 2–8–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collections; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form S–2, SEC File No. 270–60, OMB Control No. 3235–0072
Form F–1, SEC File No. 270–249, OMB Control No. 3235–0258
Form F–2, SEC File No. 270–250, OMB Control No. 3235–0257
Form F–3, SEC File No. 270–251, OMB Control No. 3235–0256
Form F–7, SEC File No. 270–331, OMB Control No. 3235–0383
Form F–8, SEC File No. 270–332, OMB Control No. 3235–0378
Form F–X, SEC File No. 270–336, OMB Control No. 3235–0379
Form 10–SB, SEC File No. 270–367 OMB Control No. 3235–0419
Form DF, SEC File No. 270–430, OMB Control No. 3235–0482
Form T–1, SEC File No. 270–121, OMB Control No. 3235–0110
Form T–2, SEC File No. 270–122, OMB Control No. 3235–0111
Form T–3, SEC File No. 270–123, OMB Control No. 3235–0105
Form T–4, SEC File No. 270–124, OMB Control No. 3235–0107
Schedule 13E–4F, SEC File No. 270–340, OMB Control No. 3235–0375
Schedule 14D–1F, SEC File No. 270–338, OMB Control No. 3235–0376
Schedule 14D–9F, SEC File No. 270–339, OMB Control No. 3235–0382
Rule 14f–1, SEC File No. 270–127, OMB Control No. 3235–0108
Rule 12d1–3, SEC File No. 270–116, OMB Control No. 3235–0109

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (Commission) is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for approval.

Form S–2 is used for registration of securities of certain issuers. The Form S–2 provides investors with the necessary information to make investment decisions regarding securities offered to the public. The likely respondents will be public companies. The information collected must be filed with the Commission. All information is provided to the public upon request. Form S–2 takes 470 burden hours to prepare and is filed by 101 respondents for a total of 47,470 burden hours.

Form F–1 is a registration statement of securities of certain foreign private issuers. Form F–1 provides the public with the necessary information to make informed investment decisions regarding securities offered to the public by foreign private issuers. The information provided on Form F–1 is mandatory. All information on Form F–1 is reported to the public upon request. Form F–1 takes approximately 1,868 burden hours to prepare and is filed by 170 respondents. It is estimated that 25% of the 317,560 total burden hours (79,390 hours) would be prepared by the company.

Form F–2 is a registration statement of securities of certain foreign private issuers. Form F–2 provides the public with the necessary information to make

informed investment decisions regarding securities offered to the public by foreign private issuers. The information provided on Form F–2 is mandatory. All information on Form F–2 is provided by the public upon request. Form F–2 takes approximately 559 hours to prepare and is filed by 5 respondents. It is estimated that 25% of the 2,795 total burden hours (699 hours) would be prepared by the company.

Form F–3 is a registration statement of securities of certain foreign issuers offered pursuant to certain types of transaction. Form F–3 provides the public with the necessary information to make informed investment decisions regarding securities offered to the public by foreign private issuers. The information provided on Form F–3 is mandatory. All information on Form F–3 is mandatory. All information on Form F–3 is provided on the public upon request. Form F–3 takes approximately 166 burden hours to prepare and is filed by 150 respondents. It is estimated that 25% of the 24,900 total burden hours (6,225 hours) would be prepared by the company.

Form F–7 is a registration statement of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing securityholders. Form F–7 provides the public with the necessary information to make informed investment decisions regarding securities offered to the public. The information provided on Form F–7 is mandatory. All information is provided to the public upon request. It takes approximately 1 burden hour to prepare and is filed by 5 respondents.

Form F–8 is a registration statement of securities of certain Canadian issuers to be issued in exchange offers or a business combination. Form F–8 provides the public with the necessary information to make informed investment decisions. The information provided on Form F–8 is mandatory. All information on Form F–8 is provided on the public upon request. Form F–8 takes one burden hour to prepare and is filed by 16 respondents. It is estimated that 25% of the 16 total burden hours (4 hours) would be prepared by the company.

Form F–X is used to appoint an agent for service of process by Canadian issuers registering securities on Form F–7, F–8, F–9 or F–10 or filing periodic reports on Form 40–F under the Exchange Act of 1934 (Exchange Act). The information required on Form F–X provides investors with the necessary information when considering investing in Canadian companies. Form F–X takes 2 burden hours to prepare and is filed by 129 respondents. It is estimated that 25% of the 258 total burden hours (64.5 hours) would be prepared by the company.

Form 10–SB is used to register classes of securities pursuant to Section 12 of the Exchange Act to provide material information necessary for informed investment decisions. The information provided on Form 10–SB is mandatory. All information on Form 10–SB is provided to the public upon request. Form 10–SB takes 23 burden hours to prepare and is filed by 162 respondents. It is estimated that 25% of the 3,726 total burden hours (932 hours) would be prepared by the company.

Form DF is used to allow registrants to identify a filing that was filed late because of electronic filing difficulties in order to preserve the timeliness of the filing. This form is required by all issuers who are required to file on EDGAR. In addition, Form DF is required to be filed on occasion. All information provided on Form DF is provided to the public upon request. Form DF takes 12 minutes to prepare and is filed by 500 respondents for a total of 100 burden hours.

Form T–1 is a statement of eligibility and qualification for corporate trustee under the Trust Indenture Act. Form T–1 is filed on occasion. The information required by Form T–1 is mandatory. All information is provided to the public upon request. Form T–1 takes 15 burden hours to prepare and is filed by 180 respondents for a total of 2,700 burden hours.

Form T–2 is a statement of eligibility under the Trust Indenture Act of an individual designated to act as trustee. The information required by Form T–2 is mandatory. All information is provided to the public upon request. Form T–2 takes 9 burden hours to prepare and is filed by 36 respondents for a total of 324 burden hours.

Form T–3 is used as an application for qualification of indentures pursuant to the Trust Indenture Act, but only when securities to be issued thereunder are not required to be registered under the Securities Act of 1933. The information required by Form T–3 is mandatory. All information is provided to the public upon request. T–3 takes 43 burden hours to prepare and is filed by 55 respondents for a total of 2,365 burden hours.

Form T–4 is used to apply for an exemption from certain provisions of the Trust Indenture Act. The information required by Form T–4 is mandatory. All information is provided to the public upon request upon request. Form T–4 takes 5 burden hours to prepare and is filed by 3 respondents for a total of 15 burden hours.

Schedule 13E–4F may used by any issuer incorporated or organized under the laws of Canada making a tender offer for the issuer's own securities, where less than 20% of the class of such issuer's securities that is the subject of the tender offer is held of record by U.S. residents. The information required by Schedule 13E–4F must be filed with Commission. All information is provided to the public upon request. Schedule 13E–4F takes 2 burden hours to prepare and is filed by 3 respondents for a total of 6 burden hours.

Schedule 14D–1F may be used by any person making a cash tender or exchange offer for securities of any issuer incorporated or organized under the laws of Canada that is a foreign private issuer, where less than 40% of the outstanding class of such issuer's securities that is the subject of the offer is held by U.S. holders. The information required by Schedule 14D–1F must be filed with the Commission. All information is provided to the public upon request. Schedule 14D–1F takes 2 burden hours to prepare and is filed by 5 respondents for a total of 10 burden hours.

Schedule 14D–9F is used by any issuer incorporated or organized under the laws of Canada, or by any director or officer of such issuer, where the issuer is the subject of a tender offer for a class of its securities filed on Schedule 14D–1F. The information required by Schedule 14D–9F must be file with the Commission. All information is provided to the public upon request. Schedule 14D–1F takes 2 burden hours to prepare and is filed by 5 respondents for a total of 10 burden hours.

Rule 14f–1 requires issuers to disclose a change in a majority of issuer directors. The information filed under Rule 14f–1 must be filed with the Commission. All information submitted is provided to the public upon request. It takes 18 burden hours to prepare the necessary information and is filed by 44 respondents for a total of 792 burden hours.

Rule 12d1–3 requires a certification that a security has been approved by an exchange for listing and registration pursuant to section 12(d) of the Exchange Act to be filed with the Commission. The information required under Rule 12d1–3 must be filed with the Commission. All information filed with the Commission is available to the public upon request. It takes one-half hour to prepare the necessary information and is filed by 688 respondents for a total of 344 burden hours.

Written comments are invited on: (a) Whether the proposed collection of

information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: January 24, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2877 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27129]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

February 2, 2000.

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 persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by February 24, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 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 February 24, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Vectren Corporation, 70–9585

Vectren Corporation (''Vectren''), an Indiana Corporation, 20 N.W. Fourth Street, Evansville, Indiana 47741, has filed an application under sections 9(a)(2) and 10 of the Act.

Under the Agreement and Plan of Merger, dated as of June 11, 1999 (''Merger Agreement''), Vectren will acquire all of the issued and outstanding common stock of SIGCORP, Inc. and Indiana Energy, Inc., both Indiana corporations and public-utility holding companies exempt under section 3(a)(1) by rule 2 from all provisions of the Act except section 9(a)(2) (''Transaction'' or ''Merger'') [1]. Upon completion of the proposed Transaction, SIGCORP and Indiana Energy will be merged with and into Vectren and Vectren will be the sole surviving corporation. Following the consummation of the Merger, Vectren will become a holding company and claim an exemption from all provisions of the Act under rule 2.

Each share of SIGCORP common stock shall be converted into 1.333 shares of Vectren Common stock. Each share of Indiana Energy common stock shall be converted into one share of Vectren common stock. No fractional shares will be issued. Instead, each holder of SIGCORP common stock who would otherwise receive a fractional share of Vectren common stock will receive cash in payment for that fractional share based on the prevailing price on the New York Stock Exchange.

SIGCORP is a holding company located in Evansville, Indiana and owns one public-utility subsidiary, Southern Indiana Gas and Electric Company (''SIGECO'') and ten non-utility subsidiaries. SIGECO is located in Evansville, Indiana and is engaged in the generation, transmission, distribution and sale of electricity and the distribution and sale of natural gas in a service area covering ten counties in southwestern Indian. As of September 30, 1999 SIGECO served 125,546 retail electric customers and supplied natural gas to 107,268 customers.[2] For the nine months ended September 30, 1999, SIGECO had operating revenues of $185,683,040 and net income of $38,264,322.

SIGECO owns approximately 33% of the outstanding common stock of Community Natural Gas Company, Inc. (''Community''), a small Indiana gas distribution company. Community has several service territories in southwestern Indiana that are adjacent to or near the gas service territory of SIGECO. Community has 6,638 natural gas customers and approximately 470 miles of distribution mains.

The non-utility subsidiaries of SIGCORP include: (1) Southern Indiana Properties, Inc., which invests in real estate and equipment; (2) Energy Systems Group, Inc., which is a partner in an energy-related performance contracting firm; (3) Southern Indiana Minerals, Inc., which processes and market coal combustion by-products; (4) SIGCORP Energy Services., Inc., which is an energy marketer; (5) SIGCORP Capital, Inc., which is the financing vehicle for SIGCORP's non-regulated subsidiaries; (6) SIGCORP Fuels, Inc., which owns and operates coal mining properties; (7) SIGCORP Power Marketing, Inc., which is not currently active; (8) SIGCORP Communications Services., Inc., which was formed to undertake communication-related initiatives; (9) SIGECO Advanced Communication, Inc., which holds SIGCORP's investment in several communications partnerships; and (10) SIGCORP Environmental Services, Inc., which holds SIGCORP's investment in Air Quality Services.

Indiana Energy is a holding company that owns one public-utility subsidiary, Indiana Gas Company, Inc. (''Indiana Gas''), and three non-utility subsidiaries. Indiana Gas is engaged in the business of providing gas utility service in the State in Indiana. In 1999, Indiana Gas supplied gas to approximately 500,000 consumers in 48 of the 92 counties in Indiana.[3] For the

[1] Vectren proposes to account for the Merger on a ''pooling-of-interests'' basis under generally accepted accounting principles.

[2] SIGECO is a party to an interconnection agreement under which it provides firm power to the City of Jasper, Indiana. It also has an agreement with Hoosier Energy Rural Electric Cooperative, Inc. for the sale of firm peaking power during the annual winter heating season. SIGECO is interconnected with Louisville Gas and Electric. Co., Cinergy Services, Inc., Indianapolis Power & Light Co., Hoosier Energy, Big Rivers Electric Corporation, Wabash Valley Power Association and the City of Jasper.

SIGECO's gas transmission system includes 359 miles of transmission mains, and the gas distribution system includes 2,520 miles of distribution mains. SIGECO currently purchases nearly 100% of its supply gas requirements from the Gulf Coast production basin, particularly in the on-shore and off-shore Texas and Louisiana producing regions.

[3] Indiana Gas owns 10,948 miles of distribution mains. Indiana Gas purchases 50% of its total system gas supply requirements from the Gulf Coast production basin and approximately 48% from

Continued

nine months ended September 30, 1999, Indiana Gas had operating revenues of approximately $419,061,000 and net income of approximately $31,377,000.

Indiana Gas is also a holding company because it owns all of the voting securities of Richmond Gas Corporation (''Richmond Gas'') and Terre Haute Gas Corporation ('Terre Haute''), both public-utility companies. While Richmond Gas and Terre Haute technically exist as separate corporate entities, in accordance with an order issued by the Indiana Utility Regulatory Commission (''IURC''), Indiana Gas, Richmond Gas and Terre Haute have combined their operations for all purposes and are transacting business under the name of ''Indiana Gas Company, Inc.'' [4]

The non-utility subsidiaries of Indiana Energy include: (1) IEI Services, LLC, which provides support services to Indiana Energy and its subsidiaries; (2) IEI Capital Corp., which was formed to carry out the financing activities of Indiana Energy; and (3) IEI Investments, Inc., which was formed to separate the non-regulated businesses and investments of Indiana Energy.

Vectren states that the merger will create a company that is better positioned to compete in the energy industry and expects the long-term value to shareholders to be enhanced while providing customers with reliable service at more stable and competitive prices.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2878 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

production in the Mid-continent basin. Approximately 2% of Indiana Gas's gas supplies are accessed through the Chicago market hub giving supply choice from the western Canadian Basin, Michigan production basin or the Mid-continent basin.

[4] Under the order of the IURC, accounting records and financial reports are maintained and presented on a consolidated basis.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24276; 812–11458]

Scudder Global Fund, Inc., et al.; Notice of Application

February 3, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered management investment companies and certain entities that are excluded from the definition of investment company by section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act to invest uninvested cash in (a) affiliated money market funds and/or short-term bond funds or (b) one or more affiliated entities that operate as cash management investment vehicles and that are excluded from the definition of investment company by section 3(c)(1) or 3(c)(7) of the Act.

APPLICANTS: Scudder Global Fund, Inc., Scudder International Fund, Scudder New Asia Fund, Inc., Scudder Global High Income Fund, Inc., The Argentina Fund, Inc., The Brazil Fund, Inc., The Korea Fund, Inc., The Japan Fund, Inc., Scudder California Tax Free Trust, Scudder Cash Investment Trust, Scudder Fund, Inc., Scudder Funds Trust, Scudder GNOME Fund, Scudder Investment Trust, Scudder Municipal Trust, Scudder Mutual Funds, Inc., Scudder Pathway Series, Scudder Portfolio Trust, Scudder Securities Trust, Scudder State Tax Free Trust, Scudder Tax Free Money Fund, Scudder Tax Free Trust, Scudder US Treasury Money Fund, Scudder Variable Life Investment Fund, CARP Growth Trust, CARP Income Trust, CARP Managed Investment Portfolios Trust, CARP Tax Free Income Trust, CARP Cash Investment Funds, Kemper Equity Trust, Kemper Global/International Series, Inc., Kemper Securities Trust, Kemper Europe Fund, Investor Fund Series (collectively, the ''Investment Companies''), Scudder Cash Management Investment Trust (''SCMIT'') (together with the Investment Companies, the ''Funds''), Scudder Trust Company (''STC''), and Scudder Kemper Investments, Inc. (''SKI'').

FILING DATES: The application was filed on January 8, 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 Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 28, 2000, 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 to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Philip H. Newsman, Esq., Goodwill, Proctor & Oar LPL, Exchange Place, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each Investment Company is organized as a Massachusetts business trust or a Maryland corporation and is registered under the Act as a management investment company.[1] SCMIT is a New Hampshire investment trust that is relying on section 3(c)(1) of the Act. STC, a New Hampshire banking corporation, is the trustee of SCMIT and is controlled by SKI. SKI is registered under the Investment Advisers Act of 1940 and serves as the investment adviser to the Funds (SKI and all entities controlling, controlled by, or under common control with SKI, collectively, ''SKI'').[2]

[1] The following Investment companies are registered under the act as closed-end companies: The Argentina Fund, Inc.; The Brazil Fund, Inc.; The Korea Fund, Inc.; Scudder Global High Income Fund, Inc.; and Scudder New Asia Fund, Inc. The other Investment Companies are registered under the Act as open-end companies.

[2] Applicants also request relief for all other existing or future registered investment companies and series thereof that are advised by SKI and all other trusts or other entities excluded from the definition of ''investment company'' under section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act now existing or hereafter established for which SKI acts as trustee or investment adviser. All Funds that currently intend to rely on the relief have been named as applicants, and any other existing or future Fund that relies on the relief will comply with the terms and conditions of the application.

2. Each Investment Company that is not a money market fund (a ''Registered Participating Fund'') has, or may be expected to have, cash balances that have not been invested in portfolio securities (''Uninvested Cash''). Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions's and dividend payments, and new cash received from investors. Currently, the Participating Funds can invest Uninvested Cash directly in money market instruments or other short-term debt obligations.[3] Applicants state that certain other entities that are excluded from the definition of investment company pursuant to section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act for which SKI acts as trustee or investment adviser (the ''Private Participating Funds'') also may have uninvested cash.

3. Applicants request an order to permit: (i) Registered Participating Funds and Private Participating Funds (collectively, ''Participating Funds'') to use their Uninvested Cash to purchase shares of one or more of the Investment Companies that are money market funds or short-term bond funds (the ''Registered Central Funds'') and shares of SCMIT or one or more future entities for which SKI acts as trustee or investment adviser that operate as cash management investment vehicles and that are excluded from the definition of investment company pursuant to section 3(c)(1) or 3(c)(7) of the Act (the ''Private Central Funds'') (the Registered Central Funds and the Private Central Funds, collectively, the ''Central Funds''); [4] (ii) the Central Funds to sell their shares to and purchase (redeem) such shares from the Participating Funds; (iii) certain of the Participating Funds and Central Funds to engage in Interfund purchase and sale transactions (''Interfund Transactions''); and (iv) SKI to effect the above transactions.

4. The investment by each Registered Participating Fund in shares of the Central Funds will be in accordance with that Registered Participating Fund's investment policies and restrictions as set forth in its registration statement. Certain of the Registered Central Funds are or will be taxable or tax-exempt money market funds that comply with rule 2a–7 under the Act. The other Registered Central Funds are or will be short-term bond funds that invest in fixed-income securities and maintain a dollar weighted average maturity of three years or less. The Private Central Funds will comply with rule 2a–7 under the Act.

Applicant's Legal Analysis

I. Investment of Uninvested Cash by the Participating Funds in the Central Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that an investment company may not acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Any entity that is excluded from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act is deemed to be an investment company for the purposes of the 3% limitations specified in section 12(d)(1)(A) and (B) with respect to purchases by and sales to such company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any persons or transactions from any provision of section 12(d)(1) to the extent that the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) of the Act to permit the Participating Funds to purchase shares of the Registered Central Funds in excess of the limits of section 12(d)(1)(A) and the Registered Central Funds to sell their shares to the Participating Funds in excess of the limits of section 12(d)(1)(B).

3. Applicants maintain that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to address. Applicants state that each of the Registered Central Funds will be managed specifically to maintain a highly liquid portfolio, and access to them will enhance each Participating Fund's ability to manage Uninvested Cash. Applicants state that there will not be an inappropriate layering of fees because shares of the Registered Central Funds sold to or redeemed by the Participating Funds will not be subject to a sales charge load, redemption fee, asset-based distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or a service fee. In addition, if SKI collects a fee from Registered Central Fund for acting as its investment adviser with respect to assets invested by a Registered Participating Fund, when approving an investment advisory contract under section 15 of the Act, the Board of the Registered Participating Fund will consider to what extent the advisory fees paid by the Registered Participating Fund to SKI should be reduced to account for the reduced services provided to the Registered Participating Fund as a result of Uninvested Cash being invested in the Registered Central Fund. Each Registered Participating Fund also will invest Uninvested Cash in Central Funds only to the extent that the Registered Participating Fund's aggregate investment in the Central Funds does not exceed 25% of its total assets in shares of the Central Funds. Applicants also state that no Central Fund will acquire securities of any investment company in excess of the limits of section 12(d)(1)(A).

B. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; any person directly or indirectly controlling, controlled by, or under common control with the other person; and, in the case of an investment company, its investment adviser.

2. Because SKI serves as, or will serve as, each Fund's investment adviser or trustee exercising investment discretion, the Funds may be deemed to be under common control and therefore affiliated persons, or affiliated persons of an affiliated person, of each other. In

[3] Certain of the applicants also have received an order under section 17(d) and rule 17d–1 under the Act which permits them to establish one or more joint trading accounts for purposes of engaging in joint repurchase agreement transactions. Scudder Global Fund, Inc. *et al.,* Investment Company Act Release Nos. 10828 (October 7, 1998) (order) and 23525 (November 5, 1998) (order).

[4] SCMIT is the only currently existing Non-Registered Central Fund.

addition, certain Investment Companies could be deemed to be under common control by virtue of the fact that they share a common board of directors or trustees (''Board''). In addition, if a Participating Fund purchases more than 5% of the voting securities of a Central Fund, the Participating and Central Funds would be affiliated persons of each other. Accordingly, applicants state that the sale and redemption of shares of the Central Funds by the Registered Participating Funds may be prohibited by section 17(a)(1) and (a)(2).

3. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions, or classes of persons or transactions, from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Registered Participating Funds to purchase and redeem shares of the Central Funds. Applicants state that the proposed transactions satisfy the standards of sections 6(c) and 17(b) of the Act. Applicants state that the consideration paid and received on the sale and redemption of shares of the Central Funds will be based on the net asset value per share of the Central Funds. Applicants also state that the Participating Funds will retain their ability to invest their Uninvested Cash directly in money market instruments and other short term obligations if they believe they can obtain a higher rate of return or for any other reason. Each of the Central Funds also reserves the right to discontinue selling shares to any of the Participating Funds if the Central Fund's Board determines that the sales would adversely affect the Central Fund's management and operations. In addition, applicants state that the investment of assets of the Registered Participating Funds in shares of the Central Funds, and the issuance of shares of the Central Funds, will be effected in accordance with each Registered Participating Fund's investment guidelines and will be consistent with each Registered Participating Fund's policies as set forth in its registration statement. Applicants also state that the Non-Registered Central Funds will comply with the provisions of the Act relating to prohibitions on affiliated transactions, leveraging, the issuance of senior securities, and rights of redemption.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission has approved the joint arrangement by an order. Applicants state that the Participating Funds and Central Funds, by participating in the proposed transactions, and SKI, by effecting the proposed transactions, could be deemed to be participants in a joint enterprise for the purposes of section 17(d) of the Act and rule 17d–1 under the Act.

2. In passing on applications for orders under section 17(d), rule 17d–1 requires that the Commission consider whether an investment company's participation in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants state that, for the reasons discussed above, the proposed transactions meet the standards for an order under rule 17d–1.

II. Interfund Transactions

1. Applicants state that they currently rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 under the Act excepts from the prohibitions of section 17(a) the purchase or sale of certain securities between registered investment companies which are affiliated persons, or affiliated persons of affiliated persons, of each other or between a registered investment company and a person which is an affiliated person of such company (or an affiliated person of such person) solely by reason of having a common investment adviser, common officers, and/or common directors. Applicants state that the Participating Funds may become affiliated persons of the Central Funds by virtue of a Participating Fund owning 5% or more of the outstanding voting securities of a Central Fund. Thus, applicants state that certain Funds may not be able to rely on rule 17a–7 to effect Interfund Transactions. The Interfund Transactions for which relief is requested are transactions between Registered Participating Funds and Private Central Funds and between Private Participating Funds and Registered Central Funds.

2. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants state that the Funds will comply with rule 17a–7 under the Act in all respects, other than the requirement that the registered investment company and the affiliated person thereof (or the affiliated person of such person) be affiliated solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers, and/or common directors, solely because a Participating Fund and a Central Fund might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act. Applicants state that the additional affiliation does not effect the other protections provided by rule 17a–7, including the integrity of the pricing mechanism employed and oversight by each Fund's Board.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, asset-based distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in Section 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

2. If SKI collects a fee from a Central Fund for acting as its investment adviser with respect to assets invested by a Registered Participating Fund, before the next meeting of the Board of the Registered Participating Fund that invests in the Central Funds is held for the purpose of voting on an advisory contract pursuant to section 15 of the Act, SKI will provide the Board with specific information regarding the approximate cost to SKI for, or portion of the advisory fee under the existing advisory fee attributable to, managing the assets of the Registered Participating Fund that can be expected to be invested in the Central Fund. Before approving any advisory contract pursuant to section 15 of the Act, the Board of the Registered Participating Fund, including a majority of the directors or trustees who are not

''interested persons,'' as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Registered Participating Fund by SKI should be reduced to account for the reduced services provided to the Registered Participating Fund by SKI as result of Uninvested Cash being invested in the Central Fund. The minute books of the Registered Participating Fund will fully record the Board's consideration in approving the advisory contract, including the fees referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment in the Central Funds does not exceed 25% of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Central Funds will be in accordance with each Registered Participating Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Fund that may rely on the order shall be advised by SKI or will have SKI as its trustee.

6. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the 1940 Act.

7. The Private Central Funds will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Private Central Funds were registered open-end investment companies. With respect to all redemption requests made by a Participating Fund, the Private Central Funds will comply with section 22(e) of the Act. SKI as sole trustee of each Private Central Fund has or will adopt procedures designed to ensure that each Private Central Fund complies with sections 17(a), (d), and (e), 18, and 22(e) of the Act. SKI will also periodically review and update as appropriate such procedures and maintain books and records describing the procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

8. Each Private Central Fund will comply with rule 2a–7 under the Act. With respect to such Private Central Fund, SKI will adopt and monitor the procedures described in rule 2a–7(c)(7) and will take such other actions as are required to be taken under those procedures. A Participating Fund may only purchase shares of a Private Central Fund if SKI determines on an ongoing basis that the Fund is in compliance with rule 2a–7. SKI will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and its staff.

9. Each Participating Fund will purchase and redeem shares of any Private Central Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of such Private Central Fund. A separate account will be established in the shareholder records of each Private Central Fund for the account of each Participating Fund that invests in such Private Central Fund.

10. To engage in Interfund Transactions, the Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers, and/or common directors solely because a Participating Fund and a Central Fund might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

11. The net asset value per share with respect to shares of a Private Central Fund will be determined separately for each Private Central Fund by dividing the value of the assets belonging to that Private Central Fund, less the liabilities of that Private Central Fund, by the number of shares outstanding with respect to that Private Central Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2965 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24275; 812–11680]

Ark Funds, et al.; Notice of Application

February 2, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit a pension plan to transfer its assets to certain registered open-end management investment companies in exchange for shares of the companies.

APPLICANTS: ARK Funds, Allfirst Financial Inc. Pension Plan (''Allfirst Plan''), Allied Investment Advisers, Inc. (''AIA''), Allfirst Trust Company, N.A. (''Allfirst Trust'') and Allfirst Financial Inc.

FILING DATES: The application was filed on July 1, 1999. Applicants have agreed to file an amendment to the application 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 Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 24, 2000, 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 to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Alan C. Porter, Esq., Piper Marbury Rudnick & Wolfe LLP, 1200 Nineteenth Street, NW, Washington, DC 20036–2412.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. ARK Funds, a Massachusetts business trust, is registered under the Act as an open-end management investment company and offers twenty series (the ''ARK Portfolios''). AIA is an investment adviser registered under the Investment Advisers Act of 1940 and serves as investment adviser to each ARK Portfolio. Allfirst Trust acts as custodian and sub-administrator for the ARK Portfolios. AIA and Allfirst Trust are wholly-owned subsidiaries of Allfirst Bank, which is a wholly-owned subsidiary of Allfirst Financial Inc., a bank holding company (Allfirst Financial Inc. and its direct and indirect subsidiaries, collectively ''Allfirst'').

2. The Allfirst Plan is a defined benefit pension plan qualified under section 401 of the Internal Revenue Code of 1986, as amended. The Allfirst Plan is maintained for the benefit of employees of Allfirst and is exempt from the definition of ''investment company'' under section 3(c)(11) of the Act. Allfirst Trust is trustee of and AIA is investment adviser to the Allfirst Plan.

3. Currently, the Allfirst Plan has approximately 36.8% of its assets invested in the ARK Portfolios, with the remainder invested directly in individual securities. The Allfirst Plan holds more than 5% of the outstanding voting securities of four of the ARK Portfolios. Applicants propose to transfer in-kind of the assets of the Allfirst Plan, other than shares of the ARK Portfolios, to various ARK Portfolios for which the securities are appropriate investments, in exchange for Institutional Class shares of the respective ARK Portfolios having an aggregate net asset value equal to that of the securities transferred (the ''Proposed Exchange''). Pursuant to procedures adopted by each ARK Portfolio's board of directors (''Board''), AIA has determined that the individual securities held by the Allfirst Plan are appropriate investments for the participating ARK Portfolios. The securities of the Allfirst Plan to be transferred will be valued in accordance with the provisions of rule 17a–7(b) under the Act. Institutional Class shares of the ARK Portfolios do not have a front-end or deferred sales charge, redemption fee, or distribution fee. Allfirst will pay any expenses incurred in connection with the Proposed Exchange. Applicants request relief to effect the Proposed Exchange.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated persons of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the investment company. Section 2(a)(3) of the Act, in relevant part, defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, the other person; and (c) if the other person is an investment company, any investment adviser of that company. Applicants state that, because the Allfirst Plan may be viewed as acting as principal in the Proposed Exchange and because the Allfirst Plan and the ARK Portfolios may be viewed as being under the common control of Allfirst, within the meaning of section 2(a)(3)(C) of the Act, the Proposed Exchange may be subject to the prohibitions of section 17(a) of the Act.

2. Rule 17a–7 under the Act exempts from the prohibitions of section 17(a) certain purchase and sale transactions if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the securities. Applicants state that rule 17a–7 may not be available for the Proposed Exchange because the Allfirst Plan owns 5% or more of the outstanding voting shares of certain ARK Portfolios and Allfirst has an indirect pecuniary interest in the performance of the assets held by the Allfirst Plan. As a result, the affiliation between the Allfirst Plan and the ARK Portfolios is not solely by reason of having a common investment adviser, common directors, and/or common officers. In addition, applicants state that the Proposed Exchange is to be effected as an in-kind transfer, rather than in cash.

3. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of assets of registered investment companies from the provisions of section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the board of directors of each investment company makes certain determinations. Applicants state that rule 17a–8 is not available for the Proposed Exchange because Allfirst is not transferring ''substantially all'' of its assets to the ARK Portfolios, because the Allfirst Plan is not a registered investment company and because the Allfirst Plan and the ARK Portfolios are affiliated other than solely by reason of having a common investment adviser, common director and/or common officers.

4. Section 17(b) of the Act provides that the Commission may exempt a proposed transaction from the provisions of section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act to permit the Proposed Exchange. Applicants submit that the Proposed Exchange satisfies the standards for relief under section 17(b) of the Act. Applicants state that the securities to be acquired from the Allfirst Plan are consistent with the investment objectives, policies and restrictions of the participating ARK Portfolios. Applicants also state that the Proposed Exchange will meet all of the conditions of rules 17a–8 (with respect to the ARK Funds) and that the Proposed Exchange will occur in accordance with procedures respectively adopted by the Board, pursuant to rule 17a–7(e), and that the provisions of rule 17a–7(b), (c), (d) and (f) will be satisfied. Applicants state that the Proposed Exchange will take place as an in-kind transfer from the Allfirst Plan to the ARK Portfolios, rather than on the basis of cash as required by rule 17a–7(a). The Proposed Exchange will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the ARK Portfolios in the Proposed Exchange is in the best interests of each ARK Portfolio and that the interests of existing shareholders of the ARK Portfolio will not be diluted as a result of the transaction.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Proposed Exchange will comply with the terms of rule 17a–7(b) through (f).

2. The Proposed Exchange will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the ARK Portfolios in the Proposed Exchange is in the best interests of each ARK Portfolio and that the interests of existing shareholders of the ARK Portfolio will not be diluted as a result of the transaction. These findings, and the basis upon which they are made, will be recorded fully in the minute books of ARK Funds.

3. The Proposed Exchange will not occur unless and until AIA, as investment manager and fiduciary of the Allfirst Plan, has determined in accordance with its fiduciary duties that the Proposed Exchange is in the best interests of the Allfirst Plan.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2879 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42372; File No. SR–CHX–99–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

January 31, 2000.

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 December 27, 1999, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 31, 2000, the CHX submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has requested a three-month extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program proposes to amend Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules. The current pilot expires on January 31, 2000. The Exchange proposes to extend the rules governing trading of Nasdaq/NM securities on the Exchange through May 1, 2000.[4]

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 regarding the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[5] Among other things, these rules rendered the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the ''MAX'' system).[6]

On January 3, 1997, the Commission approved,[7] on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to Exchange Act Rule 11Ac1–1 (the ''NBBO''). When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April 1997. Six months of trading data did not become available until November 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[8] The Exchange submitted the report to the Commission on January 30, 1998. Subsequently, the Exchange requested another three-month extension, to give the Commission adequate time to approve the pilot program on a permanent basis.

On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.[9] On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.[10] On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CHX requested that the Commission approve extension of the pilot program through May 1, 2000 instead of December 31, 2000 as initially proposed. Amendment No. 1 also removed proposed rule language that is currently being considered in another Exchange filing (SR–CHX–99–27). *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated January 28, 2000.

[4] *See* Amendment No. 1, *supra* note 3.

[5] See Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2); *see also,* Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expending the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1,000).

[6] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. See CHX Rules, Art. XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, by MAX system handling rules remain applicable.

[7] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

[8] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 63 FR 1517 (January 9, 1998).

[9] *See* Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[10] *See* Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

30, 1999.[11] On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.[12] The Exchange now requests another extension of the current pilot program, through May 1, 2000.[13] On December 22, 1999, the Exchange also submitted to the Commission a report identical in format to the Exchange's report of January 30, 1998, to enable the Commission to continue its review of the pilot program.

Under the pilot program, specialists must continue to accept agency [14] market orders or marketable limit orders, but only for orders of 100 to 1,000 shares of Nasdaq/NM securities rather than the 2,099 share limit previously in place. Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists are required to automatically execute Nasdaq/NM orders only if they are quoting at the NBBO when the order was received.

The pilot program requires the specialists to set the MAX auto-execution threshold at 1,000 shares or greater for Nasdaq/NM securities.[15] When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the auto-execution threshold designated by the specialist are executed automatically (in an amount up to the size of the specialist's quote). Orders in securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at an increment away from the NBBO, as determined by the specialist from time to time, for either 100 or 1,000 shares, depending on the issue.[16]

When the specialist is not quoting a Nasdaq/NM security at the NNBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialist does not elect manual execution, MAX market and marketable limit orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO, provided that the auto-execution threshold is less than or equal to the NBBO. If the specialist elects manual execution, the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold are not subject to these requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[17] In particular, the proposed rule is consistent with Section 6(b)(5) [18] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The CHX's proposal is intended to conform CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while recognizing that the CHX provides a separate, competitive market for Nasdaq/NM securities. The rules establish execution procedures and guarantees that attempt to provide executions reflective of the best quotes among OTC market makers and specialists in Nasdaq/NM securities without subjecting CHX specialists to execution guarantees that are substantially greater than those imposed on their competitors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any unnecessary or inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–27 and should be submitted by March 1, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) [20] of the Act, which requires that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove

[11] *See* Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[12] *See* Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999).

[13] *See* Amendment No. 1, *supra* note 3.

[14] The term ''agency order'' means an order for the account of a customer, but does not include professional orders, as defined in CHX Rules, Art. XXX, Rule 2, Interp. and Policy .04. The rule defines a ''professional order'' as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[15] The Exchange currently is seeking Commission approval of a rule amendment that would lower the auto-execution minimum to 300 shares in the case of Nasdaq/NM securities. *See* SR–CHX–99–21.

[16] Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) for issues that became subject to mandatory compliance with Exchange Act Rule 11Ac1–4 on or prior to February 24, 1997 to 1,000 shares for other issues.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] In reviewing this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 USC 78c(f).

[20] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with section 11A(a)(1)(C)[21] and 11A(a)(1)(D)[22] of the Act. The proposal is consistent with section 11A(a)(1)(C) in that it seeks to ensure economically efficient execution of securities transactions. Moreover, the proposal is consistent with Section 11A(a)(1)(D) in that it attempts to foster the linking of markets for qualified securities through communication and data processing facilities.

The Commission notes, however, that while the Exchange has been working toward establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.[23] In connection with this effort, the Commission has requested an update on the information provided in the December 21, 1999 report using the Exchange's surveillance system. The Commission requests that the Exchange supplement the available trading data so that it can consider issues concerning the pilot program, including the circumstances involving orders that are not automatically executed through MAX, whether orders are given the NBBO shown at the time the order is received or the NBBO posted at the time the order is executed, and what explanations are available for price disimprovement. The Commission is extending the pilot program for 90 days so that the Exchange may compile this data for the Commission's review.

At the conclusion of this pilot's extension, the Commission requests that the Exchange rewrite Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules so these rules clearly explain the difference between how listed (or dually traded) securities and over-the-counter (or Nasdaq/NM) securities are routed and executed by the Exchange, and submit the new proposed language to the Commission for review and approval. Additionally, the Commission requests that the Exchange include in its rules an explanation of how the provisions of the Exchange's Best Rule interact with the Exchange's Rules governing automatic execution of orders. Thus, the Commission's approval of the pilot extension has several ramifications. Approval will: (1) Allow the Exchange to operate without interruption; (2) provide a period for compilation of additional data; and (3) allow the Exchange to revise the language of the existing rules for clarity and ease of understanding in the public interest and for protection of investors.

The Commission does not want to interrupt the current operations of the Exchange while the above-described issues are being addressed. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

It Is Therefore Ordered, pursuant to section 19(b)(2)[24] of the Act that the proposed rule change (SR–CHX–99–27) be, and hereby is, approved through May 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2882 Filed 2–8–00; 8:45 am]

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[21] 15 U.S.C. 78k–1(a)(1)(C).

[22] 15 U.S.C. 78k–1(a)(1)(D).

[23] 23 *See* 1997 Order, *supra* note 7.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42374; File No. SR–MSRB–99–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board to Amend Rule G–36

February 2, 2000.

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 December 10, 1999, the Municipal Securities Rulemaking Board (''MSRB'' or the ''Board'') 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change to amend Rule G–36, on delivery of official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to the Board or its designee. The text of the proposed rule change is set forth below. Deletions are in brackets; additions are in italics.

Rule G–36—Delivery of Official Statements, Advance Refunding Documents and Forms G–36(OS) and G–36(ARD) to Board or its Designee

(a)–(b) No Change.

(c) Delivery Requirements for Issues not Subject to Securities Exchange Act Rule 15c2–12.

(i) Subject to paragraph (iii) below, each broker, dealer, or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities not subject to Securities Exchange Act Rule 15c2–12 *for which an official statement in final form is prepared by or on behalf of the issuer* shall send to the Board or its designee, by certified or registered mail, or some other equally prompt means that provides a record of sending, [within] *by the later of* one business day [of] *after* delivery of the securities by the issuer to the broker, dealer, or municipal securities dealer *or one business day after receipt of the official statement in final form from the issuer or its designated agent,* the following documents and written information: two copies of the official statement in final form[, if prepared by or on behalf of the issuer]; and[, if an official statement in final form is prepared,] two copies of completed Form G–36(OS) prescribed by the Board, including the CUSIP number or numbers for the issue.

(ii)–(iii)[3] No change.

(d)–(f) No change.

* * * * *

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 MSRB 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

[3] Filing amended to clarify text of proposed rule change by including (iii). Phone conversation between Ernesto A. Lanza, Associate General Counsel, MSRB, and Melinda R. Diller, Attorney, Division of Market Regulation, Commission on January 24, 2000.

may be examined at the places specified in Item IV below. The MSRB 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

Rule G–36 requires, among other things, that a broker, dealer or municipal securities dealer (a ''dealer'') acting as underwriter in a primary offering of municipal securities (with certain limited exceptions) send to the Board copies of the official statement and completed Form G–36(OS). The rule was adopted by the Board for the purpose of creating a repository for official statements that would function much like a public library that stores, indexes and provides copies of official statements.[4] This library, known as the Municipal Securities Information Library® (or MSL®) system,[5] is intended to serve as a central source for information regarding municipal securities trading in the primary and secondary markets. As originally adopted by the Board and approved by the Commission, Rule G–36 applied to all primary offerings of municipal securities regardless of principal amount, other than primary offerings that qualified for exemption under paragraph (d)(1) of Rule 15c2–12 under the Act.[6] The Board subsequently amended Rule G–36 to subject to its requirements certain categories of primary offerings that are exempt under Rule 15c2–12(d)(1), thereby further extending the reach of Rule G–36 beyond the scope of Rule 15c2–12.[7] The Board felt that expanding the scope of the rule to include such offerings would result in a more complete collection of disclosure documents and the overall integrity, efficiency, and liquidity of the municipal securities market would be increased.

For any primary offering subject to Rule G–36(c)(i), the underwriter currently is required to send two copies of the official statement, if one is prepared, in final form with two copies of Form G–36(OS), to the board by the business day after the issuer delivers the municipal securities to the underwriter (the ''bond closing''). The Board reviewed certain information included by underwriters on Forms G–36(OS) submitted to the Board's MSIL® system in 1998, including approximately 2,000 such forms submitted in connection with primary offerings subject to Rule G–36(c)(i).[8] For these offerings, the Board found that 96% of the official statements in final form were reported to have been delivered by issuers to underwriters within one business day after closing. The 4% of official statement deliveries by issuers to underwriters that were reported as being made more than one business day after closing and therefore too late to permit underwriters to comply with Rule G–36(c)(i) constituted more than half (approximately 54%) of all underwriter failures to meet the time frame of that section.[9]

The Board believes that there is significant room for improvement with respect to underwriter compliance with Rule G–36(c)(i) in those situations in which the official statement is received in sufficient time to send to the Board on a timely basis. Underwriters experiencing problems in this area should review their internal procedures for ensuring that official statements delivered by issuers are handled in a manner that permits the accurate completion and the prompt sending of Form G–36(OS) and the official statement to the Board.

However, the Board is concerned that more than half of the instances in which underwriters have not met the time frame of Rule G–36(c)(i) resulted from official statements that were reported to have been delivered by issuers more than one business day after closing. Of course, the Board has no authority to require that an issuer prepare an official statement or that any official statement that is prepared be delivered to underwriters within a specified time frame. In addition, the Commission excepted those primary offerings that are subject to Rule G–36(c)(i) from Rule 15c2–12. Therefore, the MSRB believes that no regulatory framework exists to compel, directly or indirectly, the preparation and delivery of an official statement in such offerings.

The Board notes that in approximately 36% of the offerings subject to Rule G–36(c)(i) the number of business days between the sale date and the business day following closing is less than ten. As a result, for these offerings, the requirement in Rule G–36(c)(i) that the underwriter send the official statement to the Board within one business day after the bond closing provides the underwriter with less time to comply with its official statement submission requirement than the ten business day outside time frame of Rule G–36(c)(i), were such a time frame

[4] *See* Securities Exchange Act Release No. 28081 (June 1, 1990), 55 FR 23333 (June 7, 1990); ''Delivery of Official Statement to the Board: Rules G–36 and G–8,'' *MSRB Reports*, Vol. 9, No. 3 (November 1989) at 3.

[5] Municipal Securities Information Library and MSIL are registered trademarks of the Board.

[6] In primary offerings subject to Rule 15c2–12, the underwriter is required under paragraph (b)(3) of the Rule to contract with the issuer to receive the final official statement within seven business days after any final agreement to purchase, offer or sell the municipal securities (the ''sale date'') and in sufficient time to accompany any confirmation that requests payment from any customer. Rule 15c2–12 does not apply to primary offerings with an aggregate principal amount of less than $1,000,000 (''Small Issue Securities''). In addition, paragraph (d)(1) of the Rule exempts primary offerings in authorized denominations of $100,000 or more if the securities (i) are sold to no more than 35 persons with knowledge and experience in financial and business matters, capable of evaluating the merits and risks of the investment and not purchasing for more than one account or with a view to distribution ('Limited Offering Securities''); (ii) have a maturity of nine months or less ('Short-Term Securities''); or (iii) at the option of the holder may be tendered to the issuer or its agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by the issuer or its agent (''Puttable Securities''). Thus, as originally adopted, Rule G–36 applied to all primary offerings subject to Rule 15c2-12 as well as to Small Issue Securities for which an official statement in final form was prepared, but did not apply to Limited Offering Securities, Short-Term Securities and Puttable Securities.

[7] *See* Securities Exchange Act Release No. 32086 (March 31, 1993), 58 FR 18290 (April 8, 1993); ''Delivery of Official Statements to the Board: Rule G–36,'' *MSRB Reports*, Vol. 12, No. 3 (September 1992) at 11. Thus only primary offerings exempt from Rule 15c2–12 for which no official statement in final form is prepared and Limited Offering Securities remain exempt from Rule G–36. Those offerings that currently are subject to Section (c)(i) of Rule G–36 consist of Small Issue Securities, Short-Term Securities and Puttable Securities, if an official statement in final form has been prepared by or on behalf of the issuer.

[8] The Board reviewed all Forms G–36(OS) for primary offerings having sale dates in 1998 received in acceptable form by the MSIL® system on or prior to December 31, 1998. Excluded from this review were any Forms G–36(OS) that omitted the sale date, date of receipt by the underwriter of the official statement from the issuer or date that the underwriter sent the official statement to the MSIL® system. Information provided by underwriters on Form G–36(OS) is not independently verified by the Board but is provided to the appropriate enforcement agency on a regular basis. Underwriters are required to certify that all information contained in each Form G–36(OS) submitted to the MSIL® system is true and correct. Inaccuracies in the information reported by underwriters on Form G–36(OS) could subject such underwriter to appropriate enforcement action. The results of the Board's review could be affected by any such inaccuracies. The full results of this review, including results relating to other provisions of Rule G–36 and to the provisions of Rule G–32 and Rule 15c2–12, were published in ''Official Statement Deliveries Under Rules G–32 and G–36 and Exchange Act Rule 15c2–12,'' *MSRB Reports,* Vol. 19, No. 3 (Sept. 1999) at 29 (the ''Board Notice'').

[9] The remaining failures consisted of situations where the issuer was reported to have delivered the official statement to the underwriter in sufficient time for the underwriter to comply with Rule G–36(c)(i) but the underwriter delayed sending the official statement to the Board until later than the business day after the bond closing.

applicable to these offerings.[10] At the same time, however, issuers in these offerings generally have not contracted with underwriters to deliver official statements within seven business days of the sale date, as provided in paragraph (b)(3) of Rule 15c2–12, since such offerings are exempt from that rule. Thus, in more than one-third of all offerings subject to Rule G–36(c)(i), underwriters are required to act more quickly than they would under Rule G–36(b)(i) even though there is no concomitant obligation on the part of issuers to deliver an official statement within any particular time frame.

As a result, the Board published the Board Notice seeking comment on, among other things, a draft amendment to Rule G–36(c)(i) which the Board believed would address this situation. After reviewing the comments received on the Board Notice, the Board determined to adopt the draft amendment, with a minor clarifying change.[11] As amended, the rule would provide that an underwriter in a primary offering subject to Rule G–36(c)(i) for which an official statement in final form is prepared by the issuer must send two copies of the official statement in final form, together with two copies of Form G–36(OS), to the Board by the later of (i) one business day after the bond closing or (ii) one business day after receipt of the official statement from the issuer.[12] The proposed rule change is intended solely to provide relief to underwriters that face violation of Rule G–36(c)(i) as a result of circumstances beyond their control and is not intended to imply that underwriters and other dealers may ignore their continuing obligation to deliver official statements for new issue municipal securities to customers by settlement, as required under rule G–32.

2. Statutory Purpose

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[13] of the Act, which provides, in part, that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just an equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change is consistent with the Act in that it removes an impediment to a free and open market in municipal securities without adversely affecting the protection of investors and of the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it would apply equally to all municipal underwriters.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In the Board Notice, the Board sought comment on a draft amendment to Rule G–36(c)(i) that would require an underwriter in a primary offering subject to Rule G–36(c)(i) for which an official statement in final form has been prepared to send the official statement to the Board by the later of (i) one business day after the bond closing or (ii) one business day after receipt of the official statement from the issuer. The Board received two comment letters in response to the Board Notice, only one of which addressed the draft amendment.[14]

The Bond Market Association (TBMA) states that it ''strongly supports'' the draft amendment. TBMA further states that the change in the timing requirement ''means that underwriters and issuers could schedule closings on the basis of the needs of the transaction, rather than for the purpose of allowing a sufficient number of days to increase the odds that the official statement will be ready in time for the closing.''

The Board strongly believes that this second statement of TBMA demonstrates a misunderstanding of the nature of the proposed rule change, the purpose of official statements in the municipal securities market and the other obligations of dealers with respect to delivery of official statements. In the Board Notice, the Board observed that for new issue municipal securities, dealers typically seek, and customers generally expect, to settle their trades on the same day as the closing of the underwriting. As a result, underwriters need to receive the official statement from the issuer in sufficient time to ensure that the official statement can be delivered to customers by settlement of their transactions, as required under Rule G–32. If an issuer prepares an official statement in final form but does not deliver it to the underwriter by the bond closing, dealers would continue to be prohibited from settling their transactions with customers until they have delivered the official statement to the customers, with certain very limited exceptions.[15] Thus, other than offerings falling within the narrow exceptions provided under Rule G–32, the only offerings in which ''the needs of the transaction'' would not include delivery of the official statement by closing would be those in which underwriters expect to hold the securities in inventory until the official statement is in fact delivered and therefore made available for redelivery to customers.

The completion and delivery of an official statement by the closing of the underwriting is not a technical requirement imposed by the Board. If an official statement serves no purpose in an offering that is exempt from Rule 15c2–12, then the issuer need not prepare one. Unless an issuer is preparing an official statement for reasons entirely unrelated to the offering that it describes, it is difficult to understand how completion of an official statement after the underwriters and initial customers have received delivery of their securities can be rationalized.[16]

[10] Section (b)(i) of Rule G–36 requires the underwriter of a primary offering subject to Rule 15c2–12 to send two copies of the final statement, together with two copies of Form G–36(OS), to the Board within one business day after receipt of the final official statement from the issuer but no later than 10 business days after the sale date.

[11] The change in language makes clearer the fact that Section (c)(i) will continue to apply to a primary offering only if an official statement in final form is prepared.

[12] In contrast, Rule G–36(c)(i) currently requires that the underwriter send the official statement to the Board by the business day after the bond closing, regardless of whether the underwriter has in fact received the official statement by such day.

[13] 15 U.S.C. 78o–4(b)(2)(C).

[14] TBMA's letter addressed the draft amendment as well as certain other issues relating to Board Rules G–36 and G–32 and Rule 15c2–12. The comment letter from Charles Schwab & Co. Inc. (''Schwab'') addressed certain issues relating to Rule G–32. The Board is considering the comments received on these other matters but has not determined to take any rulemaking action with respect to Rule G–32 or any provisions of Rule G–36, other than Section (c)(i), at this time.

[15] Commercial paper is wholly exempt from the Rule G–32 customer delivery requirement and preliminary official statements may be delivered by settlement (with official statements in final form sent when they become available) for Puttable Securities.

[16] Of course, the Board believes that there is significant value to the secondary market in having official statements available throughout the life of the issue. Nonetheless, the Board sees no way of justifying the existence of an official statement based on the needs of the secondary market while ignoring the needs of the primary market.

Although the submission requirement under current Rule G–36(c)(i) may influence an issuer to give completion of the official statement in final form a higher priority, this requirement also may serve as a disincentive to prepare the official statement in final form, since an underwriter currently can avoid a Rule G–36(c)(i) violation by prevailing upon the issuer not to prepare an official statement in final form at all (*e.g.,* an underwriter that has purchased an issue based on a preliminary official statement could advise an issuer that it need not finalize the official statement). Changing the time frame of the Rule G–36(c)(i) submission requirement would eliminate this disincentive while providing relief for underwriters that may face a potential rule violation for reasons beyond their control. The official statement delivery requirement under Rule G–32 would continue to provide a powerful incentive to underwriters to urge issuers to complete the official statement in final form in sufficient time to permit the underwriters and the other dealers to which they sell such new issue municipal securities to deliver the official statement to customers by settlement.

Although TBMA supports the draft amendment to Rule G–36(c)(i), it suggests that the Board further amend Rule G–36(c)(i) to extend the one-business day time frame to two-business days. TBMA argues that ''it is often logistically difficult to meet the one-day requirement'' and that the MSIL® systems serves ''archival rather than real-time disclosure purposes.'' [17] In adopting Rule G–36(c)(i) and creating the MSIL® system, the Board undertook to make available to the industry a comprehensive repository of official statements for use in both the primary and secondary markets. In addition to serving the vital archival purpose of ensuring that information regarding municipal securities is available throughout the life of the securities, the MSIL® system serves an important function in the primary market as an alternate source (through its subscribers) of official statements for dealers seeking to fulfill their Rule G–32 customer delivery obligation. Delaying the submission of official statements to the Board could impair the MSIL® system's usefulness in the primary market.[18] Without a more substantial showing of hardship to the dealer community, the Board believes that extension of the time frame for underwriters to turn the official statement around to the Board is not justified at this time. The ability to meet this requirement is entirely within the control of dealers, and they should review their procedures to ensure that this task is assigned to the appropriate personnel having a clear understanding of the procedural and substantive requirements of Rule G–36. To the extent that dealers experience difficulty in coordinating the actions of various personnel involved in the handling of official statements, they should consider whether they have instituted procedures that adequately provide for compliance with the rule.

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 **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 MSRB 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, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–99–11 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2880 Filed 2–8–00; 8:45 am]

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[17] TBMA states ''that it is diffuclt to ensure the desirable level of coordination between the underwriter personnel who are best-positioned to authenticate the official statement as the final official statement and the personnel who are responsible for filing with the Board.''

[18] Schwab notes that it has 'found that if the dealers [from which it purchases new issue municipal securities] do not have copies of the final official statement, such copies are also generally unavailable from the managing underwriter financial printer. Bloomberg or another Nationally Recognized Municipal Securities Information Repository.'' Delays in receiving official statements by the MSIL® system would further reduce their availability from these other sources.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42376; File No. SR–NASD–99–77]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Mutual Fund Quotation Service

February 2, 2000.

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 December 17, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. 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

Nasdaq is proposing to amend NASD Rule 7090 to change the annual listing fees for the Mutual Fund Quotation Service (''MFQS'' or ''Service''). Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7090. Mutual Fund Quotation Service

(a) Funds included in the Mutual Fund Quotation Service (''MFQS'') shall be assessed an annual fee of [$275] *$400* per fund authorized for the News Media

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Lists and [$200] *$275* per fund authorized for the Supplemental List. Funds authorized during the course of an annual billing period shall receive a proportion of these fees but no credit or refund shall accrue to funds terminated during an annual billing period. In addition, there shall be a one-time application processing fee of $250 for each new fund authorized.

(b) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to change the annual listing fees for the MFQS. The MFQS was created to collect and to disseminate data pertaining to the value of open-end and closed-end funds. Currently, the MFQS disseminates the valuation data for over 11,000 funds. The Service facilitates this process by providing for the automated entry, through a browser-based application, of pricing data by a fund and a fund's pricing agent.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.[3] The MFQS has two ''lists'' in which a fund may be included—the News Media List and the Supplemental List—and each list has its own eligibility requirements.[4] If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in newspaper fund tables and is also eligible for dissemination over Nasdaq's Level 1 Service[5], which is distributed by market data vendors. If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List, therefore, provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for inclusion in the Service.[6] Currently, funds included in the News Media List pay an annual fee of $275, and funds included in the Supplemental List pay an annual fee of $200.

The original MFQS was built as a DOS-based application. In recent years, technology has progressed and user needs for the MFQS have increased. Responding to requests made by users of the MFQS, the mutual fund industry, and the Investment Company Institute (''ICI''), Nasdaq performed market research to determine which enhancements MFQS users would prefer in a redesigned Service. Since the last fee increase in 1996,[7] the MFQS software application has been rewritten, and notable technology enhancements have been implemented to support the Service's functionality.

Specifically, in 1998, Nasdaq took the list of enhancements requested by MFQS users and developed and implemented an entirely new MFQS application, using browser-based technology. The MFQS now permits funds included in the Service (or pricing agents designated by such funds) to use the browser-based technology to transmit directly to Nasdaq a multitude of pricing information, including information about a fund's net asset value, offer price, and closing market price. Out of the approximately 27 enhancements suggested by the industry, Nasdaq has incorporated 20 into the new MFQS application, and two more are scheduled for implementation in early 2000.

The new browser-based MFQS upgrade became fully-operational in May 1999. Due to the significant costs for development, maintenance, and support of the new MFQS product, however, additional revenue is needed to (1) sustain the quality of the MFQS; and (2) make future product enhancements to the MFQS, to improve efficiency and accuracy of price reporting. In addition, the MFQS is operating at a yearly loss in light of the recent technology enhancements to the Service. Accordingly, Nasdaq proposes to increase its current fees for the Supplemental List from $200 to $275, and for the News Media List from $275 to $400.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[8] of the Act which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. Nasdaq believes that the increased user fee is a fair means of recovering the cost related to the development and maintenance of the enhanced MFQS system requested by users of the Service and the ICI. The proposal is consistent with Section 15A(b)(5)[9] because the fees will be imposed directly and only on those who benefit from the recently enhanced MFQS. The proposed fee is designed to cover the costs related to the development and maintenance of the enhanced MFQS system and development costs associated with future enhancements that will improve efficiency and accuracy in the collection of pricing information.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 NASD consents, the Commission will:

A. by order approve the proposed rule change, or

[3] *See* NASD Rule 6800.

[4] *Id.*

[5] Nasdaq Level 1 Service is a subscription-based data service that ''includes the following data: (1) Inside bid/ask quotations calculated for securities listed in the Nasdaq Stock Market and securities quoted in the OTC Bulletin Board (OTCBB) service; (2) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and (3) last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series.'' NASD Rule 7010(a).

[6] *See* NASD Rule 7090.

[7] *See* Securities Exchange Act Release No. 37014 (March 22, 1996), 61 FR 14182 (File No. SR–NASD–96–05).

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78o–3(b)(5).

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–77 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2967 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42364; File No. SR–NYSE–99–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to the Listed Company Manual

January 28, 2000.

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 April 12, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 25, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On December 16, 1999, the Exchange submitted Amendment No. 2.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Listed Company Manual (''Manual'') to: (1) Implement regulatory reviews of key personnel associated with listing applicants; (2) codify the Exchange's procedures regarding supplemental listing applications for companies identified as being below continued listing standards; and (3) amend its disclosure requirements for listed companies late in filing their form 10–K or annual report. The text of the proposed rule change follows. New text is italicized. Deleted text is bracketed.

NYSE Listed Company Manual

* * * * *

Section 3

Corporate Responsibility

* * * * *

315.00 Regulatory Review of Listing Candidates and their Significant Related Individuals and Entities

Each listing applicant must provide the Exchange with a letter from counsel representing that, to the company's knowledge, no officer, board member, no non-institutional shareholder with greater than 10% ownership of the company has been convicted of a felony or misdemeanor relating to financial issues (e.g., embezzlement, fraud, theft) in the past ten years. In addition, the Exchange will review background materials available to its regarding the aforementioned individuals as part of the eligibility review process.*

* * * * *

Section 7

Listing Applications

* * * * *

703.11 Supplemental Listing Process

* * * * *

(C) No supplemental listing applications will be approved for companies that have been identified as being below the Exchange's continued listing standards (see Para. 802.01) for issuances to new shareholders unless such issuance is determined to be consistent with an Exchange-approved plan (or its goals) pursuant to Para. 802.02 or Para. 802.03 as applicable.

* * * * *

Section 2

Disclosure and Reporting Material Information

* * * * *

203.00 Annual and Interim Reporting Requirements

203.01 Annual Report Requirement

The Exchange requires that companies publish at least once a year and [submit] *distribute* to shareholders an annual report containing financial statements of the company and its *consolidated* subsidiaries prepared in conformity with generally accepted accounting principles. The company must distribute its annual report to its shareholders not later than [three months] *120 days (225 days for non-US issuers*) after the close of each fiscal year. [, but] *Notwithstanding the foregoing, domestic issuers must make this distribution* at least fifteen days in advance of the annual meeting.)*Non-US issuers are encouraged to do so when possible.*) When the annual report is mailed to shareholders, two copies should be sent to the Exchange together with advice as to the date of mailing to shareholders.

Companies may satisfy the annual distribution requirement either by distributing an annual report to share holders, or by distributing to shareholders to Form 10–K (or Form 20–F for Non-US issuers) filed with the SEC, with an indication that it is distributed in lieu of a separate annual report. When the annual report (or Form 10–K or Form 20–F) is mailed to shareholders, two copies should be sent to the

[3] In Amendment No. 1, the NYSE made several clarifications to the proposed rule change, incorporated appropriate provisions for Non-US issuers, and revised the procedures for the annual report requirement. *See* Letter to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated October 22, 1999 (''Amendment No. 1'').

[4] In Amendment No. 2, the NYSE made several technical changes to the text of the proposed rule change and clarified that the supplemental listing application (''SLAP'') provision applies to Non-U.S. issuers. *See* Letter to Richard Strasser, Assistant Director, Division, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated December 14, 1999 (''Amendment No. 2''). In Amendment No. 2, the Exchange also requested accelerated approval of the proposed rule change. The Exchange withdrew this request as per telephone conversation between Amy Bilbija, Counsel, NYSE, and Terri Evans, Special Counsel, and Heather Traeger, Attorney, Division, SEC, on January 4, 2000.

* *As such term is defined by the Securities and Exchange Commission in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.*

Exchange together with advice as to the date of mailing to shareholders. Distribution by electronic means (including by posting on the company's web site) will be effective only as to beneficial holders who have given their prior consent to receiving the report in that form. Such consent must be in writing, which may be in the form of electronic mail.

A company that is unable to timely file its Form 10–K or Form 20–F with the SEC must notify the Exchange prior to the SEC filing deadline, explaining the reason for the delay and the anticipated filing date. The Exchange will evaluate the circumstances and the continued listing status of the company, and at a minimum will require the company to issue a press release indicating the delay, the reason for the delay and the anticipated filing date. In making its evaluation, the Exchange will consider whether the company has released or plans to release to the press information regarding its financial results for the fiscal year. Once the company does file its Form 10–K (Form 20–F) with the SEC, it must then distribute to shareholders an annual report or a Form 10–K (Form 20–F) in lieu thereof no later than 15 days (30 days for a non-US issuer) after the filing.

(A)–(E) Unchanged.

* * * * *

[(F) Availability of Form 10–K When Annual Report is Delayed If distribution of the annual report to shareholders to be delayed more than two weeks even though the Form 10–K has been filed, the company should release to the financial press copies of the Form 10–K together with a statement advising that the annual report has been delayed and the reason for the delay, specifying the date when the annual report will be mailed and indicating that a copy of the Form 10–K is available to shareholders on request.]

* * * * *

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 purpose of the proposed rule change is to implement several enhancements to the Exchange's procedures and oversight of listed companies. First, the Exchange proposes to institute a regulatory review procedure for listing applicants whereby Exchange staff would access media outlets, run Central Registration Depository checks, and consult with staff in the SEC's Division of Enforcement to identify any potential issues of concern regarding the applicant company's board members, officers (as the term ''Officer'' is defined in Section 16 of the Act), and non-institutional shareholders with an interest in excess of 10 percent. In addition, the Exchange will require each applicant company to submit a letter from inside or outside counsel representing that, to the company's knowledge, no officer, board member, or non-institutional shareholder with more than 10 percent ownership in the company has been convicted of a felony or misdemeanor relating to financial issues (*e.g.,* embezzlement, fraud, or theft) in the past 10 years.

Second, the Exchange proposes to amend its procedures for processing SLAPs submitted for consideration by companies that have been identified as being below the Exchange's continued listing criteria.[5] Upon receipt of a SLAP from such a company, Exchange staff would first determine whether or not the SLAP is for an issuance to current shareholders (*e.g.,* a stock split). If so, the application would be authorized. If, however, the SLAP is for an issuance to new shareholders, the application will be reviewed against the plan pursuant to which the company is operating to return to financial compliance with the Exchange's listing standards. If the proposed issuance is within the scope of the plan, or furthers the goals of the plan, it will be approved. Conversely, the Exchange will deny authorization if the proposed issuance is outside the scope of the plan or contradicts its goals. In this context, the Exchange recognizes that employee stock option plans, although rarely a specific element of a financial plan, are customarily in furtherance of the company's objectives in that they are adopted to facilitate equity-based compensation to employees and thus provide incentive to employees to further the financial health of the company—a goal that is by its nature consistent with any approved plan.

Third, the Exchange proposes to amend its annual report requirements. The Exchange proposes to require that a company mail to shareholders by the specified date either an annual report or a Form 10–K (Form 20–F for Non-U.S. issuers) with an indication that is in lieu of the annual report.[6] Due to longer mailing and processing time, international companies will have a maximum period following the SEC filing deadlines of 45 days to mail either the annual report or Form 20–F (with an indication that it is in lieu of the annual report), where domestic issuers have 30 days.[7]

For companies that are unable to timely file a Form 10–K (or Form 20–F), the Exchange proposes to consider why the filing cannot be made, evaluate the continued listing status of the company in light of the specific facts presented, and require that the company issue a press release. Once the Form 10–K (or Form 20–F) is filed, the Exchange proposes to require a mailing of the Form 10–K (or Form 20–F) or an annual report to shareholders within 15 days (30 days for a Non-U.S. issuer).[8]

Additionally, the Exchange proposes to permit companies to distribute the annual reports or SEC forms electronically to beneficial holders who give prior written consent. Such consent must be in writing, which may be in the form of electronic mail.[9]

Failure to comply with these requirements will result in presentation of the company's situation to Exchange staff for appropriate action. Such action could include the determination to proceed with suspension of trading and application to the SEC to delist the security.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under section 6(b)(5)[10] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market

[5] This provision will apply to both U.S. and Non-U.S. issuers.

[6] *See* Amendment No. 1, *supra* note 3. Domestic companies are required to submit their annual filings on Form 10–K to the SEC within 90 days of the fiscal year end. International companies are required to submit their annual filings on Form 20–F within 180 days of the fiscal year end.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] 15 U.S.C. 78f(b)(5).

and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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 Exchange 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–14 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2881 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42377; File No. SR–Phlx–99–24]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Establishment of a Fee to Members for Receiving On-Line Options Information

February 2, 2000.

On June 29, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to adopt a fee for the transmission to members of option trade information on a real-time trade basis. Notice of the proposed rule change was published on August 12, 1999, in the **Federal Register,** to solicit comments from interested persons.[3] On December 28, 1999, the Exchange withdrew the proposed rule change.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2966 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of finalized policy development agenda.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission proposed, in December 1999, certain priorities as the focus of its policy development work, including amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2000. The Commission was reconstituted in November 1999, in the middle of that amendment cycle. Due to the resulting constraints of an abbreviated amendment cycle, the Commission has proposed as its priorities for the amendment cycle ending May 1, 2000 only those items the Commission might be able to conclude by its statutory deadline of May 1.

The Commission published a notice of these proposed priorities in the **Federal Register** on December 8, 1999. See 64 FR 68,715, Dec. 8 ,1999. After reviewing public comment received pursuant to this notice, the Commission has decided to limit its current policy development priorities principally to the following areas: (i) Implementation of legislative directives and other high priority crime legislation enacted by the 105th Congress for which guideline amendments were not developed or finalized by the previous Commission; and (ii) resolution of a limited number of high priority circuit conflicts in guideline interpretation, with the goal of enhancing the consistency with which the guidelines are applied.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: Priorities.''The specific policy development issues that comprise the Commission's finalized agenda are as follows—

I. Legislative Directives

The Commission has identified the implementation of the following directives as a priority for this amendment cycle:

(A) The No Electronic Theft (NET) Act of 1997—Congress directed the Commission, under emergency amendment authority, to ensure that: (1) The guideline penalties for intellectual property offenses are sufficiently stringent to deter those crimes; and (2) the guidelines pertaining to intellectual property offenses provide for consideration of the retail value and quantity of infringed items.

(B) The Telemarketing Fraud Prevention Act of 1998—Congress

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41711 (August 5, 1999), 64 FR 44073.

[4] *See* Letter from John Dayton, Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC, dated December 23, 1999.

[5] 17 CFR 200.30–3(a)(12).

directed the Commission, under emergency authority, to provide: (1) Substantially increased penalties for persons convicted of telemarketing offenses; (2) an additional sentencing enhancement if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts; and (3) an additional sentencing enhancement for cases in which a large number of vulnerable victims are affected by a fraudulent scheme or schemes. The Commission promulgated emergency amendments in September 1998 in response to this directive, but they must be re-promulgated in this amendment cycle to be made permanent.

(C) The Wireless Telephone Protection Act of 1998—Congress directed the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for offenses involving the fraudulent cloning of wireless telephones.

(D) The Identity Theft and Assumption Deterrence Act of 1998—Congress directed the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for each offense under 18 U.S.C. 1028 (fraud in connection with identification documents).

(E) The Protection of Children from Sexual Predators Act of 1998—Congress directed the Commission to: (1) Provide a sentencing enhancement for offenses relating to the transportation of individuals for illegal sexual activity; (2) provide a sentencing enhancement if the defendant used a computer in connection with a sexual offense against a minor; (3) provide a sentencing enhancement if the defendant knowingly misrepresented the defendant's identity in connection with a sexual offense against a minor; (4) increase the penalties in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor; and (5) amend the guidelines to clarify that the term ''distribution of pornography'' in the guidelines relating to distribution of child pornography applies to distribution for monetary remuneration or for a non-pecuniary interest.

II. Other High Priority Crime Legislation

The Commission will consider amendments to the sentencing guidelines to implement the following additional high priority crime legislation:

(A) The Methamphetamine Trafficking Control Act of 1998—This Act does not contain a directive, but it increased the penalties for manufacturing, importing, or trafficking in methamphetamine by reducing by one-half the quantity of methamphetamine required to trigger the various mandatory minimum sentences in the drug statutes.

(B) Firearms Legislation—In Public Law 105–386, Congress amended 18 U.S.C. § 924(c) to: (1) Create a tiered system of sentencing enhancement ranges, each with a mandatory minimum and presumed life maximum, in cases in which a firearm is involved in a crime of violence or drug trafficking offense (the pertinent minimum sentence being dependent on whether the firearm was possessed, brandished, or discharged); (2) change the mandatory minimum for second or subsequent convictions under § 924(c) from 20 to 25 years; and (3) broadly define the term ''brandish.''

In Public Law 105–277 (section 121 of the General Provisions), Congress amended 18 U.S.C. 922 to prohibit an alien who is lawfully present in the United States under a non-immigrant visa from possessing or otherwise being involved in a firearms offense.

III. Circuit Conflicts

As it has in the past, the Commission has also identified as a priority the resolution of a number of conflicts among the circuit courts on sentencing guideline issues. *See Braxton* v. *United States,* 500 U.S. 344 (1991). The Commission, working with the Criminal Law Committee of the Judicial Conference, the United States Department of Justice, and other interested participants in the federal criminal justice system, has identified the following circuit conflict issues as priorities for this amendment cycle:

(A) Whether for purposes of downward departure from the guideline range a ''single act of aberrant behavior'' (Chapter 1, Part A, § 4(d)) includes multiple acts occurring over a period of time. Compare *United States* v. *Grandmaison,* 77 F.3d 555 (1st Cir. 1996) (Sentencing Commission intended the word ''single'' to refer to the crime committed; therefore, ''single acts of aberrant behavior'' include multiple acts leading up to the commission of the crime; the district court should review the totality of circumstances); with *United States* v. *Marcello,* 13 F.3d 752 (3d Cir. 1994) (single act of aberrant behavior requires a spontaneous, thoughtless, single act involving lack of planning).

(B) Whether the enhanced penalties in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals) apply only when the defendant is convicted of an offense referenced to that guideline or, alternatively, whenever the defendant's relevant conduct included drug sales in a protected location or involving a protected individual. Compare *United States* v. *Chandler,* 125 F.3d 892, 897–98 (5th Cir. 1997) (''First, utilizing the Statutory Index located in Appendix A, the court determines the offense guideline section 'most applicable to the offense of conviction.' '' Once the appropriate guideline is identified, a court can take relevant conduct into account only as it relates to factors set forth in that guideline); with *United States* v. *Clay,* 117 F.3d 317 (6th Cir.), cert. denied, 118 S. Ct. 395 (1997) (applying § 2D1.2 to defendant convicted only of possession with intent to distribute under 21 U.S.C. 841 (but not convicted of any statute referenced to § 2D1.2) based on underlying facts indicating defendant involved a juvenile in drug sales).

(C) Whether the fraud guideline enhancement for ''violation of any judicial or administrative order, injunction, decree, or process'' (§ 2F1.1(b)(4)(B)) applies to falsely completing bankruptcy schedules and forms. Compare *United States* v. *Saacks,* 131 F.3d 540 (5th Cir. 1997) (bankruptcy fraud implicates the violation of a judicial or administrative order or process within the meaning of § 2F1.1(b)(3)(B)); with *United States* v. *Shadduck,* 112 F.3d 523 (1st Cir. 1997) (falsely filling out bankruptcy forms does not violate judicial process since the debtor is not accorded a position of trust).

(D) Whether sentencing courts may consider post-conviction rehabilitation while in prison or on probation as a basis for downward departure at resentencing following an appeal. Compare *United States* v. *Rhodes,* 145 F.3d 1375, 1379 (D.C. Cir. 1998) (post-conviction rehabilitation is not a prohibited factor and, therefore, sentencing courts may consider it as a possible ground for downward departure at resentencing); with *United States* v. *Sims,* 174 F.3d 911 (8th Cir. 1999) (district court lacks authority at resentencing following an appeal to depart on ground of post-conviction rehabilitation which occurred after the original sentencing; refuses to extend holding regarding departures for post-offense rehabilitation to conduct that occurs in prison; departure based on post-conviction conduct infringes on statutory authority of the Bureau of Prisons to grant good-time credits.).

(E) Whether a court can base an upward departure on conduct that was dismissed or uncharged as part of a plea

agreement in the case. Compare *United States* v. *Figaro,* 935 F.2d 4 (1st Cir. 1991) (allowing upward departure based on uncharged conduct) with *United States* v. *Ruffin,* 997 F.2d 343 (7th Cir. 1993) (error to depart based on counts dismissed as part of plea agreement).

IV. Technical and Conforming Amendments

The Commission expects to consider several minor technical or conforming amendments necessary for maintaining the technical accuracy Guidelines Manual.

Miscellaneous

Reports, proposed amendments, and other information pertaining to the final policy development priorities described in this notice may be accessed through the Commission's website at www.ussc.gov.

The Commission received and considered public comment concerning other issues that the Commission should include in its priorities for this amendment cycle. The Commission may address these issues in the future.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Diana E. Murphy,

Chair.

[FR Doc. 00–2984 Filed 2–8–00; 8:45 am]

BILLING CODE 2211–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3236]

Commonwealth of Pennsylvania

Cumberland County and the contiguous counties of Adams, Dauphin, Franklin, Perry, and York in the Commonwealth of Pennsylvania constitute a disaster area as a result of damages caused by a fire that occurred on December 18, 1999 in the Borough of Carlisle. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 24, 2000, and for economic injury until the close of business on October 24, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 7.500%

Homeowners without credit available elsewhere: 3.750%

Businesses with credit available elsewhere: 8.000%

Businesses and non-profit organizations without credit available elsewhere: 4.000%

Others (including non-profit organizations) with credit available elsewhere: 6.750%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere: 4.000%

The numbers assigned to this disaster are 323605 for physical damage and 9G6200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 24, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–2949 Filed 2–8–00; 8:45 am]

BILLING CODE 8025–01–U

OFFICE OF SPECIAL COUNSEL

Privacy Act of 1974; System of Records

AGENCY: Office of Special Counsel.

ACTION: Notice of revised description of Privacy Act system of records.

SUMMARY: The Office of Special Counsel (OSC) published a notice in the **Federal Register** on November 19, 1999, relating to the system of records maintained in connection with the agency's program responsibilities. The notice announced administrative changes to prior system notices, as well as a proposed revision of the system notice for the system of records, by amendment of the description of two existing routine uses, and the addition of a new routine use. This notice revises the description of the system of records as published in November to correct a technical error in the numbering of certain routine uses shown in that notice.

DATES: The revision made by this notice will be effective Febraury 9, 2000.

FOR FURTHER INFORMATION, CONTACT: Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, at (202) 653–8971, or the address shown below.

ADDRESSES: U.S. Office of Special Counsel, 1730 M Street, NW, Washington, DC 20036–4505.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 552a(e)(4) and (11), the OSC published a notice appearing at 64 FR 63359 (November 19, 1999), relating to the system of records known as OSC/GOVT–1, OSC Complaint, Litigation and Political Activity Files. This system of records is maintained in connection with the agency's program responsibilities.

The notice announced administrative changes to prior system notices, to update information about individuals covered by the system, records in the system, authority for maintenance of the system, the system manager, retrievability of records, access controls, and records source categories; to update legal citations; and to make technical corrections. The notice also announced a proposed revision of the system notice for OSC/GOVT–1, by amendment of the description of two existing routine uses, and the addition of a new routine use.

The November 19th notice also advised that the revised and new routine uses would become effective 30 days after publication, unless comments received in writing by the OSC before then warranted further changes. Since the OSC received no comments on the proposed revised and new routine uses, they became effective on December 20, 1999.

Pursuant to 5 U.S.C. 552a(e)(4), this notice is to correct a technical error in the numbering of certain routine uses described in the November 19th notice. Specifically, the routine use identified as ''h'' inadvertently combined the text of two separate routine uses, which should have been denominated as routine uses ''h'' and ''i.''

The description published at 64 FR 63359 (November 19, 1999) of the system of records known as OSC/GOVT–1 is hereby incorporated by reference, and is revised as incorporated to reflect the correct numbering and text of routine uses ''h'' and ''i,'' as follows:

''h. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit;

i. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation, as set forth in OMB Circular No. A–19;''

Dated: February 2, 2000.

Elaine Kaplan,

Special Counsel.

[FR Doc. 00–2876 Filed 2–8–00; 8:45 am]

BILLING CODE 7405–01–P

DEPARTMENT OF STATE

[Public Notice No. 3214]

Notice of Meeting; International Telecommunication Advisory Committee Development Sector

The Department of State announces an open meeting for the purpose of preparing for and forming the U.S. Delegation to the upcoming March 2–3, 2000 meeting of the ITU-Development Sector Telecommunications Development Advisory Group (TDAG). The meeting will also prepare for additional ITU–D meetings that includes the following: February 28: Gender Issues; February 29 Private Sector Subgroup of the TDAG; March 1: ITU–D Study Groups 1&2 Management Team and TDAG Chairpersons and Vice-Chairs. The meeting will be held from 9:30–11:30 on Thursday, February 10, 2000, in Room 3524, Main State. Members of the general public may attend these meetings 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 this meeting should send a fax to 202–647–7407 no later than 24 hours before the meeting. This fax should provide the name of the meeting, (TDAG Prep Meeting) and date of the meeting, your name, social security number, date of birth, and organizational affiliation one of the following valid photo identifications will be required for admittance: U.S. driver's license, U.S. passport, U.S. Government identification card. Enter from the ''C'' Street Main Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not later than 15 minutes before the meeting begins.

Dated: February 3, 2000.

Doreen F. McGirr,

Chair, ITAC–D, U.S. Department of State.

[FR Doc. 00–3083 Filed 2–7–00; 12:40 pm]

BILLING CODE 4710–45–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation, Marine and Land Radionavigation Users Conference

AGENCY: Office of the Assistant Secretary for Transportation Policy, DOT.

ACTION: Notice of conference.

SUMMARY: The U.S. Department of Transportation and the U.S. Department of Defense are conducting an open meeting for all users of U.S. Government-provided radionavigation systems. The purpose of the meeting is to obtain user perspectives on Federal policies and plans for these systems. Systems to be covered include the Global Positioning System (GPS); differential GPS and other GPS augmentations; Loran-C; VOR/DME; TACAN; Radiobeacons; and ILS/MLS. Input on all applications of these systems is welcome, including navigation, positioning, surveying and mapping, timing, network synchronization, and resource management. All users, equipment manufacturers, service providers, Federal, State, and local government personnel, and any others with an interest in these systems are encouraged to attend. There is no registration fee to attend this conference.

The meeting will be held in conjunction with the Civil GPS Service Interface Committee meeting on March 28, 29, and 30, 2000, at the Fair Oaks Holiday Inn in Fairfax, Virginia. Federal Government radionavigation policies and plans will be presented on March 28 followed by reports on international and timing GPS activities on March 29, and State and Locality GPS activities on the morning of March 30. The afternoon of March 30, beginning at 1 p.m. is reserved exclusively for questions and answers regarding current and future U.S. Government policies and plans in the Federal Radionavigation Plan.

FOR FURTHER INFORMATION CONTACT: For Further Information Contact: To obtain an information/registration package, please contact Carol-Ann Courtney at the Volpe National Transportation Systems Center; Conference Office (DTS–930); 55 Broadway, Cambridge, MA 02142. Tel: (617) 494–2686. Fax: (617) 494–2569.

Issued in Washington, DC on February 3, 2000.

Joseph F. Canny,

Deputy Assistant Secretary for Navigation Systems Policy.

[FR Doc. 00–2951 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–6780]

Collection of Information by Agency Under Review by Office of Management and Budget

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of the Office of Management and Budget (OMB) for the renewal of Information Collection Requests (ICRs). These ICRs comprise: (1) Security of Passenger Vessels and Passenger Terminals, (2) Plan/Drawing Approval and Records for Safety Valves—46 CFR part 162, (3) Vital System Automation—46 CFR parts 52, 56, 58, 61, 62, 110, 111, and 113, and (4) Marine Occupational Health and Safety Standards for Benzene. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before April 10, 2000.

ADDRESSES: You may mail comments to the Docket Management System (DMS) (USCG–2000–6780), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this Request. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. With questions on the docket, ask Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document (USCG–2000–6780) and the specific ICR to which each comment applies, and

give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Security of Passenger Vessels and Passenger Terminals.

OMB Control Number: 2115–0622.

Summary: The purpose of the rules on the security of passenger vessels and passenger terminals is to deter, or mitigate the results of, terrorism and other unlawful acts against such vessels and terminals. The rules should reduce the likelihood of such acts and should reduce the damage to property and injury to persons, if such acts occur.

Need: 33 U.S.C. 1231 authorizes the Coast Guard to issue rules for the program in ports and waters safety. 33 CFR, parts 120 and 128, contain the rules for the security for passenger vessels and passenger terminals regulations.

Respondents: Certain owners of passenger vessels and passenger terminals.

Frequency: On occasion.

Burden: The estimated burden is 1,811 hours annually.

2. *Title:* Plan/Drawing Approval and Records for Safety Valves—46 CFR part 162.

OMB Control Number: 2115–0525.

Summary: Requirements for submission of plans and drawings and test reports for safety equipment and materials are necessary so the Coast Guard can determine whether items meet minimum levels of safety and performance and whether they serve to identify the approved items.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to promulgate rules for the safety of personnel and property on board vessels. Sections of 46 CFR part 162 contain rules on approval of plans and drawings for of safety valves.

Respondents: Equipment manufacturers.

Frequency: On occasion.

Burden: The estimated burden is 58 hours annually.

3. *Title:* Vital System Automation—46 CFR parts 52, 56, 58, 61, 62, 110, 111, and 113.

OMB Control Number: 2115–0548.

Summary: This collection pertains to the vital system automation on commercial vessels that is necessary to protect personnel and property on board U.S.-flag vessels.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to promulgate rules for the safety of personnel and property on board vessels. Sections of 46 CFR parts 52, 56, 58, 62, 110, 111, and 113 contain rules on the automation of vital systems.

Respondents: Vessel designers, shipyards, manufacturers, and vessel owners.

Frequency: On occasion.

Burden: The estimated burden is 57,375 hours annually.

4. *Title:* Marine Occupational Health and Safety Standards for Benzene—46 CFR part 197, subpart C.

OMB Control Number: 2115–0586.

Summary: To protect marine workers from exposure to toxic Benzene vapor, the Coast Guard implemented 46 CFR part 197, subpart C.

Need: This information collection is vital to verifying compliance.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Burden: The estimated burden is 59,775 hours annually

Dated: February 1, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 00–2895 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for International Slots for the Winter 2000/2001 Scheduling Season

AGENCY: Department of Transportation, FAA.

ACTION: Notice of submission deadline.

SUMMARY: On October 1, 1999, the FAA amended the regulations governing takeoff and landing slots and slot allocation procedures at certain High Density Traffic Airports as a result of the ''Open Transborder'' Agreement between the Government of the United States and the Government of Canada. One element of this final rule established that the deadline for submission of requests for international slots will be published in a Federal Register notice for each scheduling season. The purpose of the amendment is for the FAA deadline for international slots requests to coincide with the International Air Transport Association deadline for submission of international requests. In accordance with this amendment, the FAA announces in this notice that the deadline for submitting requests for international slots for allocation under 14 CFR 93.217 is May 10, 2000.

DATES: Requests for international slots must be submitted no later than May 10, 2000.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office, AGC–230, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202–267–7668; ARING: DCAYAXD; email address: 9–A WA-slotadmin@faa.gov.

FOR FURTHER INFORMATION CONTACT: Lorelei D. Peter, Airspace and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–3073.

Issued in Washington, DC on February 3, 2000.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 00–2957 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 10, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must

include a self-addressed stamped postcard stating, ''Comments on OMB control number __. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of eight currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Filing of Dedicated Cars.

OMB Control Number: 2130–0502.

Abstract: Title 49, part 215 of the Code of Federal Regulations, prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this Part. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and the words ''Dedicated Service'' must be stenciled on each side of the freight car body. FRA uses the information to determine whether the equipment is safe to operate and that the operation qualifies for dedicated service. See 49 CFR 215.5 (c)(2), 215.5 (d).

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 6.

Estimated Annual Burden: 6 hours.

Status: Regular Review.

Title: Remotely Controlled Railroad Switch Operations.

OMB Control Number: 2130–0516.

Abstract: Title 49, Section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for fifteen days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours	Total annual burden cost
Blue Signal Protection	350	3,600,000 records	4	240,000	$6,240,000
Camp cars	600	4,000 notifications	4	267	6,942

Total Estimated Annual Burden: 240,267 hours.

Status: Regular Review.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Abstract: Under 49 CFR part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a ''bad order'' tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged ''bad order'' so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the ''bad order'' tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 685 railroads.

Total Responses: 50,000 tags.

Average Time per Response: 10 minutes.

Estimated Total Annual Burden: 8,333 hours.

Status: Regular Review.

Title: Stenciling Reporting Mark on Freight Cars.

OMB Control Number: 2130–0520.

Abstract: Title 49, Section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stenciling to identify freight cars.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 685 railroads.

Total Responses: 35,000 cars stencilled.

Average Time per Response: 45 minutes.

Estimated Total Annual Burden: 26,250 hours.

Status: Regular Review.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR part 209, Subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion/recordkeeping.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours	Total annual burden cost
Provide copy of disqualification order to new or prospective employer.	685	3 orders	30	1.5	$23
Provide copy of disqualification order to prospective employer.	685	1 notification	30	.5	8
Request copy of disqualification order from previous employer.	685	Usual and customary procedure.	N/A	N/A	N/A

Total Estimated Burden: 2 hours.

Status: Regular Review.

Title: Grade Crossing Signal System Safety Regulations.

OMB Control Number: 2130–0534.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA's regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the grade crossing until repairs have been made.

Form Number(s): FRA-F–6180.83.

Affected Public: Businesses.

Frequency of Submission: On occasion; recordkeeping.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours	Total annual burden cost
234.7—Telephone notification	685	4 phone calls	15	1	$35
234.9—Grade crossing signal system failure rpts	685	800 reports	15	200	7,000
234.9—Notification to train crew and highway traffic control authority.	685	800 notifications	15	200	7,000
234.9—Recordkeeping	685	800 records	15	200	7,000

Total Estimated Burden: 601 hours.

Status: Regular Review.

Title: Bridge Worker Safety Rules.

OMB Control Number: 2130–0535.

Abstract: Section 20139 of Title 49 of the United States Code required FRA to issue rules, regulations, orders, and standards for the safety of maintenance-of-way employees on railroad bridges, including for ''bridge safety equipment'such as nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water. FRA has added 49 CFR part 214 to establish minimum workplace safety standards for railroad employees as they apply to railroad bridges. Specifically, section 214.15(c) establishes standards and practices for safety net systems. Safety nets and net installations are to be drop-tested at the job site after initial installation and before being used as a fall-protection system; after major repairs; and at six-month intervals if left at one site. If a drop-test is not feasible and is not performed, then a written certification must be made by the railroad or railroad contractor, or a designated certified person, that the net does comply with the safety standards of this section. FRA and State inspectors use the information to enforce the Federal regulations. The information that is maintained at the job site also promotes safe bridge worker practices.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 685 railroads.

Total Responses: 6 certifications.

Average Time per Response: 20 minutes.

Estimated Total Annual Burden: 2 hours.

Status: Regular Review.

Title: Two-Way End-of-Train Devices.

OMB Control Number: 2130–0540.

Abstract: Section 20141 of the United States Code amended the Federal Rail Safety laws by adding certain statutory mandates related to power brake safety, specifically regarding two-way end-of-train telemetry devices (two-way EOTs). This Section required two-way-end-of-train devices (or devices able to perform the same function) on road trains other than locals, road switchers, or work trains to enable the initiation of emergency braking from the rear of the train. The information collected enhances rail safety by ensuring that the locomotive engineer is notified if someone other than a train crew member tests the two-way end-of-train devices at the initial terminal or other point of installation to confirm that the device is capable of initiating an emergency power brake application from the rear of the train. The information collected is also used by FRA to verify that the end-of-train telemetry equipment is properly calibrated for accuracy according to the manufacturer's specifications at least every 365 days. Additionally, the information collected verifies that two-way-end-of-train device standards—such as the front unit having a manually operated switch that is labeled ''Emergency'' which can initiate an emergency brake transmission command to the rear unit (when activated)—are met.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
232.25(C)—Notification that test was performed	245	450,000 tests	30 seconds	3,750	$168,750
232.25(d)—End-of-train Telemetry Equip.	245	35,000 stickers	1 minute	583	168,750
232.25(d)—Two-way end-of-train device Stds.	245	17,571 stencils	5 minutes	1,464	68,880

Total Estimated Burden: 5,797 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on February 1, 2000.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–2836 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 27, 1999 (64 FR 57924–57925).

DATES: Comments must be submitted on or before March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Henrietta Spinner at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–32), 202–366–4802. 400 Seventh Street, SW, Room 5320E, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR part 575 Consumer Information Regulations (Sections 103 and 105).

OMB Number: 2127—0049.

Type of Request: Extension of a currently approved collection.

Abstract: NHTSA must ensure that motor vehicle manufacturers comply with 49 CFR Part 575, Consumer Information Regulation Part 575.103—Truck-camper loading and Part 575.105—Utility Vehicles. Part 575.103, requires that manufacturers of light trucks that are capable of accommodating slide-in campers to provide information on the cargo weight rating and the longitudinal limits within

which the center of gravity for the cargo weight rating should be located. Part 575.105, requires that manufacturers of utility vehicles affix a sticker in a prominent location alerting drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated.

Affected Public: Motor vehicle manufacturers of light trucks and utility vehicles.

Estimated Total Annual Burden: 300.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–2952 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4029; Notice 5]

Pipeline Safety: Damage Prevention ''Path Forward''

AGENCY: Research and Special Programs Administration (RSPA); Office of Pipeline Safety (OPS).

ACTION: Notice of public meeting.

SUMMARY: This notice is to announce the next public meeting of RSPA's continuing efforts to prevent damage to underground facilities. Last year, RSPA assembled a study team of over 160 industry and government stakeholders to identify best practices for one call centers and damage prevention programs. Their findings were issued in a report titled ''Common Ground.'' To help implement the recommendations of the Common Ground Study, RSPA is facilitating the establishment of an organization to advance underground facility damage prevention. To achieve this, four teams have been established: by-laws, finance, membership, and nominating. The purpose of this meeting is to provide a forum for these organizational teams and interested public to begin the development of the organization.

DATES: The public meeting will be held on Thursday, February 17, 2000, from 9:00 a.m. to 4:30 p.m. This meeting is open to the public.

ADDRESSES: The public meeting will be held at the Sheraton International Hotel at BWI, 7032 Elm Road BWI Airport, MD. For Reservations, call 410–859–3300. A block of rooms is being held until February 7, 2000, under ''DOT Damage Prevention Meeting.''

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail at *eben.wyman@rspa.dot.gov,* regarding the subject matter of this notice.

INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Eben Wyman at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA–21) authorized a comprehensive study of damage prevention and one call center practices. In response to TEA–21, RSPA initiated the Common Ground study, which provided industry and government stakeholders the opportunity to work cooperatively to address the many issues of underground damage prevention. This study team produced an unprecedented collection of best practices in one call and damage prevention programs. The final Common Ground Study was presented to the Secretary of Transportation at a public meeting held on June 30, 1999.

On October 28, 1999, RSPA held a public meeting in Baltimore, MD, to plan for the establishment of an organization to advance underground facility damage prevention building on the spirit of cooperation developed by Common Ground. RSPA collected comments regarding elements of a mission statement, goals, functions, and organizational structure needed for an effective organization. Guiding principles were proposed, and interested individuals offered to participate on teams to facilitate the planning of the organization.

As a result of the October 28th meeting, the following organizational teams were formed:

(1) A By-laws Team to: Develop charter, mission statement and goals for the organization; define the scope and boundaries of the organization; establish organizational structure; and identify organizational functions, including public education possible data analyses and serving as a clearing house for research and development.

(2) A Finance Team to: develop a business plan, including costs of operations, sources of revenue, mechanisms for funding, contributory levels for different participants; processes for receiving income and accounting; identification of major financial contributors, charter members, donors, staff and other resources needed to support the organization.

(3) A Membership Team to: determine protocol and criteria for nominating and selecting members; determine appropriate types of representation to serve in the organization; and establish membership recruitment procedures and policies.

(4) A Nominating Team may be formed to identify representatives for the executive board. This group would be formed once the organization's by-laws have been established.

An executive team, known as the Evolution Team, oversees the four organizational teams. These teams have initiated their work via conference calls, and will meet for the first time at the February 17th meeting, which is open to the public.

The February 17th public meeting will consist of a plenary session with all team representatives as well as other interested parties, followed by breakout sessions to provide each team the opportunity to meet and begin their work. The organizational teams will report-out to all meeting attendees at the end of the day, time permitting.

RSPA welcomes all interested parties to attend and participate in this public meeting to continue the development of this organization to promote and encourage underground facility damage prevention.

Issued in Washington, DC on February 3, 2000.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–2924 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice

SUMMARY: An open meeting of the Midwest Citizen Advocacy Panel will be held in Milwaukee, Wisconsin.

DATES: The meeting will be held Thursday, February 24, 2000, and Friday, February 25, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

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 a working meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, February 24, 2000, from 9:00 a.m. to 5:00 p.m. and Friday, February 25, 2000, from 9:00 a.m. to Noon at Courtyard Marriott, Meeting Room B, 300 W. Michigan Street, Milwaukee, WI. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Written comments can be submitted to the panel by faxing to (414) 297–1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. The Agenda will include the following: Various IRS issue updates and reports by the CAP sub-groups, presentation of taxpayer issues by individual members, CAP office report, and discussion of issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 1, 2000.

John J. Mannion,

Program Manager, Taxpayer Advocate Service.

[FR Doc. 00–2964 Filed 2–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0121]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 10, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0121.''

SUPPLEMENTARY INFORMATION:

Title: Obtaining Supplemental Information from Hospital or Doctor, VA FL 29–551b.

OMB Control Number: 2900–0121.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: This form letter is used to request medical evidence from an insured's attending physician or hospital in connection with continuing disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 20, 1999, at pages 50866–50867.

Affected Public: Individuals or Households.

Estimated Annual Burden: 61 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 244.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0121'' in any correspondence.

Dated: December 23, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–2969 Filed 2–8–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 65, No. 27

Wednesday, February 9, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Invention; Availability for Licensing: ''Therapeutic Methods to Treat Tumor Cells--Mutated Anthrax Toxin Protective Antigen Proteins That Specifically Target Cells Containing High Amounts of Cell-Surface Metalloproteinases or Plasminogen Activators''

Correction

In notice document 00–1423 appearing on page 3466 in the issue of Friday, January 21, 2000, make the following correction:

In the second column, in the second full paragraph, in the first line, ''60/155,061'' should read ''60/155,961''.

[FR Doc. C0–1423 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–DS4734

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2401, 2402, 2403, 2409, 2413, 2414, 2415, 2416, 2419, 2424, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2439, 2442, 2446, 2451, 2452 and 2453

[Docket No. FR-4115-F-03]

RIN 2435-AA24

HUD Acquisition Regulation; Miscellaneous Revisions

Correction

In rule document 00–532 beginning on page 3572 in the issue of Friday, January 21, 2000, make the following correction:

2432.114 [Corrected]

On page 3573, in the second column, in designated paragraph 9., in 2432.114, in the second line, ''had'' should read ''head''.

[FR Doc. C0–532 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42210; File No. SR-MSRB-9910]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Amending Rule A-4(d), ''Action Without a Meeting''

December 9, 1999.

Correction

In notice document 99–32473, beginning on page 70099, in the issue of Wednesday, December 15, 1999, make the following correction:

On page 70099, in the third column, the date line is corrected to read as set forth above.

[FR Doc. C9–32473 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42328; File No. SR-OPRA-00-01]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

January 11, 2000.

Correction

In notice document 00–1170 beginning on page 2998, in the issue of Wednesday, January 19, 2000, make the following correction:

On page 2998, in the third column, the date line is corrected to read as set forth above.

[FR Doc. C0–1170 Filed 2-8-00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33-7789; 34-42327; 35-27123; 39-2380; IC-24235]

RIN 3235-AG96

Adoption of Updated EDGAR Filer Manual

Correction

In rule document 00–1123, beginning on page 3123, in the issue of Thursday, January 20, 2000, make the following correction:

On page 3124, in the first column, in footnote 7, in the third line, ''omcide'' should read ''include''.

[FR Doc. C0–1123 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-133-AD; Amendment 39-11536; AD 2000-02-18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

Correction

In rule document 00–2085 beginning on page 5238 in the issue of Thursday, February 3, 2000, make the following correction:

§39.13 [Corrected]

On page 5240, in the second column, in §39.13, under *Applicability:*, in the 5th line, ''(P/N) 65–44861–(D)'' should read ''(P/N) 65–44861–( )''.

[FR Doc. C0–2085 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday
February 9, 2000

Part II

Department of Transportation

Office of the Secretary

14 CFR Parts 200, 211, 213, etc.
Rules of Practice in Proceedings; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 200, 211, 213, 216, 291, 300, 302, 303, 305, 377, 385, and 399

[Docket No. OST–97–2090]

RIN 2105–AC48

Rules of Practice in Proceedings

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is finalizing, with certain exceptions, a Notice of Proposed Rulemaking (NPRM) (62 FR 5094, Feb. 3, 1997) to revise 14 CFR part 302 in order to eliminate unnecessary verbiage and obsolete provisions and to make technical changes to make the rules current. The final rule also includes certain changes implementing the electronic filing component of the Department's Docket Management System (DMS). All reserved subparts are being removed, and the remaining subparts are being reorganized and renumbered to make their arrangement more logical and to emphasize procedures applicable to the much more commonly used written (as opposed to oral) proceedings. The rulemaking also adds procedures for slot exemptions at high-density airports. The NPRM proposed a number of changes in the time periods for filing responsive documents in licensing cases, which we are adopting. A number of commenters proposed further changes to the filing periods. Based on these comments, we have decided to re-evaluate all of the prescribed time periods in part 302 and will issue a supplemental notice of proposed rulemaking on this matter. In addition, as noted in the preamble to the NPRM, we are also amending those rules in 14 CFR Chapter II containing now incorrect references to specific sections in part 302. Finally, one provision in part 302 is being relocated to part 300, Rules of Conduct in DOT Proceedings Under This Chapter.

EFFECTIVE DATE: The rule shall become effective on March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia L. Thomas or Carol A. Woods, Office of Aviation Analysis, X–56, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Background

14 CFR part 302, Rules of Practice in Proceedings, contains the regulations that govern the conduct of all aviation economic proceedings before the Department of Transportation. These rules had not been comprehensively reviewed and updated since 1985 when the aviation economic functions of the Civil Aeronautics Board (CAB) were transferred to the Department as a result of the CAB's ''sunset.''

In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' In response to that directive, the Department undertook a review of its aviation economic regulations as contained in 14 CFR chapter II. Not unexpectedly in reviewing part 302, we identified a number of provisions and references that were obsolete, requiring technical and editorial revisions to make them current, and areas where changes were needed to bring the rules into conformance with the Department's current needs and practices and to facilitate their use by the public. Toward that end, the Department issued a Notice of Proposed Rulemaking (NPRM) (62 FR 5094, February 3, 1997) to revise part 302.

The Changes

Except as otherwise discussed below in the section summarizing and resolving issues raised in the comments received, we are adopting the changes as proposed in the NPRM. Because of the extent and number of changes being made, we are reissuing part 302 in its entirety. Unless noted, as with statutory re-codifications, no changes in the wording or organization of part 302 are intended to make a substantive change in the rules affected. The most noteworthy of the substantive revisions being adopted are as follows:

General

Part 302 is extensive, with different subparts governing different types of proceedings. In general, the changes include eliminating redundancies, obsolete provisions and wordiness; resequencing sections within subparts to place them in a more logical order to ''track'' the course of a particular type of proceeding; and reorganizing and renumbering subparts to place a greater emphasis on procedures used in written proceedings (*i.e.,* non-oral evidentiary proceedings) which are used in the majority of cases handled. Some sections are being separated or combined and titles added or revised for clarity and ease in locating specific provisions.

A number of the subparts are being reordered so that the rules of general applicability (revised Subpart A) come first, followed by rules pertaining to the Department's ''permanent'' licensing functions, *i.e.,* issuance of U.S. air carrier certificates and foreign air carrier permits (new Subpart B, current Subparts I and Q), rules pertaining to ''temporary'' licensing functions, *i.e.,* exemptions (new Subpart C, current Subpart D), rules on enforcement of those licenses and other Department regulations (new Subpart D, current Subpart B), and rules on rates, fares, and charges, *i.e.,* prices for foreign air transportation (revised Subpart E), airport fees (revised Subpart F), and mail rates and contracts (new Subpart G, current Subparts C and O).

Current Subpart J, Rules Applicable to Proceedings Involving Charter Air Carriers, is being removed. This subpart contains procedural rules for the immediate suspension of a charter air carrier's certificate. To our knowledge, this rule has never been used and is redundant with respect to other authority and procedures.

Subparts G, H, K, L, M, N, and P, which are currently ''reserved,'' are also being removed.

Subpart A—Rules of General Applicability currently sets forth the general rules that apply to all proceedings before the Department. The changes to Subpart A include the addition of a definitions section (§ 302.2) which include definitions drawn from other sections of the current rule (*e.g.,* DOT decisionmaker) as well as new definitions (*e.g.,* party, non-hearing case) or revised definitions. The final rule also includes certain changes implementing the electronic filing component of the Department's Docket Management System (DMS).

Some sections in Subpart A are being reorganized. For example, requirements for filing documents (§ 302.3) are being revised to include provisions on the prohibition and dismissal of certain documents, and the discussion on motions for leave to file otherwise unauthorized documents, presently contained in the general requirements for documents (§ 302.4), is being relocated to the section on responsive documents (§ 302.6(c)).

Provisions are being added to specify when an application may be amended when the application has not been set for hearing—e.g., prior to the issuance of an order establishing further procedures or disposing of the application (§ 302.5).

Service of documents (new § 302.7) is being revised to allow for service by

facsimile and other electronic means. We are also deleting the reference in proposed § 302.7(h) to the Department's Alaska Field Office, since that office has been closed.

A provision is being added in the section on requests for confidential treatment of information (new § 302.12) to allow limited disclosure to the parties in a proceeding upon submission of affidavits by those parties agreeing to protect the confidentiality of the documents in accordance with a Department order.

All of the paragraphs that pertain only to oral evidentiary hearings are being moved to the end of the subpart (new §§ 302.17–302.37) to alleviate confusion over the procedures that are applicable only to those types of proceedings and those applicable to non-hearing cases, which now comprise the bulk of the proceedings that the Department handles.

The section on administrative law judges (new § 302.17) is being revised to specify the powers of the judges and to include the delegation of authority to the judges to make decisions in hearing proceedings (current § 302.27(a)).

The section on the DOT decisionmaker (new § 302.18) is being revised to reorder the text to eliminate duplication and to reflect that the majority of cases are decided by using non-hearing proceedings.

The list of officially noticeable documents, included in the evidence section (§ 302.24), is being updated and reorganized so that documents filed with or compiled by the Department, including the Federal Aviation Administration, are listed first followed by documents filed with or compiled by other government agencies and then private organizations (§ 302.24(g)).

A new section specifying the actions that can be taken by administrative law judges after a hearing, including issuing initial or recommended decisions (which would be defined in the rule) or certifying the record to the DOT decisionmaker is being added (§ 302.31). A provision is being added stating that, in the case of a recommended decision, unless a petition for discretionary review, exceptions, or a notice by the DOT decisionmaker taking review was filed, the judge's decision would be forwarded to the President for review under 49 U.S.C. 41307 as the Department's final order.

Some sections are being removed from this subpart if they pertain only to specific types of cases (e.g., § 302.13, joinder of complaints or complainants, is being moved to new Subpart D concerning enforcement proceedings), or if they more logically belong in other rules (e.g., § 302.18(a–1)—motions to disqualify DOT employees in review of hearing matters—is being redesignated § 300.18 in part 300 of this chapter, which covers rules of conduct in DOT proceedings).

Subpart B—Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings replaces and revises current Subparts I and Q with respect to licensing procedures for new U.S. certificated and foreign air carriers and the conduct of international route proceedings.

The new Subpart B is being organized to indicate more clearly what evidence requirements and filing and review procedures will be followed in each type of licensing case. Thus, current § 302.1720, which applies to certificate cases in general, contains provisions on filing conforming applications or motions to modify the scope of a proceeding that are applicable to international route cases but not applicable to initial fitness cases. Provisions pertaining solely to international route cases are being combined in new § 302.212; those pertaining to initial or continuing fitness cases for U.S. carriers are being placed in new § 302.211; and those pertaining to foreign air carrier permit cases are being included in new § 302.213.

A provision is being added (new § 302.202(a)) stating that, in those cases involving the initial or continuing fitness of a U.S. air carrier, any application filed should also contain the supporting fitness information required by part 204 of this chapter.

The requirement to serve copies of pleadings on other parties is being revised for proceedings involving foreign air carrier permit applications to conduct scheduled operations to include the airport authority of any U.S. airport that the applicant initially proposes to serve (new § 302.203(b)(2)(C)). Service on such parties is already required and is being retained in U.S. air carrier certificate application proceedings (new § 302.203(b)(1)).

We are also eliminating the separate regulatory procedures and time periods for responsive pleadings for certificate restriction removal cases (current §§ 302.1730). Such cases are rare and can be handled under the same rules and timeframes as international route award cases. If different procedures or timetables are required in a specific case, the Department can establish those in a procedural order at the outset of such proceeding.

We are adding a provision to allow specifically for the filing of replies to answers in licensing cases (new § 302.204(b)). Replies are routinely filed in such cases (accompanied by a motion for leave to file), are permitted in response to answers to show-cause orders issued in such proceedings, and are of benefit to the Department in analyzing the information and allegations in any filed answer.

We are adding a provision to specify that, in U.S. air carrier certificate cases, the order establishing further procedures will be issued in 90 days after a *complete* application is filed (new §§ 302.211(b) and 302.212(e)). This clarification, which reflects the provision in current § 302.1713 (new § 302.209) that the time periods contained in the subpart would not begin to run until the application is complete, is intended to alleviate any confusion over when a DOT order taking action on an application would be issued, since many certificate applications are not complete when submitted and must be deferred pending receipt of supplementary information.

The section on the disposition of applications (new § 302.210) is being reorganized to reflect the current practices employed in the majority of application cases of using show-cause procedures or final orders, rather than instituting an oral evidentiary hearing.

A provision is being added to current § 302.1757 (new § 302.220(b)(2)) to clarify that if the DOT decisionmaker does not act within 90 days of the issuance of an initial decision by an administrative law judge, that decision becomes the final decision of the Department.

Current § 302.1760, which pertains to internal procedures of the Department, is being eliminated as unnecessary.

Subpart C—Rules Applicable to Exemption Proceedings replaces and revises current Subpart D, which sets forth procedural rules for U.S. and foreign air carriers to follow in applying for exemption authority under section 40109 of Subtitle VII of Title 49 of the United States Code (''the Statute''). It adds proceedings for slot exemptions at high-density airports under section 41714 of the Statute to its scope. It also gives guidance to U.S. and foreign air carrier applicants on the specific information they must file.

New § 302.302(b) revises the names of the offices where exemption applications are to be filed to the U.S. Air Carrier Licensing Division or Foreign Air Carrier Licensing Division, as appropriate, in the Office of International Aviation. New § 302.302(b)(4) is being revised to permit the filing of exemption requests by facsimile and electronic mail (when

available), and new § 302.302(e) (current § 302.401(e)) is being revised to reflect our present practice of omitting applicants' addresses when publishing notices of exemption applications filed. Also, the word ''undue'' is being changed to ''unreasonable'' in paragraphs (3) and (4) of new § 302.303(d) to reflect a change in this language in section 40109(g)(1)(C) of the Statute.

Subpart D—Rules Applicable to Enforcement Proceedings replaces and revises current Subpart B, which contains the specific rules governing actions or proceedings by which the Department enforces the aviation economic provisions of the Statute and the rules, orders, and other requirements the Department issues under those provisions. These rules also inform the public how to lodge complaints and detail the procedures that the Department and the parties will follow in the event the Department takes enforcement action.

A definitions section is being added to new Subpart D (new § 302.402).

In addition, various sections are being combined, separated or retitled for purposes of clarity. Thus, a separate section on informal complaints is being established (new § 302.403), and the section on formal complaints is being expanded to include current §§ 302.203 and 302.13 and separated into paragraphs pertaining to, among others things, the filing, amendment, and service of such complaints (new § 302.404).

The term ''third-party complaint'' used throughout is being replaced with ''formal complaint,'' and the ''saving clause'' from Subpart A (current § 302.40) is being moved to Subpart D as new § 302.420 and modified to include provisions of the Statute and orders and other requirements of the Department.

Subpart E—Rules Applicable to Proceedings with Respect to Rates, Fares and Charges for Foreign Air Transportation revises current Subpart E, which contains special rules for proceedings relating to rates and fares and their related rules, classifications and practices applied in foreign air transportation. These proceedings are instituted at the Department's discretion in response to a third-party complaint, or upon the Department's own initiative. Historically, most such proceedings involved complaints against tariffs by competitors.

The title of the subpart is being amended to add ''for Foreign Air Transportation'' to clarify that these rules do not apply to rates, fares and charges in interstate transportation.

Current § 302.506 is being eliminated. That section places the burden of going forward with the evidence (i.e., making at least a *prima facie* case of lawfulness) upon the carrier proposing a tariff change. Under deregulation pricing policies and procedures, fare decreases or rule liberalizations do not need any justification.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees contains the specific rules that apply to a complaint filed by one or more U.S. or foreign air carriers for a determination of the reasonableness of a fee increase or a newly established fee imposed upon the carrier by the owner or operator of an airport. This subpart also applies to requests by the owner or operator of an airport for such a determination.

Since Subpart F was adopted in February 1995, we had not proposed any changes to it in the NPRM except to make the provisions internally consistent with the rest of revised part 302, such as by changing section reference numbers (e.g., in § 302.617, the reference to § 302.28(a) is being changed to § 302.32(a)), and to include references to the subpart in the index in Appendix A.

However, we have decided to take this opportunity to revise Subpart F in order to eliminate redundancies, renumber the paragraphs to conform with the numbering system in the rest of part 302, and make editorial changes for purposes of clarity. In addition, because the procedures for determining the reasonableness of airport fees are identical regardless of whether the proceeding has been instituted by a complaint from an air carrier or by a request from an airport, those procedures, which are now contained in separate sections (current §§ 302.611 and 302.613), are being combined into new § 302.606.

Specifically, the following changes are being made:

In the third sentence of paragraph (a) of § 302.601, the words ''is considered to have'' are being added after ''An airport owner or operator'' and before ''imposed a fee on an air carrier or foreign air carrier'' to make clear that fees that have been set, regardless of whether they have been collected, are covered by the rule. A new paragraph (c) is being added to that section to state that ''Except as modified by this subpart, the provisions of subpart A of this part apply'' to conform to revisions in the other subparts.

Current § 302.603 is being renumbered as § 302.602. In paragraph (a) of that section, a reference to § 302.4 is being added after the reference to § 302.3 to reflect the changes being made in those sections. In paragraph (b) of new § 302.602 and throughout the rest of the subpart, the reference to ''an air carrier or foreign air carrier'' is being simplified to ''carrier''.

Also to conform to the rest of the part, any references to numbers of days in numerical form, e.g., 7, will now also include the word for that number, e.g., ''seven (7)''.

References to other numbered sections in the subpart are being updated to reflect the new section numbers, e.g., the reference to §§ 302.611 and 302.613 will now be § 302.606.

Current § 302.605 is being renumbered as § 302.603. In the second sentence of paragraph (a) of that section, the statement that the complaint or request shall include a copy of ''all supporting testimony and exhibits available to the carrier on which the filing party intends to rely'' is being revised to eliminate the reference to ''available to the carrier'' since such documents available to the airport should also be included. In paragraph (b), the reference to the ''Chief of the Economic and Financial Analysis Division'' is being dropped for the more generic ''Office of Aviation Analysis'' and the reference to filing several copies of diskettes containing exhibits with Department of Transportation Dockets, the administrative law judge, and the Office of Aviation Analysis is being revised to indicate that all 3 copies can be submitted to Department of Transportation Dockets instead of directly with each of the other two offices. The latter change is being made at the suggestion of the Airports Council International (see following section on comments received on the NPRM). The provisions in subparagraphs (c)(1) and (c)(2) concerning service of complaints are being combined, and the remaining subparagraphs renumbered. Similarly, the provisions in subparagraphs (d)(1) and (d)(2) concerning service of requests for determinations are being combined. In new subparagraph (d)(1), a reference is being included to new § 302.603(c)(1) to indicate the manner of service and to eliminate excess verbiage.

Current § 302.607 is being renumbered § 302.604. In paragraph (d) of that section, a reference is being included to new § 302.603(b) to indicate the format to be used for diskettes and to eliminate excess verbiage. The provisions in subparagraphs (e)(1) and (e)(2) concerning service of answers are being combined.

Current § 302.609 is being renumbered § 302.605. In paragraph (d), a reference to new paragraph

§ 302.603(b) is being included to indicate the format to be used for diskettes and to eliminate excess verbiage. In paragraph (e), a reference to certifying that the parties served with a reply have actually received it is being added to conform to the rules on service of other types of documents in these proceedings.

Current § 302.611 is being renumbered § 302.606 and combined with current § 302.613 so that the procedures for review of complaints or requests for determination are in the same section. Thus, the provisions of paragraphs (a) and (e) of current § 302.613 are being combined with current § 302.611(a) into new § 302.606(a); current §§ 302.611(b) and 302.613(b) are being combined into new § 302.606(b); current §§ 302.611(c) and 302.613(c) are being combined into new § 302.606(d); and current §§ 302.611(d) and 302.613(d) are being combined into new § 302.606(c). The heading of this section is also being retitled to reflect this change.

Current § 302.615 is being renumbered as § 302.607.

Current § 302.617 is being renumbered as § 302.608. In that section, subparagraphs (b)(1) and (b)(2) relating to service of petitions for review are being combined into new subparagraph (b)(1).

Current § 302.619 is being renumbered as § 302.609. Paragraphs (a) and (b) of that section are being combined into new paragraph (a), and paragraph (c) is being renumbered as paragraph (b).

Current § 302.621 is being renumbered as § 302.610. In paragraph (c) of that section, a reference is being added to a request for a determination to indicate that if the Secretary does not issue a final decision within 120 days after the filing of such a request, the decision of the administrative law judge will be deemed the final order of the Secretary.

Subpart G—Rules Applicable to Mail Rate Proceedings and Contracts combines, replaces and revises subparts C and O.

Current Subpart C—Rules Applicable to Mail Rate Proceedings sets forth the special rules applicable to proceedings for the establishment of mail rates by the Department in accordance with section 41901 of the Statute. These are the rates paid by the United States Postal Service to U.S. air carriers for the transportation of mail within Alaska and between the U.S. and foreign countries.

Current Subpart O—Procedure for Processing Contracts for Transportation of Mail by Air in Foreign Air Transportation sets forth procedures applicable to certain contractor arrangements for the carriage of mail between the U.S. Postal Service and certificated air carriers pursuant to 39 U.S.C. 5402(a).

Certain sections are being revised to allow the DOT decisionmaker additional flexibility in dealing with specific cases. Thus, current § 302.305(a) provides that a notice of objection to the rates proposed in a show-cause order is due within ten (10) days and, if such a notice is properly filed, written answers and any supporting documents are due within thirty (30) days. Subsequent to the issuance of the NPRM, the Department eliminated the provision for notices of objection and extended the answer period to forty-five (45) days, or within such other period as the order may specify. (See Orders 97–9–37, 97–11–20, and 98–6–16.) We are adopting these changes in new § 302.704(a). In addition, current § 302.307 is being revised to allow the decisionmaker to authorize the filing of additional pleadings or establish further procedural steps in lieu of instituting an oral hearing (new § 302.705(b)) and to allow the issues in any hearing that is instituted to be formulated by the instituting order (new § 302.706(a)).

The provisions of current § 302.306 and certain provisions of § 302.307 concerning the filing of answers are being combined into new § 302.705 covering further procedures, and current §§ 302.301, 302.302, and 302.308, and certain provisions of § 302.307 are being combined into new § 302.706 entitled ''Hearing.''

The provisions of paragraphs (a) and (b) of current § 302.1503 are being eliminated as unnecessary, and new § 302.719 refines and condenses the data required to reflect current practice.

The subject index contained in Appendix A—Index to Rules of Practice is being updated to include additional references (such as to Fitness Cases and Airport Fee cases), and to eliminate obsolete references. Also, to assist users in locating the newly renumbered sections, the revised Appendix lists for each subject both the current section number(s) and the corresponding new section number(s).

Comments and Their Resolution

Comments on the proposed changes were received from Airports Council International (''ACI''); American Airlines, Inc. (''American''); Continental Airlines, Inc. (''Continental''); Dade County (Florida) Aviation Department (''Dade''); Mr. Richard J. Fahy, Jr., an aviation attorney (''Mr. Fahy''); and United Air Lines, Inc. (''United''). The comments will be discussed and resolved in the order in which their subject matter appears in the proposed rule.

Subpart A

Section 302.3(c)(1) Number of Copies

The NPRM proposed to continue the current rule, as amended in a 1996 rulemaking (Docket OST–96–1436, 61 FR 29284, June 10, 1996), which sets forth the number of copies, ranging from three to nine, to be filed in each of 19 types of aviation proceedings.

Comments: Mr. Fahy recommends that the Department standardize the number of copies to be filed in proceedings so that the rule will not have to be consulted each time a different type of filing is made.

Resolution: After reviewing our needs in the various types of aviation proceedings, we have decided not to change the rule at this time.

Section 302.7(e)(2) Electronic service of documents

The NPRM proposed that adequate proof of service of a document would include ''a certificate of successful transmission executed by the person transmitting the document by facsimile or electronic mail, listing the facsimile number or electronic mail address to which the document was sent.''

Comments: Continental and United request a clarification of the term ''successful transmission.'' They contend that it should be sufficient to certify that the document was transmitted by the method stated and is presumed to have been received unless the sender receives notice of an unsuccessful transmission. United further recommends that, in the case of a transmission failure, a party should be allowed to employ another means of service without having to inform the Department.

Resolution: We agree with the commenters that requiring persons who are electronically serving documents to obtain signed statements or certificates acknowledging receipt is overly burdensome. Upon reconsideration, we believe that adequate proof of electronic service would consist of a certificate of successful transmission by the sender, including the facsimile number or electronic mail address, and a statement that the sender has not received any indication that the electronic transmission was unsuccessful. Moreover, if an electronic transmission should fail, parties should be allowed to choose another authorized means of service without being required to notify

the Department. Therefore, we are amending proposed § 302.7(e) by deleting paragraph (3) and adding the following language at the end of paragraph (2): ''and stating that no indication was received that any transmission had failed. In the event of an electronic transmission failure, any other authorized means of service may be substituted and the appropriate proof of service provided.''

Section 302.12(d)(1)(i) Confidentiality motions

The present rule (§ 302.39(e)(2)(i)), the text of which is unchanged in the NPRM, states that motions for confidential treatment shall include ''a description of the information sought to be withheld, sufficient for identification of the same.''

Comments: Continental suggests that the rule should require such motions to contain an index of the material requested to be held confidential, including a title, description of the document, document number, and number of pages.

Resolution: Upon review, we consider the instructions for identifying the material (''a description of the information sought to be withheld, sufficient for identification of the same'') to be vague, especially in cases where confidentiality is requested for multiple documents, or portions of documents, or for documents that appear similar. Therefore, we believe confidentiality motions should include an index of the documents covered by the motion. The rule is being amended to require ''an index listing each document by an identifying number, and including its title, description and number of pages, and, if relevant, the specific location within a document.''

Section 302.28(b) Cost of daily transcript

The NPRM retains the language in the current rule (§ 302.24(l)(2)) except for the addition of a fourth factor—the cost to the Department—to be considered by the administrative law judge in determining whether ordinary or daily transcripts are needed in a particular proceeding. The rule states that if the administrative law judge determines that an ordinary transcript is adequate, any party to the proceeding may make arrangements with the reporting firm to provide a daily transcript to the Department, for which extra service the requesting party will pay.

Comments: United believes that, with respect to daily transcripts, the Department should make certain that its contracts with reporting firms are enforced with respect to reasonable prices for both the Department and other parties, and that transcripts requested on a daily basis by non-Department parties are provided daily. Dade advocates that the Department should ensure that (1) both the ordinary and daily rates are reasonable, (2) ''cost to the Department'' is removed as a factor to be considered by the administrative law judge in deciding upon the necessity of a daily transcript, (3) daily transcripts shall be required in all proceedings involving airport fees (Subpart F), (4) the Department shares the cost equally with other parties who decide to order daily transcripts, and (5) parties are allowed to choose a different reporting firm if its rates for daily transcripts are more reasonable. ACI also recommends that the Department seek more inexpensive official reporting services for hearing cases.

Resolution: Among the criteria for determining whether an ordinary or daily transcript is required in any particular proceeding, we included ''cost to the Department'' (§ 302.28(b)(3)) because that factor is presently taken into account by the administrative law judges. Adoption of the commenters' recommendations would inevitably lead to extensive, complex contract negotiations, including lengthy negotiations about what is ''reasonable'' under certain circumstances. While we appreciate the concern about costs, and the need to reduce costs for all parties including the government, procedural rulemakings are not the proper place to resolve contract costs and availability issues on this matter. In addition, we do not believe that a specific requirement for daily transcripts in subpart F proceedings should be included in the rule and will continue to leave that decision to the discretion of the presiding administrative law judge. We also see no reason to change the rule to require the Department to share equally in the cost of daily transcripts ordered by another party if the administrative law judge has determined that ordinary transcripts are adequate. In addition, we do not agree that parties should be allowed to select a court reporter different from the one selected by the administrative law judge because multiple versions of the ''official'' transcript may result. Therefore, we will adopt the rule as proposed.

Subpart B

Section 302.202(a) Maps and illustrative data

The NPRM, like the present rule (§ 302.4(a)), requires applicants for certificate authority to provide the data called for in part 201 of this chapter.

Comments: Continental observes that adherence to part 201 filing requirements would obligate applicants to provide a map and illustrative data in all cases. These should be required only of applicants for certificate authority ''as directed by the Department.''

Resolution: The requirements that applicants must provide a map showing the proposed points of service and mileages, and an illustrative service proposal, formerly found in § 201.4(c)(4) and § 201.4(e)(1), respectively, were removed in a 1992 rulemaking (see 57 FR 38765, August 27, 1992). Therefore, no change in the proposed rule is required.

Section 302.202(d) Energy statement

Comments: United and Continental urge the Department to remove the requirement that each application must be accompanied by an energy statement in accordance with part 313 of this chapter. [The NPRM inadvertently referred to this statement as an ''Environmental Evaluation'' which is incorrect and has been changed in the Final Rule.] Section 313.4(a) of that part requires applicants to file an energy statement if the air service for which authority is sought would result in a near-term net annual increase in fuel consumption of 10 million gallons or more. The objectors state that the fuel crisis of the 1970s, which prompted the issuance of this rule, is no longer relevant, and that such a statement is costly to prepare and seldom used.

Resolution: Concerns about fuel consumption that arose in the 1970s have not disappeared. Today, when a proposal involves a substantial increase in fuel usage, we must conclude that the public benefits derived from the proposed service outweigh the disadvantages. Thus, it is not appropriate to remove the provision from the rule. Moreover, the part 313 requirements implementing the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) have been progressively qualified and narrowed until they have been minimal in the few cases in which they have been triggered. Elaborate calculations rarely have been required, and certificate applications ''where no determination of public convenience and necessity is required'' are specifically excluded from this requirement (§ 313.4(b)(5)). In addition, proposed § 302.202(d) now contains the qualifier ''Where required,'' reflecting that, in many circumstances, information on substantial changes in fuel usage may be omitted. Therefore, no change in the proposed rule will be made, except to correct the reference to ''energy statement'' in place of

''environmental evaluation'' as noted above.

Section 302.203(a)(2) Service on the FAA

A new provision would require an applicant to serve a complete copy of its certificate application on the Manager of the Federal Aviation Administration Flight Standards District Office processing any FAA authority needed to conduct the proposed operations.

Comments: United suggests that the Department clarify which carriers would be subject to this requirement since many would only require minor amendments to their FAA Operations Specifications.

Resolution: The proposed requirement—that an applicant should serve a complete copy of its certificate application on the Manager of the FAA Flight Standards District Office processing any FAA authority needed to conduct the proposed operations—was added to enhance the information-sharing process between the Office of the Secretary and the FAA regarding an applicant's proposed new services. Even minor amendments in certificate authority could require FAA action. Therefore, we believe it is appropriate, and not unduly burdensome, for the applicant's local FAA office to be served with a copy of any application seeking a change in the applicant's certificate authority. No change in the proposed rule will be made.

Section Verification (under 18 U.S.C. 1001)

Current § 302.4(b) requires that every authorized or required document filed with the Department must be signed by the party filing that document or by a duly authorized representative of that party, certifying that he or she has read the document and believes every statement contained therein to be true and not misleading. In addition, current § 302.1707 requires that the facts contained in pleadings filed under current Subpart Q (new Subpart B) be attested to in an affidavit signed by persons who are knowledgeable about the facts and who would be called as witnesses to substantiate the facts if an oral hearing became necessary. New § 302.206 would require a certification in accordance with 18 U.S.C. 1001, to be signed by a knowledgeable individual (as described in § 302.1707), that, under penalty of fine and/or imprisonment, he or she has not knowingly or willfully falsified or concealed any material fact or made any false statement, or knowingly used any document containing such a statement, in connection with the preparation, filing or prosecution of the pleading. Similar certifications are required for electronic filings in accordance with instructions at the Dockets DMS internet web site.

Comments: American recommends that the required certification be moved to Subpart A and amended to provide that the certification requirement applies to all pleadings, and that the certification is deemed to be incorporated in all pleadings signed by an attorney. Continental and United maintain that the requirement of an additional certification to be signed by an officer of the company is redundant to the certification presently required in § 302.4(b). United adds that the proposed verification is only needed in the rare event of a hearing case, and that, for non-hearing cases, the certification required in § 302.4(b) is sufficient. Mr. Fahy recommends that the proposed certification requirement be limited to applicants for initial certificate authority.

Resolution: It has been our concern that the ''subscription'' required in § 302.4(b) and the ''verification'' required in current § 302.1707 do not sufficiently bind the applicant in all cases. We have experienced a number of proceedings in which an outside attorney or other person engaged to prepare and file the application has signed a subscription attesting to the veracity of the statements and other material in the documents filed when in actuality that individual was attesting only to the fact that the information had been represented by his or her client as being accurate.

We believe that a certification of veracity is more reliable when signed by a principal of the applicant. The current subscription in § 302.4(b), which requires a certification to be signed by ''the [filing] party, or by a duly authorized officer or the attorney-at-law of record of such party, or by any other person so authorized'' is not as broad as the verification in current § 302.1707, which requires an attestation of the ''facts asserted in any pleading'' by ''persons having knowledge of them.'' In § 204.3(v) of this chapter, applicants filing information in support of a fitness determination are required to include a verification in accordance with 18 U.S.C. 1001 to be signed by the person signing the pleading, ''who shall be a principal owner, senior officer, or internal counsel of the applicant.'' In our experience, the contents of pleadings covered by the latter attestation have been found to be the most truthful and accurate. For these reasons, we disagree with American's view that the certification should be deemed to be incorporated in all pleadings signed by an attorney, but we agree with its recommendation that the certification should apply to all types of pleadings and should be relocated to subpart A. We also agree with Continental and United that two such certifications (§ 302.4(b) and § 302.206) are superfluous. We appreciate United's argument that the verification as proposed in § 302.206, which is to be signed by ''someone who will appear as a witness to substantiate the facts asserted if an oral hearing becomes necessary,'' is misleading inasmuch as hearing cases are now rare events.

Therefore, we have decided to change § 302.206 so that it merely refers readers to § 302.4(b), which is being amended to read as follows: ''*Verification*: The following certification shall be included with every pleading filed under this part: 'Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the pleading, who shall be a principal owner, senior officer, or internal counsel of the pleader*], in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.' '' We believe that restating the sanctions for violating 18 U.S.C. 1001 will serve as a visual reminder to the signer of the gravity of his or her attestation.

Section 302.212 International route cases—applicability

In the NPRM, the provisions in current §§ 302.1701(a) and 1720(c) would be combined to provide that any person may file an application for the same authority as sought in an application to obtain, renew, amend, or transfer a certificate authorizing air transportation over an international route.

Comments: United points out that, by combining language from the two current sections, the Department seems to be inviting applications from competing carriers seeking authority that is the subject of a transfer application, although the Department's policy has been not to entertain competing applications relating to certificate transfers.

Resolution: The proposed combining of the provisions of current

§§ 302.1701(a) and 1720(c) into new § 302.212(a) would not result in a change in the current policy. As United notes, the proposed rule allows the filing of applications from competing carriers for authority that is the subject of a transfer application, despite the Department's general policy of not entertaining such applications (*see* Orders 92–3–49 at 7 and 91–8–1). We agree with United and have removed certificate transfers from the provisions of § 302.212(c) which allows for the filing of conforming applications in other types of certificate cases.

Subpart C

Section 302.301 Exemptions

This section states that Subpart C contains the rules applicable to proceedings for exemptions under sections 40109 and 41714 of the Statute, including emergency exemptions.

Comments: American, United, and Continental propose that the rules for exemptions also apply to applications for frequency allocations under international agreements.

Resolution: We agree with the commenting air carriers that the rules for exemptions in new subpart C should also apply to applications for frequency allocations under international agreements. Indeed, the carriers' suggestion can usefully be applied to other proceedings in which the Department must allocate limited bilateral rights, such as third-country code-sharing, charters, or designation to exercise other limited opportunities. While we often will issue a notice or order to establish procedures in such cases, it will be helpful to identify exemption procedures in this subpart as the ''default'' process to be followed unless or until we specify otherwise. We will amend § 302.301 accordingly and revise the title of the subpart to ''Rules Applicable to Exemption and Certain Other Proceedings.''

Section 302.304(a)(2)—Service of notices of exemptions

The proposed rule (formerly § 302.403(b)), requires that persons filing an application for an exemption shall serve a notice that the application has been filed.

Comments: United argues that the exemption itself, not a notice, should be served since the answer period is short and the exemptions are usually not voluminous.

Resolution: We concede United's point that it is more expedient when interested parties in an exemption proceeding are served with the entire exemption application, rather than merely a notice. We have found that most applicants already serve complete applications voluntarily. Moreover, if such ''full service'' were the rule, it would eliminate the need for the Department to make a determination in each case whether the proceeding is likely to be contested and then ordering service of the complete application. Such a rule also would likely reduce the number of late-filed comments. After consideration, we believe that the added burden on applicants of serving complete applications (which are generally not lengthy) is not so substantive as to outweigh the benefit to interested parties in terms of more timely access to the entire application and to the Department in terms of facilitated procedures. Therefore, we will amend § 302.304(a)(2) accordingly.

Section 302.304(b)(4) Service of documents in slot exemptions

This new provision requires applicants for slot exemptions under section 41714 of the Statute to serve the manager of the affected airport, the mayor of the city that it serves, and the Governor of the State in which it is located.

Comments: American, United and Continental advocate that slot exemption applications should also be served on all U.S. carriers that publish schedules in the Official Airline Guides for the airport in question.

Resolution: We appreciate the rationale of the responding airlines in asserting that U.S. carriers providing scheduled service to an airport at which an applicant is seeking a slot exemption are ''interested parties'' and should be served copies of the exemption application. Consequently, we will amend § 302.304(b)(4) to provide for service to such carriers by applicants for slot exemptions.

Section 302.308 Replies to answers

This rule (former § 302.407) provides that an applicant may file a reply to answers to an exemption application within seven days of the last day of the answer period.

Comments: American, United, and Continental contend that, not only applicants, but any interested party, should be allowed to file a reply in exemption proceedings, as is allowed in certificate and licensing cases, so that other parties will not need to request leave to file their replies.

Resolution: We agree with the responding airlines that any interested party should be allowed to file a reply in exemption proceedings. Liberalizing the rule in this way will save parties the burden of having to file, and the Department of having to rule on, motions for leave to file unauthorized documents. Therefore, we will amend § 302.308 accordingly.

Subpart D

Section 302.403 Informal complaints

Comments: Continental argues that the information and allegations contained in an informal complaint and the identity of the complainant should be kept confidential.

Resolution: What Continental proposes reflects our existing practice with respect to maintaining the confidentiality of the contents of an informal complaint and the identity of the complainant. We plan to continue this practice in the future. However, in the course of conducting an informal investigation, we may at times have to reveal this information to the investigated party if necessary to obtain its response to the complaint. Our experience is that this existing practice is an effective use of limited resources, expedites the investigation, and increases accuracy without unduly prejudicing the rights of the parties involved.

Section 302.406 Action time on formal enforcement complaints

The rule (adapted from the existing practice under current § 302.205(a)) allows the Assistant General Counsel a ''reasonable time'' after the filing of an answer to a formal complaint to either issue a notice instituting a formal enforcement proceeding or an order dismissing the complaint.

Comments: United recommends the retention of the existing rule, which requires Department staff to process or dismiss an enforcement complaint within 60 days, which will avoid indefinite delays. United notes that no reason was given in the NPRM for the proposed change.

Resolution: We disagree with United and will adopt the rule as proposed. We have found that most third-party complaints require considerable time-consuming follow-up investigation by the Office of Aviation Enforcement and Proceedings, and this proposed change would reflect the current Department and industry practice in dealing with third-party complaints. Our experience is that the 60 days set forth in the existing rule rarely, if ever, permits enough time to conduct an investigation and satisfactorily resolve issues that may be raised. We are, however, sensitive to United's concerns about indefinite delays, and will endeavor to ensure that investigations are conducted as promptly as possible. We note that a

complainant or respondent retains the right under the rules as revised to move that the Deputy General Counsel require the Assistant General Counsel to act if he or she finds there to be an unreasonable delay in acting on a formal complaint.

Subpart E

Sections 302.501–302.507 Rates, Fares and Charges in Foreign Air Transportation

Comments: United points out that a related rulemaking proposes to eliminate the requirement that rates and charges for certain foreign air transportation be filed in tariffs (see NPRM 97–1, issued in Docket OST–97–2070 (62 FR 10758, March 10, 1997)). United asserts that elimination of the requirement to file tariffs would be problematical since the procedures for complaining against foreign rates, fares, and charges are linked to the submission of the matter in a tariff. United urges that the Department determine how the tariff changes in the rulemaking cited above will affect Subpart E and consolidate the two actions.

Resolution: Under the NPRM issued in Docket OST–97–2070, current part 302 procedures would continue in force for complaints against tariffs in those markets where we require that tariffs be filed. Since these markets are restrictive, we expect that most, if not all, complaints against carrier pricing would arise in just these markets. However, there are other remedies that U.S. carriers may take in the unlikely event that a foreign carrier or government pricing practice adversely affects their interests in the markets where tariffs are no longer filed. For example, U.S. carriers can bring the matter to the attention of the Department which can address the matter through direct contact with foreign officials, or, under the terms of the proposed rule, could require the foreign carrier to file its tariffs. Once the tariff was filed, normal complaint procedures would apply. No change in the proposed rules will be made.

Subpart F

Section 302.605 Service of documents

The proposed rule (current § 302.605(b)) requires parties filing a complaint about airport fees to submit a copy of each diskette to Department of Transportation Dockets, the Office of the Chief Administrative Law Judge (M–50), and to the Chief of the Economic and Financial Analysis Division of the Office of Aviation Analysis (X–55).

Comments: ACI notes that, due to security procedures, persons filing diskettes with M–50 and X–55 have difficulty gaining entrance to the DOT building, and recommends that the Department make other arrangements for the latter two offices to receive the diskettes.

Resolution: To facilitate service of diskette copies of complaints about airport fees, we will amend § 302.605(b) to indicate that service of all of the diskettes will be acceptable if made at Department of Transportation Dockets. Parties may also use the electronic document filing system available through the DOT Dockets DMS internet web site. In addition, because of certain organizational changes made at the Department, we will remove the reference to the Chief of the Economic and Financial Analysis Division and refer only to the Office of Aviation Analysis (X–50), and change the reference to the Office of Chief Administrative Law Judge to Office of Hearings (M–20).

General

Comments: Continental suggests that, since applicants may petition for reconsideration of final Department actions, intermediate review procedures are unnecessary; therefore, the Department should consider eliminating tentative decisions of the DOT decisionmaker and show-cause orders.

Resolution: We appreciate Continental's suggestion with respect to intermediate actions and concede that the matter is deserving of review. However, such an evaluation would be a significant undertaking and would require the issuance of a separate NPRM, since the issue would generate considerable interest. For the present, since our current procedures fulfill our obligations under the Administrative Procedures Act, we will not modify them at this time.

Changes to Filing Time Periods

The NPRM proposed to decrease a number of the time periods for filing responsive pleadings in U.S. and foreign air carrier licensing cases in an effort to expedite those proceedings. For example, in new §§ 302.204 and 302.212, we proposed to shorten the period allowed for answers to U.S. air carrier certificate applications from twenty-eight (28) to twenty-one (21) days.

A number of comments to the NPRM suggested further changes to the current and proposed filing periods in part 302. We believe that the commenters' proposals have merit to the extent that they suggest reducing filing periods for a number of items, which, in turn, will enable us to expedite proceedings even further. Some of the comments also suggest other changes, such as eliminating separate dates for filing exceptions and briefs in hearing cases. Except for the changes to the filing periods in licensing cases proposed in the NPRM, most of the time periods in part 302 have not been comprehensively reviewed in a number of years. Moreover, as we have already noted, the Department's own practices and procedures have changed dramatically in recent years with the overwhelming majority of cases being handled on the written record rather than through oral evidentiary proceedings. As a result, we have decided to re-evaluate all of the time periods in part 302 to determine whether any changes are warranted. We have decided to issue a Supplemental Notice of Proposed Rulemaking to deal with this issue, and we will consider the additional changes proposed by some of the commenters in that Supplemental Notice.

The following discussion identifies the various references to filing periods for which we did propose changes in the NPRM, summarizes and evaluates relevant comments received about them, if any, and indicates whether the changes are being adopted as proposed or with revisions.

Licensing Cases

Section 302.204 Responsive documents in certificate/permit proceedings

The NPRM proposed to shorten the answer period to U.S. air carrier certificate applications (both initial fitness and international route awards) and in foreign air carrier permit cases (current § 302.1720(d)) from twenty-eight (28) to twenty-one (21) days after the original or amended application is filed, and added a reply period of fourteen (14) days.

Comments: American proposes a further shortening of the answer period to ten (10) days. American, United, and Continental also advocate shortening the newly proposed period for replies from fourteen (14) to seven (7) days. Mr. Fahy opposes the additional shortening urged by the air carriers, stating that additional time is often needed, particularly by small firms, to prepare the responses.

Resolution: After considering the matter further, we have decided to adopt the proposed twenty-one (21)-day period for answers and fourteen (14)-day period for replies. We will consider the suggested additional changes in the supplemental rulemaking.

Section 302.208 Petitions for oral presentation or judge's decision

The current rule (§ 302.1712(c)) allows for petitions requesting an oral evidentiary proceeding, oral argument or the issuance of an administrative law judge decision to be filed in certificate cases fifty-two (52) days after the application is filed; in restriction removal cases thirty-five (35) days after the application is filed; and in foreign permit cases fourteen (14) days after the due date for answers. The proposed rule (§ 302.208) replaces and is almost identical to the current rule, except for the timing of the filing of the petitions. Proposed § 302.208(b) provides that petitions shall be filed no later than the due date for answers in proceedings governed by proposed § 302.211, § 302.212, and § 302.213, which is proposed to be twenty-one (21) days.

In addition, proposed § 302.208(a) provides that such petitions shall be supported by a detailed explanation of: ''(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs; (2) which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision; (3) an estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present; and (4) if cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.''

Comments: Mr. Fahy argues that the proposed rule would require petitions asking for oral hearing to be filed at the same time answers are due to certificate/permit applications. Included in the petition must be witness names, issues to be examined, subject matter of cross-examination—information that may not yet be known at the time of the objection. Mr. Fahy recommends replacing these data requirements with ''a good cause showing'' of why a hearing is necessary. If the Department applies the proposed conditions in certificate cases, he contends, it may apply the same standards in other cases, e.g., foreign code-share arrangements.

Resolution: After evaluating the comments, we have decided to adopt the proposal that petitions be due at the same time as answers to applications, which we have now set at twenty-one (21) days. However, we agree with Mr. Fahy that information on potential witnesses and time required for oral presentations would unlikely be known at the time the petition is filed. Therefore, we are amending the rule to require the petition to contain items (1) and (2) as part of the petition itself, with items (3) and (4) to be filed at a later time if the Department decides to have or is leaning toward having an oral hearing.

Section 302.212 Procedures in certificate cases involving international routes

The proposed rule shortens the period in current § 302.1720(c) for filing conforming applications [for the same authority as sought in an application to obtain, renew, or amend a certificate] and requests to modify the issues to be decided and to consolidate applications, from twenty-eight (28) to twenty-one (21) days after filing of the original application. Answers would continue to be due within fourteen (14) days after the filing of the conforming application or motion.

Comments: American advocates shortening the period for filing conforming applications even further, to ten (10) days, and both American and Continental suggest adopting a seven (7)-day answer period. Mr. Fahy opposes any further shortening of these periods.

Resolution: We have decided that the filing time for conforming applications and motions to modify scope should be set at twenty-one (21) days as proposed so that the dates for filing objections, requests for hearing, conforming applications, and motions to modify scope would all be due on the same date. In this way, the parties and the Department would be presented with one set of filings. Generally, our experience has been that, if one air carrier objects to the application for an international route submitted by another air carrier, it is likely that the objector expects to apply for the authority being requested; therefore, the objector would save the effort of a separate filing by accompanying its objection with its request for the authority. We will, however, consider the additional changes proposed by the commenters in the supplemental rulemaking.

Mail Rate Cases

Section 302.704 Objections and answers to order to show cause

The proposed rule, which is identical to current § 302.305, provides that a notice of objection to the rates proposed in an order to show cause is due within ten (10) days of issuance or the order or within such other period as the order may specify. If such a notice is properly filed, written answers and any supporting documents shall be filed within thirty (30) days after the service of the order to show cause or within such other period as the order may specify.

Comments: American argues that separate dates for objections and answers are unnecessary and recommends that the rule require that fully supported objections be filed within ten (10) days of service of the order to show cause.

Resolution: Subsequent to the issuance of the NPRM, the Department, in Order 97–9–37, served October 3, 1997, proposed to eliminate the provision for notices of objection and to extend the answer period to forty-five (45) days after the service date of the show cause order for Alaska bush and mainline mail rates. Order 97–11–20, served November 19, 1997, made final this proposed change to the procedural schedule for Alaska mail rate orders. In addition, in Order 98–6–16, served June 23, 1998, the Department, among other things, proposed identical procedural changes for international mail rates. No objections to this proposed change were received. After reviewing the matter, we are eliminating the provision for separate filing dates and amending the rule to require only answers to be filed within forty-five (45) days of the date of service of the order to show cause, unless otherwise stated in that order.

Correction of References to Sections in Part 302 Throughout Chapter II

The following table contains the changes that are being made throughout Chapter II to correct what are now obsolete references to sections in part 302.

Location of rule to be changed	Current reference to part 302	Revised reference to part 302
§ 200.2	§ 302.2	§ 302.1(c)
§ 211.12	Subpart Q	Subpart B
§ 213.2	Rule 37	Rule 14
§ 213.5(c)	Rule 37	Rule 14
§ 216.4(a)	§§ 302.3(b), 302.4(b), (c)	§§ 302.3(b), 302.4(a), (b)

Location of rule to be changed	Current reference to part 302	Revised reference to part 302
§ 216.4(b)	§ 302.8	§ 302.7
§ 291.10	Subpart Q	Subpart B
§ 300.2(b)(2)	§ 302.22a	§§ 302.2, 302.18
§ 300.2(b)(4)	§ 302.24	§§ 302.17–302.38
§ 300.2(c)(10)	§ 302.18	§ 302.11
§ 300.2(d)	§§ 302.14, 302.18	§ 302.11(e)
§ 300.20(c)	Subpart B	Subpart D
§ 303.4(b)	§ 302.19	§ 302.25
§ 303.45(c)	§ 302.15	§ 302.20
§ 305.7(b)	§§ 302.8, 302.21	§§ 302.7, 302.27(c)
§ 305.10	§§ 302.19(g), 302.39	§§ 302.25(g), 302.12
§ 305.11	Subpart B	Subpart D
§ 305.12	§ 302.202	§§ 302.4(b)
§ 377.10(c)(4)	§ 302.909	Removed
§ 385.10(b)	Subpart B	Subpart D
§ 385.11(b)	Subpart B	Subpart D
§ 385.11(d)	§ 302.215	§ 302.417
§ 385.19(i)	§ 302.39	§ 302.12
§ 385.31(c)	§§ 302.3(a), (b), (c), 302.4	§§ 302.3, 302.4
§ 399.18	§ 302.909	Removed

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of the amendment and has determined that they are not ''significant'' within the meaning of Executive Order 12866. The amendment will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. This rule does not impose any unfunded mandates.

DOT Regulatory Policies and Procedures

The amendment is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it does not involve important Departmental policies; rather, it is being made solely for the purposes of eliminating or correcting obsolete requirements and reorganizing the presentation of the regulations used by the Department to administer its aviation economic regulatory functions. The Department has also determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the Department has evaluated the effects of this action on small entities, i.e., those air carriers operating small aircraft (as defined in 14 CFR 298.2) in strictly domestic service. The changes to the Department's Rules of Practice in Proceedings merely eliminate unnecessary and obsolete verbiage, reorganize the provisions and bring them up to date with our current practice, and place no new requirements on applicants. Therefore, the Department certifies that the amendment will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism)

The amendment has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department has determined that the amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This amendment will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

National Environmental Policy Act

The Department has also analyzed the amendment for the purposes of the National Environmental Policy Act. The amendment will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with the amendment.

List of Subjects

14 CFR Part 200

Air transportation.

14 CFR Part 211

Administrative practice and procedure, Air carriers, Pacific Islands Trust Territory, Reporting and Recordkeeping requirements.

14 CFR Part 213

Air carriers, Reporting and Recordkeeping requirements.

14 CFR Part 216

Air carriers.

14 CFR Part 291

Administrative practice and procedure, Air carriers, Freight, Reporting and Recordkeeping requirements.

14 CFR Part 300

Administrative practice and procedure, Conflict of interests.

14 CFR Part 302

Administrative practice and procedure, Air carriers, Foreign air carriers.

14 CFR Part 303

Administrative practice and procedure, Air carriers, Antitrust, Reporting and Recordkeeping requirements.

14 CFR Part 305

Administrative practice and procedure, Air carriers, Investigations.

14 CFR Part 377

Administrative practice and procedure, Air carriers.

14 CFR Part 385

Administrative practice and procedure, Organization and functions (Government Agencies).

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

Final Rule

For the reasons set out in the preamble, Title 14, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—[AMENDED]

1. The authority citation for part 200 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 419, 461.

§ 200.2 [Amended]

2. In § 200.2, remove the reference ''§ 302.2'' and add, in its place, the reference ''§ 302.1(c)''.

PART 211—[AMENDED]

3. The authority citation for part 211 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

§ 211.12 [Amended]

4. In § 211.12, remove the reference ''Subpart Q'' and add, in its place, the reference ''Subpart B''.

PART 213—[AMENDED]

5. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

§ 213.2 [Amended]

6. In § 213.2, remove the reference ''Rule 37'' and add, in its place, the reference ''Rule14 ''.

§ 213.5 [Amended]

7. In § 213.5(c), remove the reference ''Rule 37'' and add, in its place, the reference ''Rule 14''.

PART 216—[AMENDED]

8. The authority citation for part 216 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 413, 417.

§ 216.4 [Amended]

9. In § 216.4(a), remove the references ''302.4(b) and (c)'' and add, in their place, the references ''302.4(a) and (b)''.

10. In § 216.4(b), remove the reference ''§ 302.8'' and add, in its place, the reference ''§ 302.7''.

PART 291—[AMENDED]

11. The authority citation for part 291 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 415, 417.

§ 291.10 [Amended]

12. In § 291.10, remove the reference ''subpart Q'' and add, in its place, the reference ''subpart B''.

PART 300—[AMENDED]

13. The authority citation for part 300 is revised to read as follows:

Authority: 49 U.S.C. subtitle I and chapters 401, 411, 413, 415, 417, 419, 421, 449, 461, 463, and 465.

§ 300.2 [Amended]

14. In § 300.2(b)(2), remove the reference ''302.22a'' and add, in its place, the references ''302.2 and 302.18''.

15. In § 300.2(b)(4)(i), remove the reference ''§ 302.24'' and add, in its place, the references ''§§ 302.17–302.38''.

16. In § 300.2(c)(10), remove the reference ''§ 302.18'' both times it occurs, and add, in its place, the reference ''§ 302.11'' both times it occurs.

17. In § 300.2(d), remove the references ''Rules 14 and 18, §§ 302.14 and 302.18'' and add, in their place, the references ''Rule 11, § 302.11''.

§ 302.18 [Redesignated in part and revised]

18. Paragraph (a–1) of § 302.18 is redesignated as § 300.18 and revised to read as follows:

§ 300.18 Motions to disqualify DOT employee in review of hearing matters.

In cases to be determined on an evidentiary record, a party desiring that a concerned DOT employee disqualify himself or herself from participating in a DOT decision shall file a motion supported by an affidavit setting forth the grounds for such disqualification in the form and within the periods prescribed in § 302.11 of this chapter. Where review of the administrative law judge's decision can be obtained only upon the filing of a petition for discretionary review, such motions must be filed on or before the date answers are due pursuant to § 302.32. In cases where exceptions are filed to recommended, initial, or tentative decisions or where the DOT decisionmaker orders review of an initial or recommended decision on his or her own initiative, such motions must be filed on or before the date briefs are due pursuant to § 302.35 or § 302.218, as applicable. Failure to file a timely motion will be deemed a waiver of disqualification. Applications for leave to file an untimely motion seeking disqualification of a concerned DOT employee must be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

§ 300.20 [Amended]

19. In § 300.20(c), remove the reference ''subpart B'', and add, in its place, the reference ''subpart D''.

PART 303—[AMENDED]

20. The authority citation for part 303 is revised to read as follows:

Authority: 49 U.S.C. chapters 401, 413, 417.

§ 303.04 [Amended]

21. In § 303.04(b), remove the reference ''302.19'' and add, in its place, the reference ''302.25''.

§ 303.45 [Amended]

22. In § 303.45(c), remove the reference ''§ 302.15'' and add, in its place, the reference ''302.20''.

PART 305—[AMENDED]

23. The authority citation for part 305 is revised to read as follows:

Authority: 49 U.S.C. chapters 401, 417, 461; 5 U.S.C. 555, 556.

§ 305.7 [Amended]

24. In § 305.7(b), remove the references ''§ 302.21'' both times it occurs, and ''§ 302.8'' both times it occurs, and add, in their place, the references ''§ 302.7'' and ''§ 302.27(c)'', respectively.

§ 305.10 [Amended]

25. In § 305.10, remove the references ''§§ 302.19(g) and 302.39'' and add, in their place, the references ''§§ 302.25(g) and 302.12''.

§ 305.11 [Amended]

26. In § 305.11, remove the reference ''subpart B'' and add, in its place, the reference ''subpart D''.

§ 305.12 [Amended]

27. In § 305.12, remove the reference ''Rule 202'' and add, in its place, the reference ''Rule 4(b)''.

PART 377—[AMENDED]

28. The authority citation for part 377 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 461; 5 U.S.C. 558, 559.

§ 377.10 [Amended]

29. In § 377.10(c)(4), remove the references ''§§ 302.909 and 399.18'' and add, in their place, the reference ''§ 399.18''.

PART 385—[AMENDED]

30. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. subtitle I, chapters 401, 411, 413, 415, 417.

§§ 385.10, 385.11 [Amended]

31. In §§ 385.10(b) and 385.11(b), remove the reference ''Subpart B'' and add, in its place, the reference ''Subpart D''.

§ 385.19 [Amended]

32. In § 385.19(i), remove the reference ''§ 302.39'' and add, in its place, the reference ''§ 302.12''.

§ 385.31 [Amended]

33. In paragraphs (a) and (e) of § 385.31, remove the words ''ten (10)'' and add, in their place, the words ''seven (7)''; in § 302.31(c), remove the references ''(a), (b), and (c),''.

PART 399—[AMENDED]

34. The authority citation for part 399 is revised to read as follows:

Authority: 49 U.S.C. 40101 *et seq.*

§ 399.18 [Amended]

35. In § 399.18, remove the words ''§ 302.909 of this chapter (Procedural Regulations) and''.

36. Part 302 is revised to read as follows:

PART 302—RULES OF PRACTICE IN PROCEEDINGS

Sec.
302.1 Applicability and description of part.
302.2 Definitions.

Subpart A—Rules of General Applicability

302.3 Filing of documents.
302.4 General requirements as to documents.
302.5 Amendment of documents.
302.6 Responsive documents.
302.7 Service of documents.
302.8 Computation of time.
302.9 Continuances and extensions of time.
302.10 Parties.
302.11 Motions.
302.12 Objections to public disclosure of information.
302.13 Consolidation of proceedings.
302.14 Petitions for reconsideration.

Non-Hearing Proceedings

302.15 Non-hearing procedures.

Rulemaking Proceedings

302.16 Petitions for rulemaking.

Oral Evidentiary Hearing Proceedings

302.17 Administrative law judges.
302.18 DOT decisionmaker.
302.19 Participation by persons not parties.
302.20 Formal intervention.
302.21 Appearances.
302.22 Prehearing conference.
302.23 Hearing.
302.24 Evidence.
302.25 Subpoenas.
302.26 Depositions.
302.27 Rights of witnesses; attendance fees and mileage.
302.28 Transcripts of hearings.
302.29 Argument before the administrative law judge.
302.30 Briefs to the administrative law judge.
302.31 Initial and recommended decisions; certification of the record.
302.32 Petitions for discretionary review of initial decisions or recommended decisions; review proceedings.
302.33 Tentative decision of the DOT decisionmaker.
302.34 Exceptions to tentative decisions of the DOT decisionmaker.
302.35 Briefs to the DOT decisionmaker.
302.36 Oral argument before the DOT decisionmaker.
302.37 Waiver of procedural steps after hearing.
302.38 Final decision of the DOT decisionmaker.

Subpart B—Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings

302.201 Applicability.
302.202 Contents of applications.
302.203 Service of documents.
302.204 Responsive documents.
302.205 Economic data and other facts.
302.206 Verification.

Disposition of Applications

302.207 Cases to be decided on written submissions.
302.208 Petitions for oral presentation or judge's decision.
302.209 Procedures for deferral of applications.
302.210 Disposition of applications; orders establishing further procedures.
302.211 Procedures in certificate cases involving initial or continuing fitness.
302.212 Procedures in certificate cases involving international routes.
302.213 Procedures in foreign air carrier permit cases.
302.214 Oral evidentiary hearing.
302.215 Briefs to the administrative law judge.
302.216 Administrative law judge's initial or recommended decision.
302.217 Exceptions to administrative law judge's initial or recommended decision.
302.218 Briefs to the DOT decisionmaker.
302.219 Oral argument before the DOT decisionmaker.
302.220 Final decision of the Department.

Subpart C—Rules Applicable to Exemption and Certain Other Proceedings

302.301 Applicability.
302.302 Filing of applications.
302.303 Contents of applications.
302.304 Service of documents.
302.305 Posting of applications.
302.306 Dismissal or rejection of incomplete applications.
302.307 Answers to applications.
302.308 Replies to answers.
302.309 Requests for hearing.
302.310 Exemptions on the Department's initiative.
302.311 Emergency exemptions.

Subpart D—Rules Applicable to Enforcement Proceedings

302.401 Applicability.
302.402 Definitions.
302.403 Informal complaints.
302.404 Formal complaints.
302.405 Responsive documents.
302.406 Procedure for responding to formal complaints.
302.407 Commencement of enforcement proceeding.
302.408 Answers and replies.
302.409 Default.
302.410 Consolidation of proceedings.
302.411 Motions to dismiss and for summary judgment.
302.412 Admissions as to facts and documents.
302.413 Evidence of previous violations.
302.414 Prehearing conference.
302.415 Hearing.
302.416 Appearances by persons not parties.
302.417 Settlement of proceedings.
302.418 Motions for immediate suspension of operating authority pendente lite.
302.419 Modification or dissolution of enforcement actions.
302.420 Saving clause.

Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges for Foreign Air Transportation

302.501 Applicability.
302.502 Institution of proceedings.
302.503 Contents and service of petition or complaint.
302.504 Dismissal of petition or complaint.
302.505 Order of investigation.
302.506 Complaints requesting suspension of tariffs; answers to such complaints.
302.507 Computing time for filing complaints.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees

302.601 Applicability.
302.602 Complaint by a carrier; request for determination by an airport owner or operator.
302.603 Contents of complaint or request for determination.

302.604 Answers to a complaint or request for determination.
302.605 Replies.
302.606 Review of complaints or requests for determination.
302.607 Decision by administrative law judge.
302.608 Petitions for discretionary review.
302.609 Completion of proceedings.
302.610 Final order.

Subpart G—Rules Applicable to Mail Rate Proceedings and Mail Contracts

302.701 Applicability.

Final Mail Rate Proceedings

302.702 Institution of proceedings.
302.703 Order to show cause or instituting a hearing.
302.704 Objections and answers to order to show cause.
302.705 Further procedures.
302.706 Hearing.

Provision for Temporary Rate

302.707 Procedure for fixing temporary mail rates.

Informal Mail Rate Conference Procedure

302.708 Invocation of procedure.
302.709 Scope of conferences.
302.710 Participants in conferences.
302.711 Conditions upon participation.
302.712 Information to be requested from an air carrier.
302.713 DOT analysis of data for submission of answers thereto.
302.714 Availability of data to the U.S. Postal Service.
302.715 Post-conference procedure.
302.716 Effect of conference agreements.
302.717 Waiver of participant conditions.

Processing Contracts for the Carriage of Mail in Foreign Air Transportation

302.718 Filing.
302.719 Explanation and data supporting the contract.
302.720 Service.
302.721 Complaints.
302.722 Answers to complaints.
302.723 Further procedures.
302.724 Petitions for reconsideration.

Appendix A to Part 302—Index to Rules of Practice

Authority: 39 U.S.C. 5402; 42 U.S.C., 4321, 49 U.S.C. Subtitle I and Chapters 401, 411, 413, 415, 417, 419, 461, 463, 471.

§ 302.1 Applicability and description of part.

(a) *Applicability.* This part governs the conduct of all aviation economic proceedings before the Department whether instituted by order of the Department or by the filing with the Department of an application, complaint, petition, motion, or other authorized or required document. This part also contains delegations to administrative law judges and to the DOT decisionmaker of the Department's function to render the agency decision in certain cases and the procedures for review of those decisions. This part applies unless otherwise specified by order of the Department.

(b) *Description.* Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to subpart A and to the rules in the subpart relating to the particular type of proceeding, if any. In addition, reference should be made to Subtitle VII of Title 49 of the United States Code (Transportation) (''the Statute''), and to the substantive rules, regulations and orders of the Department relating to the proceeding. Wherever there is any conflict between one of the general rules in subpart A and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.

(c) *Reference to part and method of citing rules.* This part may be referred to as the ''Rules of Practice''. Each section, and any paragraph or subparagraph thereof, may be referred to as a ''Rule''. The number of each rule need include only the numbers and letters at the right of the decimal point. For example, ''302.7 *Service of documents*'', may be referred to as ''Rule 7''.

§ 302.2 Definitions.

Administrative law judge as used in this part means an administrative law judge appointed pursuant to 5 U.S.C. 3105.

DOT Decisionmaker as used in this part is the official authorized to issue final decisions of the Department as set forth in § 302.18. This includes the Assistant Secretary for Aviation and International Affairs, the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, the Deputy Secretary, and the Secretary.

Hearing case or *oral hearing case* means any proceeding that the Department has determined will be conducted on the record using oral evidentiary procedures subject to 5 U.S.C. 556 and 557.

Non-hearing case means any proceeding not involving oral evidentiary procedures.

Party as used in this part includes the person initiating a proceeding, such as an applicant, complainant, or petitioner; any person filing an answer to such filing; and any other persons as set forth in § 302.10.

Statute when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

Subpart A—Rules of General Applicability

§ 302.3 Filing of documents.

(a) *Filing address, date of filing, hours.* (1) Documents required by any section of this part to be filed with the Department must be filed with Department of Transportation Dockets at the Department's offices in Washington, DC. Documents may be filed either on paper or by electronic means using the process set at the DOT Dockets Management System (DMS) internet website.

(2) Such documents will be deemed to be filed on the date on which they are actually received by the Department. Documents must be filed between the hours of 9:00 a.m. and 5:00 p.m., eastern standard or daylight savings time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays. Electronic filings may be made at any time under the process set by the Department. Electronic filings that are received after the specified Dockets Facility hours shall be deemed to be constructively received on the next Dockets Facility business day.

(b) *Formal specifications of documents.* (1) Documents filed under this part must be on white paper not larger than 8½ by 11 inches, including any tables, charts and other documents that may be included. Ink must be black to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations which may be single-spaced) using type not smaller than 12 point. The left margin must be at least 1½ inches; all other margins must be at least 1 inch. The title page and first page must bear a clear date and all subsequent pages must bear a page number and abbreviated heading. In order to facilitate automated processing in document sheet feeders, documents of more than one page should be held together with removable metal clips or similar retainers. Original documents may not be bound in any form or include tabs, except in cases assigned by order to an Administrative Law Judge for hearing, in which case the filing requirements will be set by order. Section 302.35 contains additional requirements as to the contents and style of briefs.

(2) Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes

or other indications must be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) *Number of copies.* Unless otherwise specified, an executed original, along with the number of true copies set forth below for each type of proceeding, must be filed with Department of Transportation Dockets. The copies filed need not be signed, but the name of the person signing the original document, as distinguished from the firm or organization he or she represents, must also be typed or printed on all copies below the space provided for signature. Electronic filers need only submit one copy of the document, which must conform to the submission requirements given in the electronic filing instructions at the specified DOT DMS internet website and in this part, as applicable.

	Number of copies
Airport Fees	9
Agreements:	
International Air Transport Association (IATA)	6
Other (under 49 U.S.C. 41309)	9
Complaints:	
Enforcement	5
Mail Contracts	4
Rates, Fares and Charges in Foreign Air Transportation	6
Unfair Practices in Foreign Air Transportation	7
Employee Protection Program (14 CFR 314)	7
Exemptions:	
Computer Reservations Systems (14 CFR 255)	8
Slot Exemptions (under 49 U.S.C. 41714)	7
Tariffs (under 49 U.S.C. Chapter 415 or 14 CFR 221)	5
Other (under 49 U.S.C. 40109)	7
Foreign Air Carrier Permits/Exemptions	7
International Authority for U.S. Air Carriers (certificates, exemptions, allocation of limited frequencies, designations, or charters)	7
Mail Rate Proceedings	4
Name Change/Trade Name Registrations	4
Suspension of Service (14 CFR 323)	4
Tariff Justifications to exceed Standard International Fare Level	6
U.S. Air Carrier Certificates (involving Initial or Continuing Fitness)	6
Other matters	3

(d) *Prohibition and dismissal of certain documents.* (1) No document that is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters will be accepted for filing by the Department, and will not be physically incorporated in the docket of the proceeding, unless:

(i) Such document and its filing by the person submitting it have been expressly authorized or required in the Statute, any other law, this part, other Department regulations, or any order, notice or other document issued by the DOT decisionmaker, the Chief Administrative Law Judge or an administrative law judge assigned to the proceeding, and

(ii) Such document complies with each of the requirements of this paragraph and 302.7, and for those electronically filed, the requirements specified at the DOT DMS internet website, and is submitted as a formal application, complaint, petition, motion, answer, pleading, or similar paper rather than as a letter, telegram, or other informal written communication; *Provided, however,* That for good cause shown, pleadings of any public body or civic organization or comments concerning tariff agreements that have not been docketed, may be submitted in the form of a letter.

(2) If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of the Department as to the contents thereof, or is otherwise insufficient, the Department, on its own initiative, or on motion of any party, may reject, strike or dismiss such document, or require its amendment.

(e) *Official docket copy.* With respect to all documents filed under this part, the electronic record produced by the Department shall thereafter be the official docket copy of the document and any subsequent copies generated by the Department's electronic records system will be usable for admission as record copies in any proceeding before the Department.

(f) *Retention of documents by the Department.* All documents filed with or presented to the Department Dockets will be retained in the permanent docket of the Department of Transportation.

§ 302.4 General requirements as to documents.

(a) *Contents.* (1) In case there is no rule, regulation, or order of the Department that prescribes the contents of a formal application, petition, complaint, motion or other authorized or required document, such document shall contain a proper identification of the parties concerned, a concise but complete statement of the facts relied upon and the relief sought, and, where required, such document shall be accompanied by an Energy Statement, in conformity with the provisions of part 313 of this chapter.

(2)(i) Each document must include with or provide on its first page:

(A) The docket title and subject;

(B) The relevant operating administration before which the application or request is filed;

(C) The identity of the filer and its filing agent, if applicable;

(D) The name and mailing address of the designated agent for service of any documents filed in the proceeding, along with the telephone and facsimile numbers and, if available, electronic mail address of that person; and

(E) The title of the specific action being requested.

(ii) Department of Transportation Dockets has an Expedited Processing Sheet that filers can use to assist in preparing this index for submission of paper documents, and an electronic registration for electronic filing at the DOT DMS internet website.

(3) All documents filed under this part consisting of twenty (20) or more pages must contain a subject index of the matter in such document, with page references.

(b) *Verification:* The following certification shall be included with every pleading filed under this part: ''Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the pleading, who shall be a principal owner, senior officer, or internal counsel of the pleader*], in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.'' In addition, electronic subscription requirements shall be those specified at the DOT DMS internet website.

§ 302.5 Amendment of documents.

(a) An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to the issuance of an order establishing further procedures, disposing of the application, or setting the case for hearing. Thereafter, applications may be amended only if leave is granted pursuant to the procedures set forth in § 302.11.

(b) Except as otherwise provided, if properly amended, a document and any statutory deadline shall be made effective as of the date of original filing but the time prescribed for the filing of an answer or any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

§ 302.6 Responsive documents.

(a) *Answers.* Answers to applications, complaints, petitions, motions or other documents or orders instituting proceedings may be filed by any person. In hearing cases, answers may be filed by any party to such proceedings or any person who has a petition for intervention pending. Except as otherwise provided, answers are not required.

(b) *Further responsive documents.* Except as otherwise provided, a reply to an answer, reply to a reply, or any further responsive document is not authorized.

(c) *Motions for leave to file otherwise unauthorized documents.* (1) The Department will accept otherwise unauthorized documents for filing only if leave has been obtained from the DOT decisionmaker or, if applicable, the administrative law judge, on written motion and for good cause shown.

(2) Such motions shall contain a concise statement of the matters relied upon as good cause and shall be attached to the pleading or other document for which leave to file is sought, or the written motion may be incorporated into the otherwise unauthorized document for which admission is sought. In such event, the document filed shall be titled to describe both the motion and the underlying documents.

(3) Where unauthorized responsive documents are not permitted, all new matter contained in an answer filed pursuant to paragraph (a) of this section shall be deemed controverted.

(d) *Time for filing.* Except as otherwise provided, an answer, motion, or other further responsive document shall be filed within seven (7) days after service of any document, order, or ruling to which the proposed filing is responsive and must be served on all parties to the proceeding.

§ 302.7 Service of documents.

(a) *Who makes service.* (1) *The Department.* Formal complaints, notices, orders, and similar documents issued by the Department will be served by the Department upon all parties to the proceeding.

(2) *The parties.* Answers, petitions, motions, briefs, exceptions, notices, protests, or memoranda, or any other documents filed by any party or other person with the Department shall be served by such party or other person upon all parties to the proceeding in which it is filed; including, where applicable, all persons who have petitioned for intervention in, or consolidation of applications with, such proceeding. Proof of service shall accompany all documents when they are filed. The Department may require additional service of any document(s).

(b) *How service may be made.* Service may be made by first class mail, express mail, priority mail, registered or certified mail, facsimile transmission, personal delivery, or by electronic mail. The Department may prescribe other means of service by order or notice. The means of service selected must be done in such manner so as to have the same attributes as section 46103 of the Statute, which provides for service of notices and processes in a proceeding by personal service or registered or certified mail.

(c) *Who may be served.* Service upon a party or person may be made upon an individual, or upon a member of a partnership or firm to be served, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by an air carrier or foreign air carrier under section 46103 of the Statute, but it shall be served upon a person designated by a party to receive service of documents in a particular proceeding in accordance with § 302.4(a)(2)(iv) once a proceeding has been commenced.

(d) *Where service may be made.* Service shall be made at the principal place of business of the party to be served, or at his or her usual residence if he or she is an individual, or at the office of the party's attorney of record, or at the office or usual residence of the agent designated by an air carrier or foreign air carrier under section 46103 of the Statute, or at the post office or electronic address or facsimile number stated for a person designated to receive service pursuant to § 302.4(a)(2)(iv).

(e) *Proof of service.* Proof of service of any document shall consist of one of the following:

(1) A certificate of mailing executed by the person mailing the document.

(2) A certificate of successful transmission executed by the person transmitting the document by facsimile or electronic mail, listing the facsimile numbers or electronic mail address to which the document was sent, and stating that no indication was received that any transmission had failed. In the event of an electronic transmission failure, any other authorized means of service may be substituted and the appropriate proof of service provided.

(f) *Date of service.* The date of service by post office or electronic mail is the date of mailing. Whenever proof of service by personal delivery or facsimile transmission is made, the date of such delivery or facsimile transmission shall be the date of service.

(g) *Freely Associated State Proceedings.* In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands, or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated authorities of the government(s) involved. This requirement shall apply to all

proceedings where service is otherwise required, and shall be in addition to any other service required by this chapter.

§ 302.8 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice, order or regulation or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for the Department, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or fewer, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation, unless otherwise specified by the DOT decisionmaker or the administrative law judge assigned to the proceeding, as the case may be.

§ 302.9 Continuances and extensions of time.

(a) Whenever a party has the right or obligation to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the DOT decisionmaker or the administrative law judge assigned to the proceeding, as appropriate, may:

(1) Before the expiration of the prescribed period, with or without notice, extend such period, or

(2) Upon motion, permit the act to be done after the expiration of the specified period, where good cause for the failure to act on time is clearly shown.

(b) Except where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time, as described in paragraph (a) of this section, shall be directed to the DOT decisionmaker. Requests for continuances and extensions of time may be directed to the Chief Administrative Law Judge in the absence of the administrative law judge assigned to the proceeding.

§ 302.10 Parties.

(a) In addition to the persons set forth in § 302.2, in hearing cases, parties shall include Department staff designated to participate in the proceeding and any persons authorized to intervene or granted permission to participate in accordance with §§ 302.19 and 302.20. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, these governments or their designated authorities shall be a party.

(b) Upon motion and for good cause shown, the Department may order a substitution of parties, except that in case of the death of a party, substitution may be ordered without the filing of a motion.

(c) An association composed entirely or in part of air carriers may participate in any proceedings of the Department to which the Department's procedural regulations apply if the association represents members that are identified in any documents filed with the Department, and that have specifically authorized the positions taken by the association in that proceeding. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Department. Upon motion of any interested person or upon its own initiative, the Department may issue an order requiring an association to withdraw from a case on the grounds of significant divergence of interest or position within the association.

§ 302.11 Motions.

(a) *Generally.* An application to the DOT decisionmaker or an administrative law judge for an order or ruling not otherwise specifically provided for in this part shall be by motion. If an administrative law judge is assigned to a proceeding and before the issuance of a recommended or initial decision or the certification of the record to the DOT decisionmaker, all motions shall be addressed to the administrative law judge. At all other times, motions shall be addressed to the DOT decisionmaker. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein. This paragraph should not be construed as authorizing motions in the nature of petitions for reconsideration.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing in conformity with §§ 302.3 and 302.4, shall state their grounds and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers to them, and rulings on them, may be made orally on the record unless the administrative law judge directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except where incorporation of a motion in another document is specifically authorized by the Department, or where a document is filed that requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately titled and identified to indicate that it incorporates a motion; otherwise, the motion will be disregarded.

(c) *Answers to motions.* Within seven (7) days after a motion is served, or such other period as the DOT decisionmaker or the administrative law judge may fix, any party to the proceeding may file an answer in support of or in opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon. Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed.

(d) *Oral arguments; briefs.* No oral argument will be heard on motions unless the DOT decisionmaker or the administrative law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) *Requests for expedition.* Any interested person may by motion request expedition of any proceeding or file an answer in support of or in opposition to such motions.

(f) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time to take action fixed by this part or by any order of the Department or of an administrative law judge (or any extension granted thereunder).

(g) *Disposition of motions.* The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision. The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if the administrative law judge finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, the administrative law judge may refer such motion to the DOT decisionmaker for decision.

(h) *Appeals to the DOT decisionmaker from rulings of administrative law judges.* Rulings of administrative law judges on motions may not be appealed to the DOT decisionmaker prior to his or her consideration of the entire proceeding except in extraordinary circumstances and with the consent of the administrative law judge. An appeal shall be disallowed unless the administrative law judge finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the DOT decisionmaker within such period as the administrative

law judge directs. No oral argument will be heard unless the DOT decisionmaker directs otherwise. The rulings of the administrative law judge on a motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding or at any other appropriate time irrespective of the filing of an appeal or any action taken on it.

§ 302.12 Objections to public disclosure of information.

(a) *Generally.* Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of the Department to the public. (49 CFR 7.1 *et seq.*)

(b) *Information contained in written documents.* Any person who objects to the public disclosure of any information filed in any proceeding, or pursuant to the provisions of the Statute, or any Department rule, regulation, or order, shall segregate, or request the segregation of, such information into a separate submission and shall file it separately in a sealed envelope, bearing the caption of the enclosed submission, and the notation ''Confidential Treatment Requested Under § 302.12.'' At the time of filing such submission (or, when the objection is made by a person who is not the filer, within five (5) days after the filing of such submission), the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (d) or (f) of this section, as appropriate. Notwithstanding any other provision of this section, copies of the filed submission and of the motion need not be served upon any other party unless so ordered by the Department.

(c) *Information contained in oral testimony.* Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his or her objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the administrative law judge or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and representative of each party as the administrative law judge or the person before whom the deposition is being taken shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation ''Confidential Treatment Requested Under § 302.12 Testimony Given by (name of witness or deponent).'' Within five (5) days after such testimony is given, the objecting person shall file a motion in accordance with the procedure outlined in paragraph (d) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the Department.

(d) *Form of motion.* Motions to withhold from public disclosure information covered by paragraphs (b) and (c) of this section shall be filed with the Department in accordance with the following procedure:

(1) The motion shall include:

(i) An index listing the information or document sought to be withheld by an identifying number, and including its title, description and number of pages, and, if relevant, the specific location within a document;

(ii) A statement explaining how and why the information falls within one or more of the exemptions from the Freedom of Information Act (5 U.S.C. 552(b)(1)–(9)); and

(iii) A statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting persons and is not required in the interest of the public.

(2) Such motion shall be filed with the person conducting the proceeding, or with the person with whom said application, report, or submission is required to be filed. Such motion will be denied when the complete justification required by this paragraph is not provided.

(3) During the pendency of such motion, the ruling official may, by notice or order, allow limited disclosure to parties' representatives, for purposes of participating in the proceeding, upon submission by them of affidavits swearing to protect the confidentiality of the documents at issue.

(e) *Conditions of disclosure.* The order, notice or other action of the Department containing its ruling upon each such motion will specify the extent to which, and the conditions upon which, the information may be disclosed to the parties and to the public, which ruling shall become effective upon the date stated therein, unless, within five (5) days after the date of the entry of the Department's order with respect thereto, a petition is filed by the objecting person requesting reconsideration by the Department, or a written statement is filed indicating that the objecting person in good faith intends to seek judicial review of the Department's order.

(f) *Objection by Government departments or representative thereof.* In the case of objection to the public disclosure of any information filed by or elicited from any United States Government department or agency, or representative thereof, under paragraph (b) or (c) of this section, the department or agency making such objection shall be exempted from the provisions of paragraphs (b), (c), and (d) of this section insofar as said paragraphs require the filing of a written objection to such disclosure. However, any department, agency, or representative thereof may, if it so desires, file a memorandum setting forth the reasons why it is claimed that a public disclosure of the information should not be made. If such a memorandum is submitted, it shall be filed and handled as is provided by this section in the case of a motion to withhold information from public disclosure.

§ 302.13 Consolidation of proceedings.

(a) *Initiation of consolidations.* The Department, upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. Although the Department may, in any particular case, consolidate or contemporaneously consider two or more proceedings on its own motion, the burden of seeking consolidation or contemporaneous consideration of a particular application shall rest upon the applicant and the Department will not undertake to search its docket for all applications that might be consolidated or contemporaneously considered.

(b) *Time for filing.* Unless the Department has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed within 21 days of the original application in the case of international route awards under section 41102 of the Statute (*see* § 302.212), or, where a proceeding has been set for hearing before an administrative law judge, not later than the prehearing conference in the proceeding with which consolidation or

contemporaneous consideration is requested. If made at such conference, the motion may be oral. All motions for consolidation or consideration of issues that enlarge, expand, or otherwise change the nature of the proceeding shall be addressed to the DOT decisionmaker, unless made orally at the prehearing conference, in which event the presiding administrative law judge shall present such motion to the DOT decisionmaker for his or her decision. A motion that is not timely filed, or that does not relate to an application pending at such time, shall be dismissed unless the movant shall clearly show good cause for failure to file such motion or application on time.

(c) *Answer.* If a motion to consolidate two or more proceedings is filed with the Department, any party to any of such proceedings, or any person who has a petition for intervention pending, may file an answer to such motion within such period as the DOT decisionmaker may permit. The administrative law judge may require that answers to such motions be stated orally at the prehearing conference in the proceeding with which the consolidation is proposed.

§ 302.14 Petitions for reconsideration.

(a) *Department orders subject to reconsideration; time for filing.* (1) Unless an order or a rule of the Department specifically provides otherwise:

(i) Any interested person may file a petition for reconsideration of any interlocutory order issued by the Department that institutes a proceeding; and

(ii) Any party to a proceeding may file a petition for reconsideration, rehearing, or reargument of final orders issued by the Department (*See* § 302.38), or an interlocutory order that defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Department.

(2) Unless otherwise provided, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof, and, in the case of an interlocutory order, within ten (10) days after service. However, neither the filing nor the granting of such a petition shall operate as a stay of such final or interlocutory order unless specifically so ordered by the DOT decisionmaker. Within ten (10) days after a petition for reconsideration, rehearing, or reargument is filed, any party to the proceeding may file an answer in support of or in opposition. Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing has expired, will not be granted except on a showing of unusual and exceptional circumstances, constituting good cause for the movant's inability to meet the established procedural dates.

(b) *Contents of petition.* A petition for reconsideration, rehearing, or reargument shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought. If a decision by the Secretary or Deputy Secretary is requested, the petition should describe in detail the reasons for such request and specify any important national transportation policy issues that are presented. If the petition is based, in whole or in part, on allegations as to the consequences that would result from the final order, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, on new matter, such new matter shall be set forth, accompanied by a statement to the effect that petitioner, with due diligence, could not have known or discovered such new matter prior to the date the case was submitted for decision. Unless otherwise directed by the DOT decisionmaker upon a showing of unusual or exceptional circumstances, petitions for reconsideration, rehearing or reargument or answers thereto that exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by Department of Transportation Dockets.

(c) *Successive petitions.* A successive petition for rehearing, reargument, reconsideration filed by the same party or person, and upon substantially the same ground as a former petition that has been considered or denied will not be entertained.

Non-Hearing Proceedings

§ 302.15 Non-hearing procedures.

In cases where oral evidentiary hearing procedures will not be used, § 302.17 through § 302.37, relating to hearing procedures, shall not be applicable except to the extent that the DOT decisionmaker shall determine that the application of some or all of such rules in the particular case will be conducive to the proper dispatch of its business and to the public interest. References in these and other sections of this part to powers or actions by administrative law judges shall not apply.

Rulemaking Proceedings

§ 302.16 Petitions for rulemaking.

Any interested person may petition the Department for the issuance, amendment, modification, or repeal of any regulation, subject to the provisions of part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5.1 *et seq.*).

Oral Evidentiary Hearing Proceedings

§ 302.17 Administrative law judges.

(a) *Powers and delegation of authority.* (1) An administrative law judge shall have the following powers, in addition to any others specified in this part:

(i) To give notice concerning and to hold hearings;

(ii) To administer oaths and affirmations;

(iii) To examine witnesses;

(iv) To issue subpoenas and to take or cause depositions to be taken;

(v) To rule upon offers of proof and to receive relevant evidence;

(vi) To regulate the course and conduct of the hearing;

(vii) To hold conferences before or during the hearing for the settlement or simplification of issues;

(viii) To rule on motions and to dispose of procedural requests or similar matters;

(ix) To make initial or recommended decisions as provided in § 302.31;

(x) To take any other action authorized by this part or by the Statute.

(2) The administrative law judge shall have the power to take any other action authorized by part 385 of this chapter or by the Administrative Procedure Act.

(3) The administrative law judge assigned to a particular case is delegated the DOT decisionmaker's function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the DOT decisionmaker, with or without an initial or recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 41307 of the Statute. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters that have been appealed to the DOT decisionmaker in accordance with the requirements of § 302.11.

(4) The administrative law judge's authority in each case will terminate either upon the certification of the record in the proceeding to the DOT decisionmaker, or upon the issuance of an initial or recommended decision, or when he or she shall have withdrawn from the case upon considering himself or herself disqualified.

(b) *Disqualification.* An administrative law judge shall withdraw

from the case if at any time he or she deems himself or herself disqualified. If, prior to the initial or recommended decision in the case, there is filed with the administrative law judge, in good faith, an affidavit of personal bias or disqualification with substantiating facts and the administrative law judge does not withdraw, the DOT decisionmaker shall determine the matter, if properly presented by exception or brief, as a part of the record and decision in the case. The DOT decisionmaker shall not otherwise consider any claim of bias or disqualification. The DOT decisionmaker, in his or her discretion, may order a hearing on a charge of bias or disqualification.

§ 302.18 DOT decisionmaker.

(a) *Assistant Secretary for Aviation and International Affairs.* Except as provided in paragraphs (b) and (c) of this section, the Assistant Secretary for Aviation and International Affairs is the DOT decisionmaker. The Assistant Secretary shall have all of the powers set forth in § 302.17(a)(1) and those additional powers delegated by the Secretary. The Assistant Secretary may delegate this authority in appropriate non-hearing cases to subordinate officials.

(b) *Oral hearing cases assigned to the senior career official.* Carrier selection proceedings for international route authority that are set for oral hearing and such other oral hearing cases as the Secretary deems appropriate will be assigned to the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, who will serve as the DOT decisionmaker. In all such cases, the administrative law judge shall render a recommended decision to the senior career official, who shall have all of the powers set forth in § 302.17(a)(1) and those additional powers delegated by the Secretary.

(1) Decisions of the senior career official are subject to review by, and at the discretion of, the Assistant Secretary for Aviation and International Affairs. Petitions for discretionary review of decisions of the senior career official will not be entertained. A notice of review by the Assistant Secretary will establish the procedures for review. Unless a notice of review is issued, the decision of the senior career official will be issued as a final decision of the Department and will be served fourteen (14) days after it is adopted by the senior career official.

(2) Final decisions of the senior career official may be reviewed upon a petition for reconsideration filed pursuant to § 302.14. Such a petition shall state clearly the basis for requesting reconsideration and shall specify any questions of national transportation policy that may be involved. The Assistant Secretary will either grant or deny the petition.

(3) Upon review or reconsideration, the Assistant Secretary may either affirm the decision or remand the decision to the senior career official for further action consistent with such order of remand.

(4) Subject to the provisions of paragraphs (b)(1) through (3) of this section, final decisions of the senior career official will be transmitted to the President of the United States when required under 49 U.S.C. 41307.

(c) *Secretary and Deputy Secretary.* The Secretary or Deputy Secretary may exercise any authority of the Assistant Secretary whenever he or she believes a decision involves important questions of national transportation policy.

§ 302.19 Participation by persons not parties.

Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence that is relevant to the issues. With the consent of the administrative law judge or the DOT decisionmaker, such person may also cross-examine witnesses directly. Such persons may also present to the administrative law judge a written statement on the issues involved in the proceeding. Such written statements shall be filed and served on all parties prior to the close of the hearing.

§ 302.20 Formal intervention.

(a) *Who may intervene.* Any person who has a statutory right to be made a party to an oral evidentiary hearing proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the public interest and will not unduly delay the conduct of such proceeding may be permitted to intervene.

(b) *Considerations relevant to determination of petition to intervene.* In passing upon a petition to intervene, the following factors, among other things, will be considered and will be liberally interpreted to facilitate the effective participation by members of the public in Department proceedings:

(1) The nature of the petitioner's right under the statute to be made a party to the proceeding;

(2) The nature and extent of the property, financial or other interest of the petitioner;

(3) The effect of the order that may be entered in the proceeding on petitioner's interest;

(4) The availability of other means whereby the petitioner's interest may be protected;

(5) The extent to which petitioner's interest will be represented by existing parties;

(6) The extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record; and

(7) The extent to which participation of the petitioner will broaden the issues or delay the proceeding.

(c) *Petition to intervene.* (1) *Contents.* Any person desiring to intervene in a proceeding shall file a petition in conformity with this part setting forth the facts and reasons why he or she thinks he or she should be permitted to intervene. The petition should make specific reference to the factors set forth in paragraph (b) of this section.

(2) *Time for filing.* Unless otherwise ordered by the Department:

(i) A petition to intervene shall be filed with the Department prior to the first prehearing conference, or, in the event that no such conference is to be held, not later than fifteen (15) days prior to the hearing.

(ii) A petition to intervene filed by a city, other public body, or a chamber of commerce shall be filed with the Department not later than the last day prior to the beginning of the hearing.

(iii) A petition to intervene that is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for his or her failure to file such petition on time.

(3) *Answer.* Any party to a proceeding may file an answer to a petition to intervene, making specific reference to the factors set forth in paragraph (b) of this section, within seven (7) days after the petition is filed.

(4) *Disposition.* The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the petitioner or other parties to the proceeding.

(d) *Effect of granting intervention.* A person permitted to intervene in a proceeding thereby becomes a party to the proceeding. However, interventions provided for in this section are for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by the Department that the intervening party has such a substantial interest in the order that is to be entered in the proceeding as will entitle it to judicial review of such order.

§ 302.21 Appearances.

(a) Any party to a proceeding may appear and be heard in person or by a designated representative.

(b) No register of persons who may practice before the Department is maintained and no application for admission to practice is required.

(c) Any person practicing or desiring to practice before the Department may, upon hearing and good cause shown, be suspended or barred from practicing.

§ 302.22 Prehearing conference.

(a) *Purpose and scope of conference.* At the discretion of the administrative law judge, a prehearing conference may be called prior to any hearing. Written notice of the prehearing conference shall be sent by the administrative law judge to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. The purpose of such a conference is to define the issues and the scope of the proceeding, to secure statements of the positions of the parties and amendments to the pleadings, to schedule the exchange of exhibits before the date set for hearing, and to arrive at such agreements as will aid in the conduct and disposition of the proceeding. For example, consideration will be given to:

(1) Matters that the DOT decisionmaker can consider without the necessity of proof;

(2) Admissions of fact and of the genuineness of documents;

(3) Requests for documents;

(4) Admissibility of evidence;

(5) Limitation of the number of witnesses;

(6) Reducing of oral testimony to exhibit form;

(7) Procedure at the hearing; and

(8) Use of electronic media as a basis for exchange of briefs, hearing transcripts and exhibits, etc., in addition to the official record copy.

(b) *Actions during prehearing conference.* The administrative law judge may require a further conference, or responsive pleadings, or both. If a party refuses to produce documents requested by another party at the conference, the administrative law judge may compel the production of such documents prior to a hearing by subpoena issued in accordance with the provisions of § 302.25 as though at a hearing. Applications for the production prior to hearing of documents in the Department's possession shall be addressed to the administrative law judge, in accordance with the provisions of § 302.25(g), in the same manner as provided therein for production of documents at a hearing. The administrative law judge may also, on his or her own initiative or on motion of any party, direct any party to the proceeding (air carrier or non-air carrier) to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant to the issues in the proceeding.

(c) *Report of prehearing conference.* The administrative law judge shall issue a report of prehearing conference, defining the issues, giving an account of the results of the conference, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to such report. The report shall be served upon all parties to the proceeding and any person who appeared at the conference. Objections to the report may be filed by any interested person within the time specified therein. The administrative law judge may revise his or her report in the light of the objections presented. The revised report, if any, shall be served upon the same persons as was the original report. Exceptions may be taken on the basis of any timely written objection that has not been met by a revision of the report if the exceptions are filed within the time specified in the revised report. Such report shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§ 302.23 Hearing.

The administrative law judge to whom the case is assigned or the DOT decisionmaker shall give the parties reasonable notice of a hearing or of the change in the date and place of a hearing and the nature of such hearing.

§ 302.24 Evidence.

(a) *Presenting evidence.* Presenting evidence at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the report of prehearing conference, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice, and shall not be unduly repetitious. Evidence shall be presented in such form by all parties as the administrative law judge may direct.

(b) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate except as ordered by the administrative law judge. Rulings on such objections shall be a part of the transcript.

(c) *Exhibits.* When exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the administrative law judge, unless the parties previously have been furnished with copies or the administrative law judge directs otherwise. If the administrative law judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing. Copies of exhibits may, at the discretion of the administrative law judge or the DOT decisionmaker, be furnished by use of electronic media in lieu of or in addition to a paper record copy.

(d) *Substitution of copies for original exhibits.* In his or her discretion, the administrative law judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

(e) *Designation of parts of documents.* When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable. If the volume of immaterial or irrelevant matter would unduly encumber the record, such submission will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the administrative law judge so directs, a true copy of such matter, in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the submission, and to offer in evidence in like manner other portions of the exhibit.

(f) *Records in other proceedings.* In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(1) The portion is specified with particularity in such manner as to be readily identified;

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the DOT decisionmaker;

(3) The parties represented at the hearing stipulate upon the record that

such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference upon compliance with paragraphs (f)(1) and (2) of this section; and

(4) The administrative law judge directs such incorporation or waives the requirement in paragraph (f)(3) of this section with the consent of the parties.

(g) *Official notice of facts contained in certain documents.* (1) Without limiting, in any manner or to any extent, the discretionary powers of the DOT decisionmaker and the administrative law judge to notice other matters or documents properly the subject of official notice, facts contained in any document within the categories enumerated in this subdivision are officially noticed in all formal economic proceedings except those subject to subpart D of this part. Each such category shall include any document antedating the final Department decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

(i) Air carrier certificates or applications therefor, together with any requests for amendment, and pleadings responding to applications when properly filed.

(ii) All Form 41 reports required to be filed by air carriers with the Department.

(iii) Reports of Traffic and Financial Data of all U.S. Air Carriers issued by the Civil Aeronautics Board (CAB) or the Department.

(iv) Airline Traffic Surveys and Passenger Origin-Destination Surveys, Domestic and International, compiled by the CAB or the Department and published and/or made available either to the public or to parties in proceedings.

(v) Compilations of data relating to competition in the airline industry and made available to the public by the CAB or the Department, such as the 1990 Airline Competition Study.

(vi) Passenger, mail, express, and freight data submitted to the CAB or the Department as part of ER–586 Service Segment Data by U.S. carriers, or similar data submitted to the Department by U.S. air carriers (T–100) or by foreign air carriers (T–100F) that is not confidential.

(vii) All tariffs, including the electronic versions, and amendments thereof, of all air carriers, on file with the Department.

(viii) Service Mail Pay and Subsidy for U.S. Certificated Air Carriers published by the CAB and any supplemental data and subsequent issues published by the CAB or the Department.

(ix) Airport Activity Statistics of Certificated Air Carriers compiled and published by the Federal Aviation Administration (FAA) or the Department.

(x) Air Traffic Activity Data issued by the FAA.

(xi) National Plan of Integrated Airport Systems (NPIAS) issued by the FAA.

(xii) Airport Facilities Directory, Form 5010, issued by the FAA.

(xiii) The Airman's Information Manual issued by the FAA.

(xiv) ICAO Statistical Summary, Preliminary Issues and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by ICAO, Montreal, Canada, with all changes and additions.

(xv) Monthly, quarterly and annual reports of the Immigration and Naturalization Service, U.S. Department of Justice.

(xvi) All forms and reports required by the U.S. Postal Service to be filed by air carriers authorized to transport mail.

(xvii) All orders of the Postmaster General designating schedules for the transportation of mail.

(xviii) Publications of the Bureau of the Census of the U.S. Department of Commerce (DOC) relating, but not necessarily limited, to population, manufacturing, business, statistics, and any yearbooks, abstracts, or similar publications published by DOC.

(xix) ABC World Airways Guide and all Official Airline Guides, including the North American, Worldwide, All-Cargo and quick reference editions, including electronic versions.

(xx) Official Guide of the Railways and Russell's Official National Motor Coach Guide.

(xxi) The Rand McNally Commercial Atlas and Marketing Guide, and the Rand McNally Road Atlas, United States, Canada, and Mexico.

(xxii) Survey of Buying Power published by Sales Management Magazine.

(2) Any fact contained in a document belonging to a category enumerated in paragraph (g)(1) of this section shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding under section 7(d) of the Administrative Procedure Act (5 U.S.C. 557(d)).

(3) The decisions of the Department and its administrative law judges may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in paragraph (g)(1) of this section. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters that have been noticed.

(h) *Receipt of documents after hearing.* No document or other writings shall be accepted for the record after the close of the hearing except in accordance with an agreement of the parties and the consent of the administrative law judge or the DOT decisionmaker.

(i) *Exceptions.* Formal exceptions to the rulings of the administrative law judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the administrative law judge is made or sought, makes known the action he or she desires the administrative law judge to take or his or her objection to an action taken, and his or her grounds therefor.

(j) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence that counsel contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

§ 302.25 Subpoenas.

(a) An application for a subpoena requiring the attendance of a witness at a hearing or the production of documentary evidence may be made without notice by any party to the administrative law judge or, in the event that an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or the Chief Administrative Law Judge, for action.

(b) An application for a subpoena shall be in duplicate except that if it is made during the course of a hearing, it may be made orally on the record with the consent of the administrative law judge.

(c) All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by two copies of a draft of the subpoena sought that,

in the case of evidence, shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible, or, in the case of a witness, the name of the witness and a general description of the matters concerning which the witness will be asked to testify.

(d) The administrative law judge or DOT decisionmaker considering any application for a subpoena shall issue the subpoena requested if the application complies with this section. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena, and no detailed or burdensome showing shall be required as a condition to the issuance of a subpoena.

(e) Where it appears during the course of a proceeding that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the administrative law judge, Chief Administrative Law Judge or DOT decisionmaker may issue on his or her own initiative a subpoena requiring such witness to attend and testify or requiring the production of such documentary evidence.

(f) Subpoenas issued under this section shall be served upon the person to whom directed in accordance with § 302.7(b). Any person upon whom a subpoena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpoena with the administrative law judge or, in the event an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or the Chief Administrative Law Judge for action. If the person to whom the motion to modify or quash the subpoena has been addressed or directed, has not acted upon such a motion by the return date, such date shall be stayed pending his or her final action thereon. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the Chief Administrative Law Judge denying a motion to quash a subpoena. In such cases, the DOT decisionmaker may order that the return date of a subpoena be stayed pending action thereon.

(g) The provisions of this section are not applicable to the attendance of DOT employees or the production of documentary evidence in the custody thereof at a hearing. The attendance of DOT employees and the production of documentary evidence in their custody are governed by 49 CFR Parts 9 and 7, respectively.

§ 302.26 Depositions.

(a) For good cause shown, the DOT decisionmaker or administrative law judge assigned to a proceeding may order that the testimony of a witness be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Ordinarily an order to take the deposition of a witness will be entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing,

(2) The deposition is deemed necessary to perpetuate the testimony of the witness, or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in an undue burden to other parties or in undue delay.

(b) Any party desiring to take the deposition of a witness shall make application therefor in duplicate to the administrative law judge or, in the event that an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or Chief Administrative Law Judge, setting forth the reasons why such deposition should be taken, the name and residence of the witness, the time and place proposed for the taking of the deposition, and a general description of the matters concerning which the witness will be asked to testify. If good cause be shown, the administrative law judge, the DOT decisionmaker, or the Chief Administrative Law Judge, as the case may be, may, in his or her discretion, issue an order authorizing such deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied. Such order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question shall be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the designated officer shall include argument or debate. Objections to questions or evidence shall be noted by the designated officer upon the deposition, but he or she shall not have power to decide on the competency or materiality or relevance of evidence, and he or she shall record the evidence subject to objection. Objections to questions or evidence not made before the designated officer shall not be deemed waived unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the designated officer, or under his or her direction, after which the deposition shall be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the designated officer. If the deposition is not signed by the witness, the designated officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to Department of Transportation Dockets and shall be filed in the proceedings.

(f) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. Ordinarily such procedure will be authorized only if necessary to achieve the purposes of an oral deposition and to serve the balance of convenience of the parties. The interrogatories shall be filed in quadruplicate with two copies of the application and a copy of each shall be served on each party. Within seven (7) days after service any party may file with the person to whom application was made two copies of his or her objections, if any, to such interrogatories and may file such cross-interrogatories as he or she desires to submit. Cross-interrogatories shall be filed in quadruplicate, and a copy thereof together with a copy of any objections to interrogatories, shall be served on each party, who shall have five (5) days thereafter to file and serve his or her objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories, shall be served on the DOT decisionmaker or the administrative law judge considering the application. Objections to interrogatories shall be made before the order for taking the deposition issues and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories, and cross-interrogatories, no party shall be present or represented, and no person other than the witness, a reporter, and the designated officer shall be present at the examination of the witness, which fact shall be certified by the designated officer, who shall ask the interrogatories and cross-interrogatories to the witness

in their order and reduce the testimony to writing in the witness's own words. The provisions of paragraph (e) of this section shall be applicable to depositions taken in accordance with this paragraph.

(g) All depositions shall conform to the specifications of § 302.3 except that the filing of three copies thereof shall be sufficient. Any fees of a witness, the reporter, or the officer designated to take the deposition shall be paid by the person at whose instance the deposition is taken.

(h) The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding. Only such part or the whole of a deposition as is received in evidence shall constitute a part of the record in such proceeding upon which a decision may be based.

§ 302.27 Rights of witnesses; attendance fees and mileage.

(a) Any person appearing as a witness in any proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may be accompanied, represented, and advised by counsel and may be examined by that counsel after other questioning.

(b) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may retain, or, on payment of lawfully prescribed costs, procure, a copy of any document so submitted or a copy of any transcript made of such testimony.

(c) No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpoena unless upon a service of the subpoena he or she is tendered attendance fees and mileage by the party at whose instance he or she is called in accordance with the requirements of paragraphs (c)(1) and (2) of this section; *Provided,* That a witness summoned at the instance of the Department or one of its employees, or a salaried employee of the United States summoned to testify as to matters related to his or her public employment, need not be tendered such fees or mileage at that time.

(1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same per diem, subsistence, and mileage fees paid to witnesses for like service in the courts of the United States that are in effect at the time of travel; *Provided,* That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 41511 of the Statute shall be entitled to any fees or mileage; *And provided further,* That such fees and mileage shall not be applicable for witnesses summoned to testify in Alaska, and that, in Alaska, where permitted by section 41511 of the Statute, the witness may, at his or her option, accept a pass for travel by air. Such witnesses shall be furnished appropriate forms and instructions for the submission of claims for attendance fees, subsistence, and mileage from the Government before the close of the proceedings that they are required to attend. Only persons summoned by subpoena shall be entitled to claim attendance fees, subsistence, or mileage from the Government.

(2) Witnesses who are salaried employees of the United States and who are summoned to testify on matters relating to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

§ 302.28 Transcripts of hearings.

(a) Hearings shall be recorded and transcribed under supervision of the administrative law judge, by a reporting firm under contract with the Department. Copies of the transcript that may, at the discretion of the administrative law judge, be furnished by use of electronic media in addition to the official copy, shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(b) The administrative law judge shall determine whether ''ordinary transcript'' or ''daily transcript'' (as those terms are defined in the contract) will be necessary and required for the proper conduct of the proceeding and the Department will pay the reporting firm the cost of reporting its proceedings at the contract price for such type of transcript. If the administrative law judge has determined that ordinary transcript is adequate, and has notified the parties of such determination (in the notice of hearings, or otherwise), then any party may request reconsideration of such determination and that daily transcript be required. In determining what is necessary and required for the proper conduct of the proceeding, the administrative law judge shall consider, among other things:

(1) The nature of the proceeding itself;

(2) The DOT decisionmaker's needs as well as the reasonable needs of the parties;

(3) The cost to the Department; and

(4) The requirements of a fair hearing.

(c) If the administrative law judge has determined that ordinary transcript is adequate, or, upon reconsideration, has adhered to such determination, then any party may request the reporting firm to provide daily transcript. In that case, pursuant to its contract with the Department, the reporting firm will be obligated to furnish to the Department daily transcript upon the agreement by the requesting party to pay to the reporting firm an amount equal to the difference between the contract prices for ordinary transcript and daily transcript, provided that the requesting party makes such agreement with the reporting firm at least twenty-four (24) hours in advance of the date for which such transcript is requested.

(d) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which the Department currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(e) Copies of transcripts ordered by parties other than the Department shall be prepared for delivery to the requesting person at the reporting firm's place of business, within the stated time for the type of transcript ordered. The requesting party and the reporting firm may agree upon some other form or means of delivery (mail, messenger, electronic media, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(f) Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with Department of Transportation Dockets, within ten (10) days after receipt of the completed transcript by the Department. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the administrative law judge, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the administrative law judge together with a request for a comparison of the transcript with the reporter's record of the hearing. After receipt of the report of the official reporter an order shall be entered by the administrative law judge settling the record and ruling on the motion.

§ 302.29 Argument before the administrative law judge.

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he or she may, either on his or her own motion or at the request of a party, permit the presentation of oral argument, and may impose such time limits on the argument as he or she may determine appropriate. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the Department decisionmaker for consideration in deciding the case.

§ 302.30 Briefs to the administrative law judge.

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his or her consideration briefs which may include proposed findings of fact and conclusions of law that shall contain exact references to the record and authorities relied upon.

§ 302.31 Initial and recommended decisions; certification of the record.

(a) *Action by administrative law judge after hearing.* Except where the DOT decisionmaker directs otherwise, after the taking of evidence and the receipt of briefs which may include proposed findings of fact and conclusions of law, if any, the administrative law judge shall take the following action:

(1) *Initial decision.* If the proceeding does not involve foreign air transportation, the administrative law judge shall render an ''initial decision.'' Such decision shall encompass the administrative law judge's decision on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(2) *Recommended decision.* In cases where the action of the Department involves foreign air transportation and is subject to review by the President of the United States pursuant to section 41307 of the Statute, the administrative law judge shall render a ''recommended decision.'' Such decision shall encompass the administrative law judge's decision on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Certification to the DOT decisionmaker for decision.* At any time prior to the close of the hearing, the DOT decisionmaker may direct the administrative law judge to certify any question or the entire record in the proceeding to the DOT decisionmaker for decision. In cases where the record is thus certified, the administrative law judge shall not render a decision but shall make a recommendation to the DOT decisionmaker as required by section 8(a) of the Administrative Procedure Act (5 U.S.C. 558(a)) unless advised by the DOT decisionmaker that he or she intends to issue a tentative decision.

(c) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every such decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (d) of this section. In the event the administrative law judge certifies the record to the DOT decisionmaker without an initial or recommended decision, he or she shall notify the parties of the time within which to file with the DOT decisionmaker briefs which may include proposed findings of fact and conclusions of law.

(d) Unless a petition for discretionary review is filed pursuant to § 302.32, exceptions are filed pursuant to § 302.217, or the DOT decisionmaker issues an order to review upon his or her own initiative, the initial decision shall become effective as the final order of the Department thirty (30) days after service thereof; in the case of a recommended decision, that decision shall be transmitted to the President of the United States under 49 U.S.C. 41307. If a petition for discretionary review or exceptions are timely filed or action to review is taken by the DOT decisionmaker upon his or her own initiative, the effectiveness of the initial decision or the transmission of the recommended decision is stayed until the further order of the DOT decisionmaker.

§ 302.32 Petitions for discretionary review of initial or recommended decisions; review proceedings.

(a) *Petitions for discretionary review.* (1) Review by the DOT decisionmaker pursuant to this section is not a matter of right but is at the sole discretion of the DOT decisionmaker. Any party may file and serve a petition for discretionary review by the DOT decisionmaker of an initial decision or recommended decision within twenty-one (21) days after service thereof, unless the DOT decisionmaker sets a different period for filing.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(i) A finding of a material fact is erroneous;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, the Department's rules, or precedent;

(iii) A substantial and important question of law, policy or discretion is involved; or

(iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the administrative law judge, but that the petitioner proposes to argue on brief to the DOT decisionmaker, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the DOT decisionmaker, petitions shall not exceed twenty (20) pages including appendices and other papers physically attached to the petition.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the DOT decisionmaker.

(b) *Answers.* Within fifteen (15) days after service of a petition for discretionary review, any party may file and serve an answer of not more than fifteen (15) pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he or she shall do so in a single document of not more than twenty (20) pages.

(c) *Orders declining review.* The DOT decisionmaker's order declining to exercise the discretionary right of review will specify the date upon which the administrative law judge's decision shall become effective as the final decision of the Department. A petition for reconsideration of a Department

order declining review will be entertained only when the order exercises, in part, the DOT decisionmaker's discretionary right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of the Department in the review proceeding.

(d) *Review proceedings.* (1) The DOT decisionmaker may take review of an initial or recommended decision upon petition or on his or her own initiative or both. The DOT decisionmaker will issue a final order upon such review without further proceedings on any or all the issues where he or she finds that matters raised do not warrant further proceedings.

(2) Where the DOT decisionmaker desires further proceedings, he or she will issue an order for review that will:

(i) Specify the issues to which review will be limited. Only those issues specified in the order shall be argued on brief to the DOT decisionmaker, pursuant to § 302.35, and considered by the DOT decisionmaker;

(ii) Specify the portions of the administrative law judge's decision, if any, that are to be stayed as well as the effective date of the remaining portions thereof; and

(iii) Designate the parties to the review proceeding.

§ 302.33 Tentative decision of the DOT decisionmaker.

(a) Except as provided in paragraph (b) of this section, whenever the administrative law judge certifies the record in a proceeding directly to the DOT decisionmaker without issuing an initial or recommended decision in the matter, the DOT decisionmaker shall, after consideration of any briefs submitted by the parties, prepare a tentative decision and serve it upon the parties. Every tentative decision of the DOT decisionmaker shall state the names of the persons who are to receive copies of it, the time within which exceptions to such decision and briefs, if any, in support of or in opposition to the exceptions may be filed, and the date when such decision will become final in the absence of exceptions thereto. If no exceptions are filed to the tentative decision of the DOT decisionmaker within the period fixed, it shall become final at the expiration of such period unless the DOT decisionmaker orders otherwise.

(b) The DOT decisionmaker may, in his or her discretion, omit a tentative decision in proceedings under subpart B. Final decisions of the DOT decisionmaker are subject to review as provided in § 302.18.

§ 302.34 Exceptions to tentative decisions of the DOT decisionmaker.

(a) *Time for filing.* Within ten (10) days after service of any tentative decision of the DOT decisionmaker, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) *Form and contents of exceptions.* Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not restate the same point in several exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto; *Provided, however,* That exceptions shall specify any matters of law, fact, or policy that were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

(c) *Effect of failure to file timely and adequate exceptions.* No objection may be made on brief or at a later time to an ultimate conclusion that is not expressly made the subject of an exception in compliance with the provisions of this section; *Provided, however,* That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

§ 302.35 Briefs to the DOT decisionmaker.

(a) *Time for filing.* Within such period after the date of service of any tentative decision by the DOT decisionmaker as may be fixed therein, any party may file a brief addressed to the DOT decisionmaker in support of his or her exceptions to such decision or in opposition to the exceptions filed by any other party. Briefs to the DOT decisionmaker on initial or recommended decisions of administrative law judges shall be filed only in those cases where the DOT decisionmaker grants discretionary review and orders further proceedings, pursuant to § 302.32(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within thirty (30) days after date of service of the order granting discretionary review unless otherwise specified in the order. In cases where, because of the limited number of parties and the nature of the issues, the filing of opening, answering, and reply briefs will not unduly delay the proceeding and will assist in its proper disposition, the DOT decisionmaker may direct that the parties file briefs at different times rather than at the same time.

(b) *Effect of failure to restate objections in briefs.* In determining the merits of an appeal, the DOT decisionmaker will not consider the exceptions or the petition for discretionary review but will consider only the brief. Each objection contained in the exceptions or each issue specified in the DOT decisionmaker's order exercising discretionary review must be restated and supported by a statement and adequate discussion of all matters relied upon, in a brief filed pursuant to and in compliance with the requirements of this section.

(c) *Formal specifications of briefs.* (1) *Contents.* Each brief shall discuss every point of law, fact, or precedent that the party submitting it is entitled to raise and that it wishes the DOT decisionmaker to consider. Each brief shall include a summary of the argument not to exceed five (5) pages. Support and justification for every point raised shall include itemized references to the pages of the transcript of hearing, exhibit or other matter of record, and citations of the statutes, regulations, or principal authorities relied upon. If a brief or any point discussed in the brief is not in substantial conformity with the requirement for such support and justification, no motion to strike or dismiss such document shall be made but the DOT decisionmaker may disregard the points involved. Copies of briefs may be furnished by use of electronic media in a format acceptable to the Department and the parties.

(2) *Incorporation by reference.* Briefs to the DOT decisionmaker shall be completely self-contained and shall not incorporate by reference any portion of any other brief or pleading; *Provided, however,* That instead of submitting a brief to the DOT decisionmaker a party may adopt by reference specifically identified pages or the whole of his or her prior brief to the administrative law judge if the latter complies with all requirements of this section. In such cases, the party shall file with Department of Transportation Dockets a letter exercising this privilege and serve all parties in the same manner as a brief to the DOT decisionmaker.

(3) *Length*. Except by permission or direction of the DOT decisionmaker, briefs shall not exceed fifty (50) pages including pages contained in any appendix, table, chart, or other document physically attached to the brief, but excluding maps and the summary of the argument. In this case ''map'' means only those pictorial representations of routes, flight paths, mileage, and similar ancillary data that are superimposed on geographic drawings and contain only such text as is needed to explain the pictorial representation.

§ 302.36 Oral argument before the DOT decisionmaker.

(a) If any party desires to argue a case orally before the DOT decisionmaker, he or she shall request leave to make such argument in his or her exceptions or brief. Such request shall be filed no later than the date when briefs before the DOT decisionmaker are due in the proceeding. The DOT decisionmaker will rule on such request, and, if oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for such argument and the amount of time allowed to each party. Requests for oral argument on petitions for discretionary review will not be entertained.

(b) Pamphlets, charts, and other written data may be offered to the DOT decisionmaker at oral argument only in accordance with the following rules: All such material shall be limited to facts in the record of the case being argued and shall be served on all parties to the proceeding with four (4) copies transmitted to Department of Transportation Dockets at least five (5) calendar days in advance of the argument.

§ 302.37 Waiver of procedural steps after hearing.

The parties to any proceeding may agree to waive any one or more of the procedural steps provided in § 302.29 through § 302.36.

§ 302.38 Final decision of the DOT Decisionmaker.

When a case stands submitted to the DOT decisionmaker for final decision on the merits, he or she will dispose of the issues presented by entering an appropriate order that will include a statement of the reasons for his or her findings and conclusions. Such orders shall be deemed ''final orders'' within the purview of § 302.14(a), in the manner provided by § 302.18.

Subpart B—Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings

§ 302.201 Applicability.

(a) This subpart sets forth the specific rules applicable to proceedings on:

(1) U.S. air carrier certificates of public convenience and necessity and U.S. all-cargo air service certificates under Chapter 411 of the Statute, including renewals, amendments, modifications, suspensions and transfers of such certificates.

(2) Foreign air carrier permits under Chapter 413 of the Statute, including renewals, amendments, modifications, suspensions, and transfers of such permits.

(b) Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.202 Contents of applications.

(a) Certificate applications filed under this subpart shall contain the information required by part 201 of this chapter and, where applicable, part 204 of this chapter, and foreign air carrier permit applications shall contain the information required by part 211 of this chapter, along with any other information that the applicant desires the Department to notice officially.

(b) Applications shall include a notice on the cover page stating that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Amendments to applications will be considered new applications for the purpose of calculating the time limitations of this subsection.

(c) Applications shall include a list of the names and addresses of all persons who have been served in accordance with § 302.203.

(d) Where required, each application shall be accompanied by an Energy Statement in conformity with part 313 of this chapter.

§ 302.203 Service of documents.

(a) *General requirements.* (1) Applicants shall serve on the persons listed in paragraph (b) of this section a notice that an application has been filed, and upon request shall promptly provide those persons with copies of the application and supporting documents. The notice must clearly state the authority sought and the due date for other pleadings.

(2) Applicants shall serve a complete copy of the application on the Manager of the FAA Flight Standards District Office responsible for processing the application for any FAA authority needed to conduct the proposed operations.

(3) After an order under § 302.210 has been issued, parties need only serve documents on those persons listed in the service list accompanying the order.

(4) In the case of an application sought to be consolidated, the applicant shall serve the notice required in paragraph (a)(1) of this section on all persons served by the original applicant.

(b) *Persons to be served*—

(1) *U.S. air carriers.* (i) In certificate proceedings, except for those proceedings that involve charter-only authority under section 41102(a)(3) of the Statute:

(A) Applicants for certificates to engage in interstate air transportation and other persons who file a pleading in the docket shall serve:

(*1*) The airport authority of each airport that the applicant initially proposes to serve, and

(*2*) Any other person who has filed a pleading in the docket.

(B) Applicants for certificates to engage in foreign air transportation and other persons who file a pleading in the docket shall serve:

(*1*) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or in the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(*2*) The airport authority of each U.S. airport that the applicant initially proposes to serve, and

(*3*) Any other person who has filed a pleading in the docket.

(ii) In certificate proceedings involving charter-only authority under 41102(a)(3) of the Statute, applicants and other persons who file a pleading in the docket shall serve any other person who has filed a pleading in the docket.

(2) *Foreign air carriers.* (i) In permit proceedings, except for those proceedings involving charter-only authority, applicants and other persons who have filed a pleading in the docket shall serve:

(A) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(B) The U.S. Department of State,

(C) The airport authority of each U.S. airport that the applicant initially proposes to serve, and

(D) Any other person who has filed a pleading in the docket.

(ii) In foreign air carrier permit proceedings for charter-only authority,

applicants and other persons who file a pleading in the docket shall serve the U.S. Department of State and any other person who has filed a pleading in the docket.

(c) *Additional service*. The Department may, at its discretion, order additional service upon such persons as the facts of the situation warrant. Where only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated authorities of the government(s) involved.

§ 302.204 Responsive documents.

(a) Any person may file an answer in support of or in opposition to any application. Answers shall set forth the basis for the position taken, including any economic data or other facts relied on. Except as otherwise provided in § 302.212(d), answers shall be filed within twenty one (21) days of the original or amended application and shall be served in accordance with § 302.203.

(b) Replies to answers shall be filed within fourteen (14) days after the filing of the answer.

(c) Persons having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

§ 302.205 Economic data and other facts.

Whenever economic data and other facts are provided in any pleading, such information shall include enough detail so that final results can be obtained without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

§ 302.206 Verification.

Any pleading filed under this subpart shall include a certification as provided in § 302.4(b).

Disposition of Applications

§ 302.207 Cases to be decided on written submissions.

(a) Applications under this subpart will be decided on the basis of written submissions unless the DOT decisionmaker, on petition as provided in § 302.208 or on his or her own initiative, determines that an oral presentation or an administrative law judge's decision is required because:

(1) Use of written procedures will prejudice a party;

(2) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or

(3) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

(b) The standards employed in deciding cases under § 302.210(a)(1) or (5) shall be the same as the standards applied in cases decided under § 302.210(a)(4). These are the standards set forth in the Statute as interpreted and expanded upon under that Statute.

§ 302.208 Petitions for oral presentation or judge's decision.

(a) Any person may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in § 302.207 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs;

(2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision;

(3) An estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present; and

(4) If cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(b) Petitions for an oral hearing, oral argument, or an administrative law judge's decision shall be filed no later than the due date for answers in proceedings governed by § 302.211, § 302.212 and § 302.213, and be accompanied with the information specified in paragraphs (a)(1) and (a)(2) of this section. Filing of the information required in paragraphs (a)(3) and (a)(4) of this section may be deferred until the DOT decisionmaker has decided to hold a formal proceeding.

(c) Where a stipulation of disputed facts would eliminate the need for an oral presentation or an administrative law judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

§ 302.209 Procedures for deferral of applications.

Within twenty-eight (28) days after the filing of an application under this subpart, the DOT decisionmaker may defer further processing of the application until all of the information necessary to process that application is submitted. The time periods contained in this subpart with respect to the disposition of the application shall not begin to run until the application is complete. In addition, the DOT decisionmaker may defer action on a foreign air carrier permit application for foreign policy reasons.

§ 302.210 Disposition of applications; orders establishing further procedures.

(a) *General requirements*. The DOT decisionmaker will take one of the following actions with respect to all or any portion of each application:

(1) Issue an Order to Show Cause why the application should not be granted, denied or dismissed, in whole or in part.

(2) Issue a Final Order granting the application if the DOT decisionmaker determines that there are no material issues of fact that warrant further procedures for their resolution.

(3) Issue a Final Order dismissing or rejecting the application for lack of prosecution or if the application does not comply with this subpart or is otherwise materially deficient.

(4) Issue an order setting the application for oral evidentiary hearing. The order will establish the scope of the issues to be considered and the procedures to be employed, and will indicate whether one or more attorneys from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will participate as a party. All of the procedures set forth in § 302.214 through § 302.218 will apply unless the DOT decisionmaker decides otherwise.

(5) Begin to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker may indicate which, if any, of the procedural steps set forth in § 302.215 through § 302.219 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(b) *Additional evidence*. An order establishing further procedures under paragraph (a)(1), (4) or (5) of this section may provide for the filing of additional evidence.

(c) *Petitions for reconsideration.* Petitions for reconsideration of an order issued under this section will not be entertained except to the extent that the order dismissed or rejected all or part of an application. If a petition for reconsideration results in the reinstatement of all or part of an application, the deadline for final Department decision established in § 302.220 will be calculated from the date of the order reinstating the application.

§ 302.211 Procedures in certificate cases involving initial or continuing fitness.

(a) *Applicability.* This section applies to cases involving certificate authority under sections 41102 and 41103 of the Statute, including applications for new authority, renewals, amendments, modifications, suspensions, and transfers of such certificates, where the issues involve a determination of the applicant's fitness to operate. Where such applications propose the operation of scheduled service in limited entry international markets, the provisions of § 302.212 also apply.

(b) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will take action as provided in § 302.210.

§ 302.212 Procedures in certificate cases involving international routes.

(a) *Applicability.* This section applies to cases involving certificates under section 41102 of the Statute that involve international routes, including applications to obtain, renew, amend, transfer, or remove restrictions in such certificates.

(b) *Answers to applications.* Answers shall be filed within twenty one (21) days after the filing of the original application.

(c) *Conforming applications or motions to modify scope.* Any person may file an application for the same authority as sought in an application to obtain, renew, or amend a certificate filed under paragraph (a) of this section. Requests to modify the issues to be decided and to consolidate applications filed in other dockets shall be filed as a ''motion to modify scope.'' Motions and applications under this section shall include economic data, other facts, and any argument in support of the person's position and must be filed within twenty one (21) days after the original application is filed. Later-filed competing applications shall conform to the base and forecast years used by the original applicant and need not contain traffic and financial data for markets for which data have already been submitted by another person.

(d) *Answers to conforming applications or motions to modify scope.* Answers to conforming applications and motions to modify scope filed in accordance with paragraph (b) of this section shall be filed within fourteen (14) days after the filing of the conforming application or motion. Answers may argue that an application should be dismissed. Answers may also seek to consolidate an application filed in another docket if that application conforms to the scope of the proceeding proposed in the motion to modify scope and includes the information prescribed in § 302.202. Answers and applications shall not, however, propose the consideration of additional markets.

(e) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will issue an order as provided in § 302.210.

§ 302.213 Procedures in foreign air carrier permit cases.

(a) *Applicability.* This section applies to cases involving foreign air carrier permits under section 41302 of the Statute, including applications for new authority, renewals, amendments, modifications, suspensions, and transfers of such permits.

(b) *Executive departments.* In addition to the standards set forth in § 302.207(b), the views of other executive agencies, such as the Department of State, and the Federal Aviation Administration's evaluation of the applicant's operational fitness, may be sought in determining the appropriate action on applications filed under this section.

(c) *Order establishing further procedures.* As soon as possible after the date that answers are due and all information needed to reach a decision is filed, the DOT decisionmaker will issue an order as provided in § 302.210.

§ 302.214 Oral evidentiary hearing.

If the DOT decisionmaker determines under § 302.210(a)(4) that an oral evidentiary hearing should be held, the application or applications will be set for oral hearing before an administrative law judge. The issues will be those set forth in the order establishing further procedures. The procedures in § 302.17 to § 302.38 governing the conduct of oral evidentiary hearings will apply.

§ 302.215 Briefs to the administrative law judge.

Briefs to the administrative law judge shall be filed within the following periods, as applicable:

(a) Fourteen (14) days after the close of the oral evidentiary hearing, unless the administrative law judge determines that, under the circumstances of the case, briefs are not necessary or that the parties will require more time to prepare briefs; or

(b) Fourteen (14) days after the filing of additional evidence called for in the order establishing further procedures if no oral evidentiary hearing is called for, unless the DOT decisionmaker determines that some other period should be allowed.

§ 302.216 Administrative law judge's initial or recommended decision.

(a) In a case that has been set for oral evidentiary hearing under § 302.210(a)(4), the administrative law judge shall adopt and serve an initial or recommended decision within one hundred thirty-six (136) days after the issuance of the order establishing further procedures unless:

(1) The DOT decisionmaker, having found extraordinary circumstances, has by order delayed the initial or recommended decision by a period of not more than thirty (30) days; or

(2) An applicant has failed to meet the procedural schedule adopted by the judge or the DOT decisionmaker. In this case, the administrative law judge may, by notice, extend the due date for the issuance of an initial or recommended decision for a period not to exceed the period of delay caused by the applicant.

(b) In a case in which some of the issues have not been set for oral hearing under § 302.210(a)(4), the administrative law judge shall adopt and serve an initial or recommended decision within the time established by the DOT decisionmaker in the order establishing further procedures, except that that due date may be extended in accordance with paragraph (a)(2) of this section.

(c) The initial or recommended decision shall be issued by the administrative law judge fourteen (14) days after it is served. Unless exceptions are filed under § 302.217 or the DOT decisionmaker issues an order to review on his or her own initiative, an initial decision shall become effective as the final order of the Department the day it is issued. Where exceptions are timely filed or the DOT decisionmaker takes action to review on his or her own initiative, the effectiveness of the initial decision is stayed until further order of the DOT decisionmaker.

(d) In all other respects, the provisions of § 302.31 shall apply.

§ 302.217 Exceptions to administrative law judge's initial or recommended decision.

(a) Within seven (7) days after service of any initial or recommended decision

of an administrative law judge, any party may file exceptions to the decision with the DOT decisionmaker.

(b) If timely and adequate exceptions are filed, review of the initial or recommended decision is automatic.

(c) In all other respects, the provisions of § 302.34 shall apply.

§ 302.218 Briefs to the DOT decisionmaker.

(a) In a case in which an initial or recommended decision has been served and exceptions have been filed, any party may file a brief in support of or in opposition to any exceptions. Such briefs shall be filed within fourteen (14) days after service of the initial or recommended decision.

(b) In a case in which no exceptions have been filed, briefs shall not be filed unless the DOT decisionmaker has taken review of the initial or recommended decision on his or her own initiative and has specifically provided for the filing of such briefs.

(c) In all other respect, the provisions of § 302.35 shall apply.

§ 302.219 Oral argument before the DOT decisionmaker.

If the order establishing further procedures provides for an oral argument, or if the DOT decisionmaker otherwise decides to hear oral argument, all parties will be notified of the date and hour set for that argument and the amount of time allowed each party. The provisions of § 302.36(b) shall also apply.

§ 302.220 Final decision of the Department.

In addition to the provisions of § 302.38, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under § 302.210(a)(4), the Department will issue its final order within ninety (90) days after the initial or recommended decision is issued. If an application has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the date for a final decision for a period equal to the period of delay caused by the applicant.

(b) If the DOT decisionmaker does not act in the time period established in paragraph (a) of this section:

(1) in the case of an application for a certificate to engage in foreign air transportation, the recommended decision shall be transmitted to the President of the United States under 49 U.S.C. 41307; or

(2) in the case of an application not subject to review by the President of the United States, the initial decision shall become effective as the final order of the Department.

(c) In the case of a certificate application that has been processed under § 302.210(a)(1) or (5), the Department will issue its final order within one hundred eighty (180) days after the order establishing further procedures. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the due date for a final decision for a period equal to the period of delay caused by the applicant.

Subpart C—Rules Applicable to Exemption and Certain Other Proceedings

§ 302.301 Applicability.

(a) This subpart sets forth the specific rules applicable to proceedings for exemptions under sections 40109 and 41714 of the Statute, including the granting of emergency exemptions, as well as applications for frequency allocations and other limited authority under international agreements. Except as modified by this subpart, the provisions of subpart A of this part apply.

(b) Proceedings for the issuance of exemptions by regulation are subject to the provisions governing rulemaking.

§ 302.302 Filing of applications.

(a) Except as provided in paragraphs (b) and (c) of this section, applications for exemption shall conform to the requirements of §§ 302.3 and 302.4.

(b) Applications for exemption from section 41101 or 41301 of the Statute (including those that incorporate an exemption from section 41504) that involve ten (10) or fewer flights may be submitted to the U.S. Air Carrier Licensing Division or the Foreign Air Carrier Licensing Division (as appropriate), Office of International Aviation, on OST Form 4536. However, that form may not be used for:

(1) Applications filed under section 40109(g) of the Statute;

(2) Applications by persons who do not have either:

(i) An effective air carrier certificate or foreign air carrier permit from the Department, or

(ii) A properly completed application for such a certificate or permit, and an effective exemption from the Department for operations similar to those proposed;

(3) Successive applications for the same or similar authority that would total more than ten (10) flights; or

(4) Any other application for which the Department decides the requirements of §§ 302.3 and 302.4 are more appropriate. Upon a showing of good cause, an application may be filed by cablegram, telegram, facsimile, electronic mail (when available), or telephone; all such telephonic requests must be confirmed by written application within three (3) business days of the original request.

(c) Applications for exemption from Chapter 415 of the Statute, from tariffs (except for waivers filed under subpart Q of part 221 of this chapter), or from Department regulations concerning tariffs may be submitted by letter. Three copies of such applications shall be sent to Department of Transportation Dockets. Upon a showing of good cause, the application may also be filed by cablegram, telegram, facsimile, electronic mail (when available), or telephone; all such requests must be confirmed by written application within three (3) business days of the original request.

(d) Applications filed under paragraph (a) of this section shall be docketed and any additional documents filed shall be identified by the assigned docket number.

(e) Applications filed under paragraph (b) or (c) of this section will normally not be docketed. The Department may require such applications to be docketed if appropriate. The Department will publish a notice of such applications in its Weekly List of Applications Filed.

§ 302.303 Contents of applications.

(a) *Title.* An application filed under § 302.302(a) shall be entitled ''Application for . . .'' (followed by the type of authority request, e.g., exemption, frequency allocation) and, where applicable, shall state if the application involves renewal and/or amendment of existing exemption authority.

(b) *Factual statement.* Each application shall state:

(1) The section(s) of the Statute or the rule, regulation, term, condition, or limitation from which the exemption is requested;

(2) The proposed effective date and duration of the exemption;

(3) A description of how the applicant proposes to exercise the authority (for example, applications for exemption from section 41101 or 41301 of the Statute should include at least: places to be served; equipment types, capacity and source; type and frequency or service; and other operations that the proposed service will connect with or support); and

(4) Any other facts the applicant relies upon to establish that the proposed

service will be consistent with the public interest.

(c) *Supporting evidence.* (1) Each application shall be accompanied by:

(i) A statement of economic data, or other matters or information that the applicant desires the Department to officially notice;

(ii) Affidavits, or statements under penalty of 18 U.S.C. 1001, establishing any other facts the applicant wants the Department to rely upon; and

(iii) Information showing the applicant is qualified to perform the proposed services.

(2) In addition to the information required by paragraph (c)(1) of this section, an application for exemption from section 41101 or 41301 of the Statute (except exemptions under section 40109(g)) shall state whether the authority sought is governed by a bilateral agreement or by principles of comity and reciprocity. Applications by foreign carriers shall state whether the applicant's homeland government grants U.S. carriers authority similar to that requested. If so, the application shall state whether the fact of reciprocity has been established by the Department and cite the pertinent finding. If the fact of reciprocity has not been established by the Department, the application shall include documentation to establish such reciprocity.

(d) *Emergency cabotage.* Applications under section 40109(g) of the Statute shall, in addition to the information required in paragraphs (b) and (c) of this section, contain evidence showing that:

(1) Because of an emergency created by unusual circumstances not arising in the normal course of business, traffic in the markets requested cannot be accommodated by air carriers holding certificates under section 41102 of the Statute;

(2) All possible efforts have been made to accommodate the traffic by using the resources of such air carriers (including, for example, the use of foreign aircraft, or sections of foreign aircraft, under lease or charter to such air carriers, and the use of such air carriers' reservation systems to the extent practicable);

(3) The authority requested is necessary to avoid unreasonable hardship for the traffic in the market that cannot be accommodated by air carriers; and

(4) In any case where an inability to accommodate traffic in a market results from a labor dispute, the grant of the requested exemption will not result in an unreasonable advantage to any party in the dispute.

(e) *Renewal applications.* An application requesting renewal of an exemption or other limited authority under this subpart that is intended to invoke the automatic extension provisions of 5 U.S.C. 558(c) shall comply with, and contain the statements and information required by part 377 of this chapter.

(f) *Record of service.* An application shall list the parties served as required by § 302.304.

§ 302.304 Service of documents.

(a) *General requirements.* (1) An application for exemption and responsive pleadings shall be served as provided by § 302.7.

(2) Applicants shall serve on the persons listed in paragraph (b) of this section a complete copy of the application and any supporting documents. Responsive pleadings shall be served on the same persons as applications.

(b) *Persons to be served.* (1) Applicants for scheduled interstate air transportation authority shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the city-pair market(s) specified in the application,

(ii) The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute.

(3) Applicants for charter-only or nonscheduled-only authority shall serve any person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute. However, applicants that file fewer than sixteen (16) days prior to the proposed start of service must also serve:

(i) Those U.S. carriers (including commuter carriers) that are known to be operating in the general market(s) at issue and

(ii) Those persons who may be presumed to have an interest in the subject matter of the application.

(4) Applicants for slot exemptions under section 41714 of the Statute shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the airport(s) specified in the application,

(ii) The manager of each of the affected airports,

(iii) The mayor of the city that each affected airport serves,

(iv) The Governor of the State in which each affected airport is located, and

(v) Any other person who has filed a pleading in a related proceeding under section 41714 of the Statute.

(5) *Additional service.* The Department may, in its discretion, order additional service upon any other person.

§ 302.305 Posting of applications.

A copy of every docketed application for exemption shall be posted in Department of Transportation Dockets and listed in the Department's Weekly List of Applications Filed. A copy of every undocketed application shall be posted in the Licensing Division's lobby of the Office of International Aviation.

§ 302.306 Dismissal or rejection of incomplete applications.

(a) *Dismissal or rejection.* The Department may dismiss or reject any application for exemption that does not comply with the requirements of this part.

(b) *Additional data.* The Department may require the filing of additional data with respect to any application for exemption, answer, or reply.

§ 302.307 Answers to applications.

Within fifteen (15) days after the filing of an application for exemption, any person may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the exemption should be granted or denied. An answer shall include a statement of economic data or other matters the Department is requested to officially notice, and shall be accompanied by affidavits establishing any other facts relied upon.

§ 302.308 Replies to answers.

Within seven (7) days after the last day for filing an answer, any interested party may file a reply to one or more answers.

§ 302.309 Requests for hearing.

The Department will not normally conduct oral evidentiary hearings concerning applications for exemption. However, the Department may, in its discretion, order such a hearing on an application. Any applicant, or any person opposing an application, may request an oral evidentiary hearing. Such a request shall set forth in detail the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application. A request relying on factual assertions shall be accompanied by affidavits establishing such facts. If the Department orders an oral evidentiary hearing, the procedures in subpart A of this part shall apply.

§ 302.310 Exemptions on the Department's initiative.

The Department may grant exemptions on its own initiative when it finds that such exemptions are required by the circumstances and consistent with the public interest.

§ 302.311 Emergency exemptions.

(a) *Shortened procedures.* When required by the circumstances and consistent with the public interest, the Department may take action, without notice, on exemption applications prior to the expiration of the normal period for filing answers and replies. When required in a particular proceeding, the Department may specify a lesser time for the filing of answers and replies, and notify interested persons of this time period.

(b)(1) *Applications.* Applications for emergency exemption need not conform to the requirements of this subpart or of subpart A of this part (except as provided in this section and in § 302.303(d) concerning emergency cabotage requests). However, an application for emergency exemption must normally be in writing and must state in detail the facts and evidence that support the application, the grounds for the exemption, and the public interest basis for the authority sought. In addition, the application shall state specific reasons that justify departure from the normal exemption application procedures. The application shall also identify those persons notified as required by paragraph (c) of this section. The Department may require additional information from any applicant before acting on an application.

(2) *Oral requests.* The Department will consider oral requests, including telephone requests, for emergency exemption authority under this section in circumstances that do not permit the immediate filing of a written application. All oral requests must, however, provide the information required in paragraph (b)(1) of this section, except that actual evidence in support of the application need not be tendered when the request is made. All oral requests must be confirmed by written application, together with all supporting evidence, within three (3) business days of the original request.

(c) *Notice.* Except when the Department decides that no notice need be given, applicants for emergency exemption shall notify, as appropriate, those persons specified in § 302.304(b) of this subpart. Such notification shall be made in the same manner, contain the same information, and be dispatched at the same time, as the application made to the Department.

Subpart D—Rules Applicable to Enforcement Proceedings

§ 302.401 Applicability.

This subpart contains the specific rules that apply to Department proceedings to enforce the provisions of Subtitle VII of the Statute, and the rules, regulations, orders and other requirements issued by the Department, as well as the filing of informal and formal complaints. Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.402 Definitions.

Assistant General Counsel, when used in this subpart, refers to the Assistant General Counsel for Aviation Enforcement and Proceedings.

Complainant refers to the person filing a complaint.

Parties, when used in this subpart, include the Office of the Assistant General Counsel, the respondent, the complainant, and any other person permitted to intervene under § 302.20.

Respondent refers to the person against whom a complaint is filed.

§ 302.403 Informal Complaints.

Any person may submit in writing to the Assistant General Counsel an informal complaint with respect to anything done or omitted to be done by any person in contravention of any provision of the Statute or any requirement established thereunder. Such informal complaints need not otherwise comply with the provisions of this part. Matters so presented may, if their nature warrants, be handled by correspondence or conference with the appropriate persons. Any matter not disposed of informally may be made the subject of an enforcement proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

§ 302.404 Formal complaints.

(a) *Filing.* Any person may make a formal complaint to the Assistant General Counsel about any violation of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of § 302.3 and § 302.4, concerning the form and filing of documents. The filing of a complaint shall result in the institution of an enforcement proceeding only if the Assistant General Counsel issues a notice instituting such a proceeding as to all or part of the complaint under § 302.406(a) or the Deputy General Counsel does so under § 302.406(c).

(b) *Amendment.* A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Assistant General Counsel. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under § 302.11.

(c) *Insufficiency of formal complaint.* In any case where the Assistant General Counsel is of the opinion that a complaint does not sufficiently set forth matters required by any applicable rule, regulation or order of the Department, or is otherwise insufficient, he or she may advise the complainant of the deficiency and require that any additional information be supplied by amendment.

(d) *Joinder of complaints or complainants.* Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The Assistant General Counsel may separate or split complaints if he or she finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of the Department's business or the ends of justice.

(e) *Service.* A formal complaint, and any amendments thereto, shall be served by the person filing such documents upon each party complained of, upon the Deputy General Counsel, and upon the Assistant General Counsel.

§ 302.405 Responsive documents.

(a) *Answers.* Within fifteen (15) days after the date of service of a formal complaint, each respondent shall file an answer in conformance with and subject to the requirements of § 302.408(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for good cause shown.

(b) *Offers to satisfy.* A respondent in a formal complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served, within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of an offer to satisfy the

complaint shall not excuse the filing of an answer.

(c) *Motions to dismiss.* Motions to dismiss a formal complaint shall not be filed prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

§ 302.406 Procedure for responding to formal complaints.

(a) Within a reasonable time after an answer to a formal complaint is filed, the Assistant General Counsel shall either:

(1) Issue a notice instituting a formal enforcement proceeding in accordance with § 302.407 or (2) Issue an order dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) An order dismissing a complaint issued pursuant to paragraph (a)(2) of this section shall become effective as a final order of the Department thirty (30) days after service thereof.

(c) Whenever the Assistant General Counsel has failed to act on a formal complaint within a reasonable time after an answer is due, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute an enforcement proceeding by docketing the complaint upon a showing that it is in the public interest to do so; and

(2) By the respondent to dismiss the complaint upon a showing that it is in the public interest to do so.

(d) The Deputy General Counsel may grant, deny, or defer any of the motions, in whole or in part, and take appropriate action to carry out his or her decision.

§ 302.407 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Assistant General Counsel there are reasonable grounds to believe that any economic regulatory provision of the Statute, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that efforts to satisfy a complaint as provided by § 302.405 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel may issue a notice instituting an enforcement proceeding before an administrative law judge.

(b) The notice shall incorporate by reference the formal complaint submitted pursuant to § 302.404 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant.

(c) The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Department to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures that it may deem necessary or proper.

(d) Whenever the Assistant General Counsel seeks an assessment of civil penalties in an enforcement proceeding, he or she shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting a formal enforcement proceeding or in a separate document.

(e) In any proceeding in which civil penalties are sought, any decisions issued by the Department shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

§ 302.408 Answers and replies.

(a) Within fifteen (15) days after the date of service of a notice issued pursuant to § 302.407, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.405. Any requests for extension of time for filing of an answer to such complaint shall be filed in accordance with § 302.11.

(b) All answers shall be served in accordance with § 302.7 and shall fully and completely advise the parties and the Department as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint unless the respondent is without knowledge, in which case, his or her answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted. Any answer to a complaint, or response to a notice, proposing the assessment of civil penalties shall specifically present any matters that the respondent intends to rely upon in opposition to, or in mitigation of, such civil penalties.

(c) The DOT decisionmaker or the administrative law judge may, in his or her discretion, require or permit the filing of a reply in appropriate cases; otherwise, no reply may be filed.

§ 302.409 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by § 302.408 shall be deemed to authorize the DOT decisionmaker or administrative law judge, as a matter of discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting a formal enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, as a matter of discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order; *Provided,* that the DOT decisionmaker or administrative law judge may permit late filing of an answer for good cause shown.

§ 302.410 Consolidation of proceedings.

The DOT decisionmaker or Chief Administrative Law Judge may, upon his or her own initiative, or upon motion of any party, consolidate for hearing or for other purposes, or may contemporaneously consider, two or more enforcement proceedings that involve substantially the same parties or issues that are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

§ 302.411 Motions to dismiss and for summary judgment.

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within seven (7) days after service of the motion.

(b) Parties may petition the DOT decisionmaker to review any action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in § 302.32.

§ 302.412 Admissions as to facts and documents.

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or administrative law judge and serve upon the opposing

side a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents.

(b) Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny such matters.

(c) Service of such request and answering statement shall be made as provided in § 302.7. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him or her for any other purpose or be used against him or her in any other proceeding or action.

§ 302.413 Evidence of previous violations.

Evidence of previous violations by any person or of any provision of the Statute or any requirement thereunder found by the Department or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

§ 302.414 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with § 302.22.

§ 302.415 Hearing.

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge shall give the parties reasonable written notice of the time and place of the hearings. Except as may be modified by the provisions of this subpart, the procedures in § 302.17 to § 302.38 governing the conduct of oral evidentiary hearings will apply.

§ 302.416 Appearances by persons not parties.

With consent of the administrative law judge, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with the consent of the administrative law judge, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be asked witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

§ 302.417 Settlement of proceedings.

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision is issued by the DOT decisionmaker. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within ten (10) days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

§ 302.418 Motions for immediate suspension of operating authority pendente lite.

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by, the DOT decisionmaker. Proceedings on the motion shall be in accordance with § 302.11. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

§ 302.419 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding, in which an order of the Department has been issued pursuant to section 46101 of the Statute or an injunction or other form of enforcement action has been issued by a court of competent jurisdiction pursuant to section 46106 of the Statute, believes that changed conditions of fact or law or the public interest require that said order or judicial action be modified or set aside, in whole or in part, such party may file with the Department a motion requesting that the Department take such administrative action or join in applying to the appropriate court for such judicial action, as the case may be. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include the materials and argument in support thereof. The motion shall be served on each party to the proceeding in which the enforcement action was taken. Within thirty (30) days after the service of such motion, any party so served may file an answer thereto. The Department shall dispose of the motion by such procedure as it deems appropriate.

§ 302.420 Saving Clause.

Repeal, revision or amendment of any of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges for Foreign Air Transportation

§ 302.501 Applicability.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation under Chapter 415 of the Statute. Except as modified by this subpart, the provisions of subpart A apply.

§ 302.502 Institution of proceedings.

A proceeding to determine the lawfulness of rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing

of a petition or complaint by any person, or by the issuance of an order by the Department.

§ 302.503 Contents and service of petition or complaint.

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the air carrier against whose tariff provision the petition or complaint is filed.

(c) Answers to complaints, other than those filed under § 302.506, shall be filed within seven (7) working days after the complaint is filed.

§ 302.504 Dismissal of petition or complaint.

If the Department is of the opinion that a petition or complaint does not state facts that warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

§ 302.505 Order of investigation.

The Department, on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the foreign air transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and may assign the proceeding for hearing before an administrative law judge. If a hearing is held, except as modified by this subpart, the provisions of § 302.17 through § 302.38 of this part shall apply.

§ 302.506 Complaints requesting suspension of tariffs; answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 41509 of the Statute shall fully identify the tariff and include reference to:

(1) The issued or posting date,

(2) The effective date,

(3) The name of the publishing carrier or agent,

(4) The Department number, and

(5) Specific items or particular provisions protested or complained against. The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 41509 of the Statute, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by the complainant, and within the time limits herein provided, a complaint may be sent by facsimile, telegram, or electronic mail (when available) to the Department and to the carrier against whose tariff provision the complaint is made. Such complaint shall state the grounds relied upon, and must be confirmed in writing within three (3) business days and filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

§ 302.507 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to § 302.506, with respect to tariffs that do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for the Department, in which event the period for filing shall be extended to the next successive day that is not a Saturday, Sunday, or holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by § 302.8.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees

§ 302.601 Applicability.

(a) This subpart contains the specific rules that apply to a complaint filed by one or more air carriers or foreign air carriers (''carriers''), pursuant to 49 U.S.C. 47129(a), for a determination of the reasonableness of a fee increase or a newly established fee for aeronautical uses that is imposed upon the carrier by the owner or operator of an airport. This subpart also applies to requests by the owner or operator of an airport for such a determination. An airport owner or operator is considered to have imposed a fee on a carrier when it has taken all steps necessary under its procedures to establish the fee, whether or not the fee is being collected or carriers are currently required to pay it.

(b) This subpart does not apply to—

(1) A fee imposed pursuant to a written agreement with a carrier using the facilities of an airport;

(2) A fee imposed pursuant to a financing agreement or covenant entered into prior to August 23, 1994, or

(3) Any other existing fee not in dispute as of August 23, 1994.

(c) Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.602 Complaint by a carrier; request for determination by an airport owner or operator.

(a) Any carrier may file a complaint with the Secretary for a determination as to the reasonableness of any fee imposed on the carrier by the owner or operator of an airport. Any airport owner or operator may also request such a determination with respect to a fee it has imposed on one or more carriers. The complaint or request for determination shall conform to the requirements of this subpart and §§ 302.3 and 302.4 concerning the form and filing of documents.

(b) If a carrier has previously filed a complaint with respect to the same airport fee or fees, any complaint by another carrier and any airport request for determination shall be filed no later than seven (7) calendar days following the initial complaint. In addition, all complaints or requests for determination must be filed on or before the sixtieth (60th) day after the carrier receives written notice of the imposition of the new fee or the imposition of the increase in the fee.

(c) To ensure an orderly disposition of the matter, all complaints and any request for determination filed with respect to the same airport fee or fees will be considered in a consolidated proceeding, as provided in § 302.606.

§ 302.603 Contents of complaint or request for determination.

(a) The complaint or request for determination shall set forth the entire grounds for requesting a determination of the reasonableness of the airport fee. The complaint or request shall include a copy of the airport owner or operator's written notice to the carrier of the imposition of the fee, a statement of position with a brief, and all supporting testimony and exhibits on which the filing party intends to rely. In lieu of submitting duplicative exhibits or testimony, the filing party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(b) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. The disk submission must be in one of the following formats, in the latest two versions, or in such other format as may be specified by notice in the **Federal Register:** Microsoft Word (or RTF), Word Perfect, Ami Pro, Microsoft Excel, Lotus 123, Quattro Pro, or ASCII tab-delineated files. Parties should submit three copies of each diskette to Department of Transportation Dockets: one copy for the docket, one copy for the Office of Hearings, and one copy for the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(c) When a carrier files a complaint, it must also certify:

(1) That it has served on the airport owner or operator and all other carriers serving the airport the complaint, brief, and all supporting testimony and exhibits, and that those parties have received or will receive these documents no later than the date the complaint is filed. Such service shall be by hand, by electronic transmission, or by overnight express delivery. (Unless a carrier has informed the complaining carrier that a different person should be served, service may be made on the person responsible for communicating with the airport on behalf of the carrier about airport fees.);

(2) That the carrier has previously attempted to resolve the dispute directly with the airport owner or operator;

(3) That when there is information on which the carrier intends to rely that is not included with the brief, exhibits, or testimony, the information has been omitted because the airport owner or operator has not made that information available to the carrier. The certification shall specify the date and form of the carrier's request for information from the airport owner or operator; and

(4) That any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

(d) When an airport owner or operator files a request for determination, it must also certify:

(1) That it has served on all carriers serving the airport the request, brief, and all supporting testimony and exhibits, and that those parties have received or will receive these documents no later than the date the request is filed. Such service shall be in the same manner as provided in § 302.603(c)(1).

(2) That the airport owner or operator has previously attempted to resolve the dispute directly with the carriers; and

(3) That any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.604 Answers to a complaint or request for determination.

(a)(1) When a carrier files a complaint under this subpart, the owner or operator of the airport and any other carrier serving the airport may file an answer to the complaint as provided in paragraphs (b) and (c) of this section.

(2) When the owner or operator of an airport files a request for determination of the reasonableness of a fee it has imposed, any carrier serving the airport may file an answer to the request.

(b) The answer to a complaint or request for determination shall set forth the answering party's entire response. When one or more additional complaints or a request for determination has been filed pursuant to § 302.602(b) with respect to the same airport's fee or fees, the answer shall set forth the answering party's entire response to all complaints and any such request for determination. The answer shall include a statement of position with a brief and any supporting testimony and exhibits on which the answering party intends to rely. In lieu of submitting duplicative exhibits or testimony, the answering party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) Answers to a complaint shall be filed no later than fourteen (14) calendar days after the filing date of the first complaint with respect to the fee or fees in dispute at a particular airport. Answers to a request for determination shall be filed no later than fourteen (14) calendar days after the filing date of the request.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions as provided in § 302.603(b).

(e) The answering party must also certify that:

(1) it has served the answer, brief, and all supporting testimony and exhibits by hand, by electronic transmission, or by overnight express delivery on the carrier filing the complaint or the airport owner or operator requesting the determination, and that those parties have received or will receive these documents no later than the date the answer is filed; and

(2) that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.605 Replies.

(a) The carrier submitting a complaint may file a reply to any or all of the answers to the complaint. The airport owner or operator submitting a request for determination may file a reply to any or all of the answers to the request for determination.

(b) The reply shall be limited to new matters raised in the answers. It shall constitute the replying party's entire response to the answers. It shall be in the form of a reply brief and may include supporting testimony and exhibits responsive to new matters raised in the answers. In lieu of submitting duplicative exhibits or testimony, the replying party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) The reply shall be filed no later than two (2) calendar days after answers are filed.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions as provided in § 302.603(b).

(e) The carrier or airport owner or operator submitting the reply must certify that it has served the reply and all supporting testimony and exhibits on the party or parties submitting the answer to which the reply is directed, and that those parties have received or will receive these documents no later than the date the reply is filed, and that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.606 Review of complaints or requests for determination.

(a) Within thirty (30) days after a complaint or request for determination is filed under this subpart, the Secretary will determine whether the complaint or request meets the procedural requirements of this subpart and whether a significant dispute exists, and take appropriate action pursuant to paragraph (b), (c), or (d) of this section. When both a complaint and a request for determination have been filed with respect to the same airport fee or fees, the Secretary will issue a determination as to whether the complaint, the request, or both meet the procedural requirements of this subpart and whether a significant dispute exists

within thirty (30) days after the complaint is filed.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the complaint or request for hearing before an administrative law judge. The instituting order will—

(1) Establish the scope of the issues to be considered and the procedures to be employed;

(2) Indicate the parties to participate in the hearing;

(3) Consolidate into a single proceeding all complaints and any request for determination with respect to the fee or fees in dispute; and

(4) Include any special provisions for exchange or disclosure of information by the parties.

(c) If the Secretary determines that the complaint or request does not meet the procedural requirements of this subpart, the complaint or request for determination will be dismissed without prejudice to filing a new complaint. The order of the Secretary will set forth the terms and conditions under which a revised complaint or request may be filed.

(d) If the Secretary finds that no significant dispute exists—

(1) If the proceeding was instituted by a complaint, the Secretary will issue an order dismissing the complaint, which will contain a concise explanation of the reasons for the determination that the dispute is not significant.

(2) If the proceeding was instituted by a request for determination, the Secretary will either issue a final order as provided in § 302.610 or set forth the schedule for any additional procedures required to complete the proceeding.

§ 302.607 Decision by administrative law judge.

The administrative law judge shall issue a decision recommending a disposition of a complaint or request for determination within sixty (60) days after the date of the instituting order, unless a shorter period is specified by the Secretary.

§ 302.608 Petitions for discretionary review.

(a) Within five (5) calendar days after service of a decision by an administrative law judge, any party may file with the Secretary a petition for discretionary review of the administrative law judge's decision.

(b) Petitions for discretionary review shall comply with § 302.32(a). The petitioner must also certify that it has served the petition by hand, by electronic transmission, or by overnight express delivery on all parties to the proceeding and that those parties have received or will receive the petition no later than the date it is filed.

(c) Any party may file an answer in support of or in opposition to any petition for discretionary review. The answer shall be filed within four (4) calendar days after service of the petition for discretionary review. The answer shall comply with the page limits specified in § 302.32(b).

§ 302.609 Completion of proceedings.

(a) When a complaint or a request for determination with respect to an airport fee or fees has been filed under this subpart and has not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint or request is filed.

(b) When both a complaint and a request for determination have been filed with respect to the same airport fee or fees and have not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint is filed.

§ 302.610 Final order.

(a) When a complaint or request for determination stands submitted to the Secretary for final decision on the merits, he or she may dispose of the issues presented by entering an appropriate order, which will include a statement of the reasons for his or her findings and conclusions. Such an order shall be deemed a final order of the Secretary.

(b) The final order of the Secretary shall include, where necessary, directions regarding an appropriate refund or credit of the fee increase or newly established fee which is the subject of the complaint or request for determination.

(c) If the Secretary has not issued a final order within 120 days after the filing of a complaint by an air carrier or foreign air carrier, the decision of the administrative law judge shall be deemed to be the final order of the Secretary.

Subpart G—Rules Applicable to Mail Rate Proceedings and Mail Contracts

§ 302.701 Applicability.

(a) This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by the Department for foreign air transportation and air transportation between points in Alaska, and certain contractual arrangements between the U.S. Postal Service and certificated air carriers for the carriage of mail in foreign air transportation entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772.

(b) Such contracts must be for the transportation of at least 750 pounds of mail per flight, and no more than five (5) percent, based on weight, of the international mail transported under any such contract may consist of letter mail.

Final Mail Rate Proceedings

§ 302.702 Institution of proceedings.

(a) Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the U.S. Postal Service, or upon the issuance of an order by the DOT decisionmaker.

(b) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rates, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(c) In any case where an air carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the DOT decisionmaker, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit.

(d) All petitions, amended petitions, and documents relating thereto shall be served upon the U.S. Postal Service by sending a copy to the Assistant General Counsel, Transportation Division, Washington, DC 20260–1124, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the U.S. Postal Service shall consist of a statement in the document that the person filing it has served a copy as required by this section.

(e) Answers to petitions shall be filed within twenty (20) days after service of the petition.

§ 302.703 Order to show cause or instituting a hearing.

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT decisionmaker may issue an order directing the respondent to show cause why it should not adopt such findings and conclusions and such final rates as may be specified in the order to show cause, or may issue an order setting the matter for hearing before an administrative law judge.

§ 302.704 Objections and answers to order to show cause.

(a) Where an order to show cause is issued, any person having objections to the rates specified in such order shall file with the DOT decisionmaker an answer within forty-five (45) days after the date of service of such order or within such other period as the order may specify.

(b) An answer to an order to show cause shall contain specific objections, and shall set forth the findings and conclusions, the rates, and the supporting exhibits that would be substituted for the corresponding items in the findings and conclusions of the show cause order, if such objections were found valid.

(c) An answer filed by a person who is neither a party nor a person ultimately permitted to intervene in an oral evidentiary hearing if such proceeding is established shall be treated as a memorandum filed under § 302.706.

§ 302.705 Further procedures.

(a) If no answer is filed within the designated time, or if a timely filed answer raises no material issue of fact, the DOT decisionmaker may, upon the basis of the record in the proceeding, enter a final order fixing the rate or rates.

(b) If an answer raising a material issue of fact is filed within the time designated in the Department's order, the DOT decisionmaker may then issue an order authorizing additional pleadings and/or establishing further procedural steps, including setting the matter for oral evidentiary hearing before an administrative law judge.

§ 302.706 Hearing.

(a) If a hearing is ordered under § 302.705, the issues at such hearing shall be formulated in accordance with the instituting order, except that at a prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he or she deems necessary to make a full determination of a fair and reasonable rate.

(b)(1) The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the U.S. Postal Service, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom the DOT decisionmaker or administrative law judge permits to intervene in accordance with § 302.20.

(2) In addition to participation in hearings in accordance with § 302.19, persons other than parties may, within the time fixed for filing an answer to an order to show cause as provided in § 302.704, submit a memorandum of opposition to, or in support of, the position taken in the petition or order. Such memorandum shall not be received as evidence in the proceeding.

(c) All direct evidence shall be in writing and shall be filed in exhibit form within the times specified by the DOT decisionmaker or by the administrative law judge.

(d) Except as modified by this subpart, the provisions of § 302.17 through § 302.38 of this part shall apply.

Provision for Temporary Rate

§ 302.707 Procedure for fixing temporary mail rates.

At any time during the pendency of a proceeding for the determination of final mail rates, the DOT decisionmaker, upon his or her own initiative, or on petition by the air carrier whose rates are in issue or by the U.S. Postal Service, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

Informal Mail Rate Conference Procedure

§ 302.708 Invocation of procedure.

(a) Conferences between DOT employees, representatives of air carriers, the U.S. Postal Service and other interested persons may be called by DOT employees for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

(b) At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conference shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the DOT employees conducting such conference shall note in writing on such statement the time of termination of such conference.

§ 302.709 Scope of conferences.

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of DOT employees in rate conferences essentially will not be different, therefore, from the duties and powers they have in the processing of rate cases not involving a rate conference. The employees' function in both instances is to present clearly to the DOT decisionmaker the issues and the related material facts, together with recommendations. The DOT decisionmaker will make an independent determination of the soundness of the employees's analyses and recommendations.

§ 302.710 Participants in conferences.

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the U.S. Postal Service, and the authorized DOT employees. No other person will attend unless the DOT employees deem his or her presence necessary in the interest of one or more purposes to be accomplished, and in such case his or her participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the authorized DOT employees.

§ 302.711 Conditions upon participation.

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for ninety (90) days after its termination, or until the Department takes public action with respect to the facts and issues covered in the conference, whichever is earlier:

(1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference in absolute confidence and trust;

(2) Shall not deal, directly or indirectly, for the account of himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the DOT decisionmaker; and

(3) Shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his or her supervision, who by reason of their employment come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused. (The term ''information'', as used in this section, shall refer only to information obtained at the conference regarding the future course of action or position of the

Department or its employees with respect to the facts or issues discussed at the conference.)

(b) *Signed statement required.* Every representative of an air carrier actually present at any conference shall sign a statement that he or she has read this entire instruction and promises to abide by it and advise any other participant to whom he or she discloses any confidential information of the restrictions imposed above. Every representative of the U.S. Postal Service actually present at any conference shall, on his or her own behalf, sign a statement to the same effect.

(c) *Presumption of having conference information.* A director of any air carrier that has had a representative at the conference, who deals either directly or indirectly for himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth above, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed above; but such presumption can be rebutted.

(d) *Compliance report required.* Within ten (10) days after the expiration of the time specified for keeping conference matters confidential, every participant, as defined in paragraph (e) of this section, shall file a verified compliance report with Department of Transportation Dockets stating that he or she has complied in every respect with the conditions of this section, or if he or she has not so complied, stating in detail in what respects he or she has failed to comply.

(e) *Persons subject to the provisions of this section.* For the purposes of this section, participants shall include:

(1) Any representative of any air carrier and any representative of the U.S. Postal Service actually present at the conference;

(2) The directors and the officers of any air carrier that had a representative at the conference;

(3) The members of any firm of attorneys or consultants that had a representative at the conference; and

(4) The members of the U.S. Postal Service staff who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.

§ 302.712 Information to be requested from an air carrier.

When an air carrier is requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment that will be required to perform the operations for a future period, full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the air carrier's experience. With respect to the rate for a past period, essentially the same procedure shall be followed. Other information or data likewise may be requested by the DOT employees. All data submitted by the air carrier shall be certified by a responsible officer.

§ 302.713 DOT analysis of data for submission of answers thereto.

After a careful analysis of these data, the DOT employees will, in most cases, send the air carrier a statement of exceptions showing areas of differences. Where practicable, the air carrier may submit an answer to these exceptions. Conferences will then be scheduled to resolve the issues and facts in accordance with sound ratemaking principles.

§ 302.714 Availability of data to the U.S. Postal Service.

The representatives of the U.S. Postal Service shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the DOT employees and the air carrier, and a reasonable time shall be allowed to review the facts and issues and to make any presentation deemed necessary; *Provided,* That in cases other than those involving an issue as to the service mail rates payable by the U.S. Postal Service pursuant to section 41901 of the Statute, representatives of the U.S. Postal Service shall be furnished with copies of data under this provision only upon their written request.

§ 302.715 Post-conference procedure.

No briefs, argument, or any formal steps will be entertained by the DOT decisionmaker after the rate conferences. The form, content and time of the staff's presentation to the DOT decisionmaker are entirely matters of internal procedure. Any party to the mail rate proceeding may, through an authorized DOT employee, request the opportunity to submit a written or oral statement to the DOT decisionmaker on any unresolved issue. The DOT decisionmaker will grant such requests whenever he or she deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall not, however, impair the rights that any party might otherwise have under the Statute and this part.

§ 302.716 Effect of conference agreements.

No agreements or understandings reached in rate conferences as to facts or issues shall in any respect be binding on the Department or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that a rate conference was held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that, upon the filing of an answer by any party to the rate proceeding, all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with § 302.22.

§ 302.717 Waiver of participant conditions.

After the termination of a mail rate conference hereunder, the air carrier whose rates were in issue may petition the DOT decisionmaker for a release from the obligations imposed upon it and all other persons by § 302.711. The DOT decisionmaker will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Department's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the DOT decisionmaker will grant or deny the request without being required to assign reasons therefor.

Processing Contracts for the Carriage of Mail in Foreign Air Transportation

§ 302.718 Filing.

Any air carrier that is a party to a contract to which this subpart is applicable shall file three (3) copies of the contract in the Office of Aviation Analysis, X–50, Department of Transportation, Washington, DC 20590, not later than ninety (90) days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in § 302.720 and the certificate of service shall specify the persons upon whom service has been made. One copy of each contract filed shall bear the certification of the secretary or other duly authorized officer of the filing air carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

§ 302.719 Explanation and data supporting the contract.

Each contract filed pursuant to this subpart shall be accompanied by economic data and such other information in support of the contract upon which the filing air carrier intends that the Department rely, including, in cases where pertinent, estimates of the annual volume of contract mail (weight and ton-miles) under the proposed contract, the nature of such mail (letter mail, parcel post, third class, etc.), together with a statement as to the extent to which this traffic is new or diverted from existing classes of air and surface mail services and the priority assigned to this class of mail.

§ 302.720 Service.

A copy of each contract filed pursuant to § 302.718, and a copy of all material and data filed pursuant to § 302.719, shall be served upon each of the following persons:

(a) Each certificated and commuter (as defined in § 298.2 of this chapter) air carrier, other than the contracting carrier, that is actually providing scheduled mail services between any pair of points between which mail is to be transported pursuant to the contract; and

(b) The Assistant General Counsel, Transportation Division, U.S. Postal Service, Washington, DC 20260–1124.

§ 302.721 Complaints.

Within fifteen (15) days of the filing of a contract, any interested person may file with the Office of Aviation Analysis, X–50, Department of Transportation, Washington, DC 20590, a complaint with respect to the contract setting forth the basis for such complaint and all pertinent information in support of same. A copy of the complaint shall be served upon the air carrier filing the contract and upon each of the persons served with such contract pursuant to § 302.720.

§ 302.722 Answers to complaints.

Answers to the complaint may be filed within ten (10) days of the filing of the complaint, with service being made as provided in § 302.720.

§ 302.723 Further procedures.

(a) In any case where a complaint is filed, the DOT decisionmaker shall issue an order dismissing the complaint, disapproving the contract, or taking such other action as may be appropriate. Any such order shall be issued not later than ten (10) days prior to the effective date of the contract.

(b) In cases where no complaint is filed, the DOT decisionmaker may issue a letter of notification to all persons upon whom the contract was served indicating that the Department does not intend to disapprove the contract.

(c) Unless the DOT decisionmaker disapproves the contract not later than ten (10) days prior to its effective date, the contract automatically becomes effective.

§ 302.724 Petitions for reconsideration.

Except in the case of a Department determination to disapprove a contract, no petitions for reconsideration of any Department determination pursuant to this subpart shall be entertained.

Appendix A to Part 302—Index to Rules of Practice

Appendix A shows the subjects covered by part 302 and the section numbers used before and after the final rule revising part 302, published in the **Federal Register** on February 9, 2000 and became effective on March 10, 2000.

Subject	Old rule	New rule
ADMINISTRATIVE LAW JUDGES:		
Actions after hearings	§ 302.27(b)	§ 302.31(a)
Actions during prehearing conference	§ 302.23(a)	§ 302.22(b)
Arguments before	§ 302.25	§ 302.29
Briefs	§ 302.26	§ 302.30
Licensing cases	§ 302.1752	§ 302.215
Certification for decision	§ 302.22(d)	§ 302.31(b)
Definition	§ 302.22(a)	§ 302.2
Delegation of authority	§ 302.27(a)	§ 307.17(a)(3)
Exceptions	§ 302.27(a)	§ 307.17(a)(3)
Interlocutory matters	§ 302.27(a)	§ 307.17(a)(3)
Disqualification	§ 302.22(b)	§ 302.17(b)
Exceptions	§ 302.24(e)	§ 302.24(i)
Licensing cases	§ 302.1754	§ 302.217
Hearings before	§ 302.24	§ 302.23
Initial decision (*see* Initial Decision)		
Powers	§ 302.22(c)	§ 302.17(a)
Prehearing conference report	§ 302.23(b)	§ 302.22(c)
Recommended decision (*see* Recommended Decision)		
Termination of authority	§ 302.22(c)	§ 307.17(a)(4)
ADMISSIONS:		
Enforcement proceeding	§ 302.212	§ 302.412
Limitation on use	§ 302.212	§ 302.412(c)
AIRPORT FEES:		
Administrative law judge decision	§ 302.615	§ 302.607
Complaints by U.S. or foreign air carriers	§ 302.603(a)	§ 302.602(a)
Answers	§ 302.607	§ 302.604
Additional complaints	§ 302.603(b)	§ 302.602(b)
Contents	§ 302.605	§ 302.603
Format of exhibits and briefs	§ 302.605(b)	§ 302.603(b)
Service	§ 302.605(c)(1)	§ 302.603(c)(1)
Replies	§ 302.609	§ 302.605
Consolidation of proceedings	§ 302.603(c)	§ 302.602(c)
Dismissal	§§ 302.611(c), (d)	§§ 302.606(c), (d)
Final order	§ 302.621	§ 302.610
Timing	§ 302.619	§ 302.609
Instituting order	§ 302.611(b)	§ 302.606(b)
Petitions for discretionary review	§ 302.617	§ 302.608

Subject	Old rule	New rule
Answers	§ 302.617(c)	§ 302.608(c)
Request for determination by airport owner/operator	§ 302.603(a)	§ 302.602(a)
Answers	§ 302.607	§ 302.604
Contents	§ 302.605	§ 302.603
Format of exhibits and briefs	§ 302.605(b)	§ 302.603(b)
Service	§ 302.605(d)(1)	§ 302.603(d)(1)
Replies	§ 302.609	§ 302.605
Review procedures	§ 302.611	§ 302.606
Significant dispute determination	§ 302.611(b)	§ 302.606(b)
AMENDMENTS OF DOCUMENTS (*see* Documents)		
ANSWERS (*see also* Replies):		
Airport fees	§ 302.607	§ 302.604
Certificate applications:		
Initial fitness	§ 302.1730(c)	§ 302.204
International route awards		
Conforming applications	§ 302.1720(d)	§ 302.212(d)
Motions to modify scope	§ 302.1720(e)	§ 302.212(d)
New authority	§ 302.1720(d)	§ 302.212(b)
Complaints		
Air mail contracts	§ 302.1506	§ 302.722
Airport fees	§ 302.607	§ 302.604
Enforcement matters	§ 302.204(b)	§ 302.405
Suspension of tariffs	§ 302.505	§ 302.506
Consolidation of proceedings	§ 302.12(c)	§ 302.13(c)
Enforcement proceeding, notice instituting	§ 302.207	§ 302.408
Exemption applications	§ 302.406	§ 302.307
Foreign air carrier permit applications	§ 302.1740(c)	§ 302.204
Generally	§ 302.6	§ 302.6
Mail rate proceedings show cause orders	§ 302.305	§ 302.704
Motions, generally	§ 302.18(c)	§ 302.11(c)
Motions to consolidate	§ 302.12(c)	§ 302.13(c)
Motions to dismiss and for summary judgment	§ 302.212	§ 302.411
Motions for modification/dissolution of enforcement proceedings	§ 302.218	§ 302.419
Petitions for discretionary review	§ 302.28(b)	§ 302.32(b)
Petitions for final mail rates	§ 302.303	§ 302.702(e)
Petitions for intervention	§ 302.15(c)(3)	§ 302.20(c)(3)
Petitions for reconsideration	§ 302.37a	§ 302.14
Requests for determination of airport fees	§ 302.607	§ 302.607
APPEALS:		
Administrative Law Judge's ruling	§ 302.18(f)	§ 302.11(h)
Enforcement complaints	§ 302.206(b)	§ 302.406(c)
APPEARANCES:		
Generally	§ 302.11	§ 302.21
Application for admission to practice unnecessary	§ 302.11(a)	§ 302.21(b)
Copy of transcript	§ 302.11(c)	§ 302.27(b)
Retention of counsel	§ 302.11(b)	§ 302.27(a)
Enforcement proceedings	§ 302.214	§ 302.416
APPLICATIONS:		
Admission to practice unnecessary	§ 302.11(a)	§ 302.21(b)
Suspension from practicing before DOT	§ 302.11(a)	§ 302.21(c)
Amendment	§ 302.5	§ 302.5
Certificates for international route awards	§§ 302.1701–1713, 1720	§§ 302.201–206
Conforming applications	§ 302.1720(c)	§ 302.212(c)
Certificates involving initial fitness	§§ 302.1701–1713, 1730	§§ 302.201–206
Consolidation	§ 302.12	§ 302.13
Exemptions	§§ 302.401–405	§§ 302.302–304
Exemptions, emergency	§§ 302.410(b), (c)	§ 302.311
Foreign Air Carrier Permits	§§ 302.1701–1713, 1740	§§ 302.201–206
Licensing cases	§§ § 302.1701–1790	§ 302.201–206
ARGUMENT:		
Before Administrative Law Judge	§ 302.25	§ 302.29
Oral (*see* Oral Arguments)		
ATTENDANCE FEES AND MILEAGE	§ 302.21	§ 302.27(c)
BRIEFS:		
Accompanying motions or answers	§ 302.18(d)	§ 302.11(d)
Failure to restate objections	§ 302.31(b)	§ 302.35(b)
Filing time	§ 302.31(a)	§ 302.35(a)
Formal specifications	§ 302.31(c)	§ 302.35(c)
Incorporation by reference	§ 302.31(b)	§ 302.35(c)(2)
Licensing cases	§§ 302.302.1752, 1755	§§ 302.215, 218
To Administrative Law Judge	§ 302.26	§ 302.30
Licensing cases	§ 302.1752	§ 302.215
To DOT decisionmaker	§ 302.31	§ 302.35
Licensing cases	§ 302.1755	§ 302.218

Subject	Old rule	New rule
CERTIFICATE CASES FOR U.S. AIR CARRIERS:		
Application:		
Answers to	§§ 302.1720(d) 1730(d)	§ 302.204(a)
Contents of	§ 302.1704	§ 302.202
Incomplete	§ 302.1713	§ 302.209
Replies to answers		§ 302.204(b)
Service of	§ 302.1705	§ 302.203
Supporting evidence	§ 302.1710	§§ 302.202(a), 205
Verification	§ 302.1707	§ 302.206
Continuing Fitness	§ 302.1730	§ 302.211
Non-hearing procedures	§ 302.1712(a)	§ 302.207
Generally	§§ 302.1701–1790	§§ 302.201–220
Initial Fitness	§ 302.1730	§ 302.211
International Route Awards	§ 302.1720	§ 302.212
Oral evidentiary hearing proceedings	§§ 302.1751–1757	§§ 302.214–220
Petition for	§ 302.1712(b)	§ 302.208
CERTIFICATION:		
Documents	§ 302.4(b)	§ 302.4(b)
Record	§§ 302.22(d), 27, 29	§ 302.31(b)
CHARGES (*see* Rates, Fairs, and Charges; Airport Fees)		
CITATION OF RULES	§ 302.2	§ 302.1(c)
CIVIL PENALTIES	§ 302.206(a)	§§ 302.407(d), (e)
COMPLAINANTS, JOINDER	§ 302.13	§ 302.404(d)
COMPLAINTS:		
Airport fees	§§ 302.603–605	§§ 302.602–603
Contracts for transportation of mail	§§ 302.1505–1507	§ 302.721
Enforcement proceedings	§§ 302.200–204	§§ 302.403–404
Joinder	§ 302.13	§ 302.404(d)
Rates, fares, and charges	§§ 302.501–508	§§ 302.501–507
Suspension of tariffs	§§ 302.505–508	§ 302.506
COMPUTATION OF TIME (*see also* Time)	§ 302.16	§ 302.8
CONSOLIDATION OF PROCEEDINGS	§ 302.12	§ 302.13
Airport fees	§ 302.603(c)	§ 302.602(c)
Answer to motion for	§ 302.12(c)	§ 302.13(c)
Enforcement proceedings	§ 302.210(a)	§ 302.410
Filing time	§ 302.12(b)	§ 302.13(b)
Initiation of	§ 302.12(a)	§ 302.13(a)
CONTINUING FITNESS CERTIFICATE CASES	§ 302.1701–1713	§ 302.212
CONTRACTS (*see* Mail Contracts)		
DECISIONS:		
Final	§ 302.36	§§ 302.38, 220
Initial (*see* Administrative Law Judges)		
Recommended (*see* Administrative Law Judges)		
Tentative	§ 302.29	§ 302.33
Exceptions to	§ 302.30	§ 302.34
DEFINITIONS	NA	§§ 302.2, 402
DELEGATION OF AUTHORITY	§ 302.27	§§ 302.17(a), 18(a)
DEPOSITIONS:		
Application by party for	§ 302.20(b)	§ 302.26(b)
Criteria for order to issue	§ 302.20(a)	§ 302.26(a)
Evidential status	§§ 302.20(h)	§ 302.26(h)
Objections to questions or evidence	§ 302.2(d)	§ 302.26(d)
Specifications	§ 302.20(g)	§ 302.26(g)
Subscription by witness	§ 302.20(e)	§ 302.26(e)
Written interrogatories	§ 302.20(f)	§ 302.26(f)
DISCRETIONARY REVIEW:		
Initial and Recommended decisions	§ 302.28	§ 302.32
Answers in opposition or support	§ 302.28(b)	§ 302.32(b)
Formal requirements	§ 302.28(a)(3)	§§ 302.32(a)(3), (4)
Grounds for	§ 302.28(a)(2)	§ 302.32(a)(2)
Orders declining review	§ 302.28(c)	§ 302.32(c)
Oral arguments	§ 302.28(a)(5)	§ 302.32(a)(5)
Petitions for	§ 302.28(a)(1)	§ 302.32(a)(1)
Review proceedings	§ 302.28(d)	§ 302.32(d)
DISSOLUTION OF ENFORCEMENT ACTION	§ 302.218	§ 302.419
DOCUMENTS:		
Amendments	§ 302.5	§ 302.5
Leave of Department	§ 302.5	§ 302.5(a)
Timing of	§ 302.5	§ 302.5(b)
Answers (*see* Answers)		
Briefs (*see* Briefs)		
Dismissal	§ 302.5	§ 302.3(d)
Electronic filing	NA	§ 302.3(c)
Exhibits	§§ 302.24(g)	§ 302.24(c)

Subject	Old rule	New rule
Filing	§ 302.3	§ 302.3
Address	§ 302.3(a)	§ 302.3(a)
Date	§ 302.3(a)	§ 302.3(a)
Improper filing	§ 302.4e	§ 302.3(d)
Formal specifications	§ 302.3(b)	§ 302.3(b)
General requirements	§ 302.4	§ 302.4
Contents	§ 302.4(a)	§ 302.4(a)(2)
Designation of person to receive service	§ 302.4(c)	§ 302.4(a)
Subscription	§ 302.4(b)	§ 302.4(b)
Memoranda of opposition or support	§ 302.6(c)	§ 302.706(b)(2)
Number of copies	§ 302.3(c)	§ 302.3(c)
Objections to public disclosure	§ 302.39(b)	§ 302.12
Official Notice of facts	§ 302.24(n)	§ 302.24(g)
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Exceptions to	§ 302.1754	§ 302.217
Oral arguments	§ 302.28(a)(5)	§ 302.32(a)(5)
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Petitions for discretionary review	§ 302.28	§ 302.32
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Scope	§ 302.27(a)	§ 302.31(a)(2)

Subject	Old rule	New rule
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Licensing cases	§ 302.1705	§ 302.203
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Issued in Washington, DC, on January 24, 2000.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

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Wednesday
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Part III

Department of Transportation

Coast Guard

46 CFR Parts 2, 30, et al.
Frequency of Inspection; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 2, 30, 31, 52, 61, 71, 90, 91, 98, 107, 110, 114, 115, 125, 126, 132, 133, 134, 167, 169, 175, 176, 188, 189, 195, and 199

[USCG–1999–4976]

RIN 2115–AF73

Frequency of Inspection

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its vessel inspection regulations to introduce a 5-year Certificate of Inspection cycle in accordance with the Coast Guard Authorization Act of 1996 to harmonize our inspections with most internationally required certificates. This rulemaking is necessary for the following reasons: to align inspection schedules with international protocols; to establish an examination process giving industry additional latitude in scheduling inspections; and to create a parity between small passenger vessels and all other Coast Guard-inspected vessels. The Coast Guard expects this rule to result in a reduction in the time and paperwork associated with Coast Guard vessel inspections for certification.

DATES: This final rule is effective February 4, 2000.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–4976 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Lieutenant Commander Don Darcy, Office of Standards Evaluation and Development (G–MSR–2), Coast Guard, telephone 202–267–1200. For questions on viewing the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 15, 1999, we published a notice of proposed rulemaking (NPRM) entitled ''Frequency of Inspection, Alternate Hull Examination Program for Certain Vessels, and Underwater Surveys for Passenger, Nautical School, and Sailing School Vessels'' in the **Federal Register** (64 FR 62018). We received 49 letters commenting on the proposed rule. Several comments requested a public hearing, mainly concerning the provisions of the Alternate Hull Examination and Underwater Survey Programs. We do not plan to hold a public hearing on the frequency of inspection requirements in this rule.

Background and Purpose

Our review of the comments to the NPRM revealed strong public interest in the Alternate Hull Examination and Underwater Survey portions of this rulemaking. As a result of this public interest, we have decided to create a new docket (USCG–2000–6858) entitled, ''Alternate Hull Examination Program for Certain Passenger Vessels, and Underwater Surveys for Passenger, Nautical School, and Sailing School Vessels,'' and re-examine the provisions concerning the Alternate Hull Examination and Underwater Survey programs. Comments to the NPRM concerning the Alternate Hull Examination and Underwater Survey Programs will be included in the new docket. Therefore, you do not need to resubmit any comments already submitted to the NPRM.

This final rule only establishes a 5-year Certificate of Inspection cycle to harmonize our inspections with internationally required certificates. We are publishing the final rule to establish the frequency of inspection requirements to meet the International Convention for the Safety of Life at Sea, 1974 and the International Convention on Load Line compliance date of February 3, 2000.

Frequency of Inspection

On October 31, 1988, the International Maritime Organization (IMO) convened the International Conference on the Harmonized Systems of Survey and Certification to adopt the Protocol of 1988 relating to the International Convention for Safety of Life at Sea (SOLAS), 1974, and the Protocol of 1988 relating to the International Convention on Load Lines, 1966. By adopting these 1988 Protocols, IMO standardized the term of validity for certificates and intervals for vessel inspections required by the Conventions. These 1988 Protocols will enter into force as international law on February 3, 2000. As party to the SOLAS Convention, and the International Convention on Load Lines, the U.S. ratified the 1988 Protocol on July 1, 1991. Section 605 of the Coast Guard Authorization Act of 1996, Public Law 104–324, codified at Title 46 of the United States Code (U.S.C.) section 3307 was amended to require vessel inspections for certification once a year or once every 5 years, depending on vessel type. Previously, vessels were inspected for certification once a year, or once every 2 or 3 years, depending on vessel type.

This rulemaking aligns the term of validity for a Certificate of Inspection (COI) and the type of inspections required during the term of the COI with the standards prescribed in the 1974 SOLAS Convention. Adopting a 5-year COI, with interval annual inspections, and a periodic inspection will ensure that U.S. vessels meet international standards and comply with international law. These changes will also provide vessel owners and operators with more flexibility to schedule required inspections and reduce paperwork associated with these inspections.

Discussion of Comments and Changes

The following is a summary of the comments we received concerning the frequency of inspection section to the NPRM, and the changes made to the regulatory text in response to those comments.

General

(1) Six comments expressed support for the Coast Guard initiative to bring certification and inspection requirements in line with international standards. Three comments pointed out that the changes make good economic sense and go a long way to eliminating inspection creep.

(2) One comment stated that issuing 5-year certificates will minimize the number of vessels operating on temporary certificates and eliminate burdensome paperwork.

We envisioned a reduction in the use of temporary certificates as a result of the changes in this rule. However, we may initially have to issue COIs with a validity of less than 5 years to coincide with the dates of the 5-year SOLAS and the International Convention on Load Lines documents.

(3) Two comments stated that the 45-day comment period was too short and leaves the Coast Guard with little time to evaluate public comment. One comment noted the short amount of time between the end of the comment period and the February 3, 2000, compliance date for international requirements.

We agree that the 45-day comment period may have been too optimistic for proposed changes concerning the Alternate Hull Examination and Underwater Survey programs. For this reason, we are taking additional time to evaluate the provisions on these programs. However, we have thoroughly considered all comments for the frequency of inspection provisions. We determined that harmonizing our inspections with internationally required certificates will lessen the burden and create greater flexibility for industry.

(4) One comment opposed the extension of the inspection period for small passenger vessels. The comment recommended increasing frequency of inspections or providing better training to Coast Guard inspectors. The comment suggests that increasing the period between inspections reduces the time inspectors are on the boats and increases the risk of catastrophic failure.

The changes in this rule will not extend the inspection period. Inspections of vessels will continue to be conducted annually. Only the issuance of the COI and term of validity is being changed by this project. In addition, annual inspections can be as extensive as the attending marine inspector deems necessary. Annual inspections could be more extensive due to the condition of the vessel or problems found with the vessel. The issue of training for Coast Guard inspectors is outside the scope of this rulemaking.

(5) One comment pointed out that the NPRM did not mention how the Coast Guard would phase-in the new inspection cycle. The comment asks whether all COI renewals after the effective date of the final rule will reflect the new requirements.

A NVIC is being developed in conjunction with this rulemaking to provide guidance on how to transition a vessel from the current survey and certification system to the harmonized system. The date of introduction of the harmonized system of survey and certification for a specific U.S. flag vessel should be agreed upon between the owner or operator and the cognizant Officer in Charge, Marine Inspection (OCMI). This agreed upon date may be the date of drydocking or the date of repairs or renovation. In any case, the date would not be later than the latest expiration date of the vessel's SOLAS, International Convention on Load Lines, or International Convention for the Prevention of Pollution from Ships (MARPOL) certificates. (As of February 3, 2000, MARPOL certificates will be issued with a 5-year term of validity.) Vessels with 2 or 3-year COIs, not required to have SOLAS certificates, will be issued a 5-year COI when their current COI expires and upon completion of that inspection for certification.

Anniversary Date

(6) One comment suggested that a constant anniversary date will make harmonization with the new COI schedule and drydock dates very difficult. The comment emphasizes that regulatory events should meld with the business cycle of vessels, which includes a credit drydock. The comment also requests the Coast Guard to clarify whether a vessel will retain its anniversary date when it has been taken out of service and then brought back into service.

This rulemaking only affects the anniversary date of the COI to harmonize with international standards. The vessel owner or operator should discuss harmonizing drydock dates with COIs when they speak with the OCMI to establish the COI anniversary date. For vessels taken out of service, their anniversary date will not change unless their deactivation extends beyond the validity of SOLAS, International Convention on Load Lines, or International Convention for the Prevention of Pollution from Ships (MARPOL) certificates or COIs.

Applicability

(7) One comment pointed out that oil spill response vessels (OSRVs) and oil spill response barges are not included in the regulations. The comment recommended that these vessels be addressed in some manner.

OSRVs are inspected under subchapter I, Cargo and Miscellaneous Vessels. The revisions to subchapter I in this final rule apply to OSRVs.

(8) One comment stated that the Coast Guard should include offshore supply vessels (OSVs) into the regulations.

Offshore supply vessels are addressed in 46 CFR subchapter L of the Coast Guard's regulations. This final rule amends the inspection and certification requirements for OSVs in 46 CFR 126.50, 126.420, 126.510, 126.520, and 126.530.

Equipment and System Inspections

(9) Four comments pointed out the importance of aligning equipment and system inspections with the 5-year inspection cycle. One comment stated that the alignment of pressure vessel inspections with the 5-year inspection for certification is a welcomed change.

(10) Three comments noted that in § 61.05–10 the regulations still require boiler inspections every 2.5 years and would prevent an owner from selecting the third anniversary option for a periodic inspection.

In Table 61.05–10, Inspection Intervals for Boilers, footnote number 2 explains that an entry of 2.5 in the table means ''two tests or inspections must occur within any 5-year period, and no more than 3 years may elapse between any test or inspection and its immediate predecessor.'' Footnote number 2 allows owners or operators to select the third anniversary options for boiler inspections.

Inspection Creep

(11) One comment recommended that the Coast Guard should not grant a 3-month extension beyond the anniversary date without the approval of the OCMI. The OCMI needs the ability to disqualify substandard vessels from automatic 3-month extensions.

The 3-month extension is actually a 3-month window on either side of the anniversary date for the annual or periodic inspections. This extension does not apply beyond the validity of the COI. In addition, the OCMI retains the authority to limit the operations or require corrective action due to the condition of the vessel at anytime during the validity of the COI.

(12) One comment suggested that, in order to completely eliminate inspection creep, the wording in §§ 31.05–10, 91.01–10, 107.211, 126.250, 169.207, and 189.01–10 should be changed to permit the new COI to be dated ''5 years from the date of the previous COI,'' instead of from the date of inspection.

We determined that the effect the proposed change in the comment would keep vessels out of harmonization with international standards. For vessels not wishing to harmonize with the international standards, their COIs will be dated 5 years from the date of the previous COI. In order to harmonize with SOLAS certificates, the period of validity will be based on the current COI date to eliminate inspection creep. The flexibility of establishing an anniversary date is discussed in the response to comment 5 and in a NVIC we are currently developing.

(13) Another comment recommended that owners have a one-time opportunity to ''reset'' the expiration date by renewing the current COI early or by requesting a period of validity of less than 5 years on an initial COI.

We agree that a one-time opportunity to ''reset'' the expiration date or to request a COI for less than 5-years will allow for harmonization and eliminate inspection creep. As previously stated,

the Coast Guard is developing policy guidance in a NVIC on the transition from the current survey and certification system to the harmonized system.

(14) Two comments recommended expressing the expiration date with the month and year only. One comment suggested that there is still a problem if an operator renews a COI before the expiration date of the last COI. The new date would still be earlier than the last COI date.

We disagree. The possibility of inspection creep still exists with only the month and year as the expiration date of the COI.

Mobile Offshore Drilling Units (MODUs)

(15) One comment recommended that the Coast Guard modify the inspection interval of load tests for cranes in § 107.361 to 5 years to conform to IMO and Coast Guard policy.

We agree that load tests for cranes should coincide with IMO and Coast Guard inspection intervals. Title 46 CFR 107.260 contains the requirements for the load test for cranes. We are amending 46 CFR 107.260(c)(2) to extend the interval for the load test for cranes from 48 months to 60 months.

Periodic Inspections

(16) One comment recommended that the Coast Guard eliminate periodic inspections and require four annual inspections during each 5-year cycle for COI. The comment also noted that periodic inspections are not required by SOLAS or U.S. law.

We disagree. Period inspections are part of the SOLAS system and the newly adopted 1988 protocols. Periodic inspections are an integral part of standardizing the term of validity for certificates and intervals for vessel inspections required by the IMO.

Streamlined Inspection Program (SIP) and Alternate Compliance Program (ACP)

(17) Six comments noted that the NPRM did not discuss the impact of the proposed changes on the Alternate Compliance Program (ACP) and the Streamlined Inspection Program (SIP). These comments requested that the Coast Guard clarify how the proposed rule would impact vessels in the SIP and ACP programs. One comment recommended that vessels enrolled in these programs should not be required to undergo annual inspections, only the inspection for certification.

Vessels enrolled in the ACP and SIP programs will be able to have a third party complete their inspections. The changes in this rule will have no effect on the ACP and SIP program. We disagree that vessels in the ACP and SIP programs should be allowed to avoid annual inspections.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

This rulemaking affects a total of 10,973 vessels. Of these, 5,531 vessels are required to change from a 2-year to a 5-year inspection interval. The following types of vessels have 2-year certificates: freight barges, freight ships, mobile offshore drilling units (MODUs), industrial vessels, oceanographic research vessels, offshore supply vessels, sailing school vessels, seagoing towing vessels, tank barges, and tank ships. The remaining vessels (5,442) are small passenger vessels that will change from a 3-year to a 5-year inspection interval.

Potential benefits of the frequency of inspection changes include—

- A harmonized inspection system enabling vessel owners and operators to receive their COI, SOLAS certificates, and Load Line Certificates simultaneously;
- Increased flexibility for vessel owners and operators by establishing up to a 3 month window on either side of the COI anniversary date in which to conduct inspections; and
- A reduction in the burden placed on vessel owners decreasing the time expended on required inspections. For the next 30 years, we estimate an annual burden reduction of 35 minutes per vessel for those in the previous 2-year COI cycle, and for vessels with previous 3-year COIs we expect an annual burden reduction of 13.5 minutes per vessel.

We considered whether this rule would have an impact on the currently assessed annual vessel inspection fees. The Coast Guard considers the impact to be minimal; and therefore, will have a negligible effect on the annual vessel inspection fee schedule. Accordingly, this rule does not change annual vessel inspection fees. However, we will initiate a rulemaking later this year that will reassess annual vessels inspection fees, and will account for all market condition changes.

Although this rulemaking restructures the inspection process, vessels will continue to be inspected once per year.

Potential benefits of changes made to load test for cranes include a reduction in the burden placed on MODU owners. MODUs will load test their cranes every five years instead of every four years. We estimate that the 132 MODUs will have an annual burden reduction of 1 hour 12 minutes per MODU for the next 20 years. MODUs usually contract a company to perform the load tests for cranes.

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. The term ''small entities'' comprises 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 does not increase costs to any of the affected vessels and, therefore, does not increase cost to small entities. We estimate this rule slightly reduces their burden by requiring less time expended on inspections. The anticipated benefits of this rulemaking to small entities are as follows:

- Requiring a COI certificate once every 5 years instead of every 2 or 3 years reduces the collection-of-information burden for all portions of the affected populations of the industry, including small entities. We determined that this rule reduces the collection-of-information burden over a 30-year period.
- The inspection cycle aligns better with international standards, enabling vessel owners and operators to complete several major inspections and surveys at the same time. This allows small businesses to reduce their inspection cost and increase their productivity.
- Requiring annual inspections that are less time consuming reduces the number of total inspection hours per vessel. The purpose of annual inspections is to examine specific areas of concern on vessels between the COI and periodic inspections.
- The inspection cycle for small passenger vessels (changing from a 3-year to a 5-year inspection for certification interval) will not include a periodic inspection. After careful consideration, we determined that periodic inspections for small passenger vessels increase industry's burden for each inspection by an estimated 7 minutes per vessel annually. Therefore,

the rule only requires COI and annual inspections, reducing the inspection burden from for all small passenger vessels.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for two collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The information collection requirements of the rule are addressed in the previously approved OMB collections 2115–0007 and 2115–0133.

OMB Collection 2115–0007

Title: Application for Vessel Inspection and Waiver.

Summary of the Collection of Information: The rule requires vessel owners and operators to change the frequency in which they send an ''Application for Inspection of U.S. Vessel (CG–3752)''. These changes revise the previously approved OMB Collection 2115–0007. This collection of information is affected by changes in the following sections: 46 CFR 31.01–15, 91.25–5, 126.420, 169.205, and 189.25–5.

Need for Information: This rulemaking reduces the paperwork burden for affected vessels. Vessel owners or operators are required to send an application (CG–3752) to schedule an inspection for renewal of a Certificate of Inspection once every 5 years, rather than every 2 or 3 years.

Proposed Use of Information: The application provides the Coast Guard with basic vessel information which is necessary for the initial planning and scheduling of inspection.

Description of the Respondents: This rule affects respondents who previously had 2- or 3-year inspection intervals for their vessel's Certificate of Inspection (COI). This rule implements a 5-year inspection interval. Previous 2-year COI vessel classes include freight barges, freight ships, industrial vessels, mobile offshore drilling units, oceanographic research vessels, offshore supply vessels, seagoing tows, tank barges, and tank ships. Previous 3-year COI vessel classes include small passenger vessels.

Number of Respondents: The regulation affects 10,973 respondents that currently have 2- or 3-year inspection intervals.

Frequency of Response: Vessel owners need to respond once per COI period. Completing and mailing the application constitutes a response. The Coast Guard anticipates that 2,195 vessels per year will get new COIs under the new 5-year inspection interval (10,973 respondents affected by this rule/5 years).

Burden of Response: The annual hour burden created by the posting of COIs for vessels with 5-year COIs is 549 hours (2,195 COI/Year × 0.25 hours). We expect operators to need 15 minutes at most to complete and mail the application.

Estimate of Total Annual Burden: The annual burden attributed to this collection for vessels with a 5-year COI is $21,960 (549 hours × the private industry wage rate of $40 per hour).

OMB Collection 2115–0133

Title: Various Forms and Posting Requirements Under Title 46 CFR Concerning Vessel Inspections.

Summary of the Collection of Information: This rule requires vessel owners and operators to change the frequency in which they post COIs on vessels. This change revises and amends the previously approved OMB Collection 2115–0133.

This collection of information is affected by the changes in the following sections: 46 CFR 31.05–10, 91.01–10, 107.211, 115.107, 126.250, 169.207, 176.107, and 189.01–10.

Need for Information: This rulemaking reduces the paperwork burden for affected vessels. Vessel owners or operators will renew Certificates of Inspection once every 5 years, rather than every 2 or 3 years. An application for a Certificate of Inspection is necessary to allow a Coast Guard inspector to evaluate the condition of a specific vessel and to ensure it is fit for the service for which it is intended.

Proposed Use of Information: The Coast Guard uses the inspection for certification to evaluate the condition of a specific vessel and to ensure it is fit for the service for which it is intended. The COI attests to that fitness.

Description of the Respondents: This rule affects respondents who currently have 2-year and 3-year COI interval. The rule implements a 5-year inspection interval. Previous 2-year COI vessel classes include freight barges, freight ships, industrial vessels, MODUs, oceanographic research vessels, offshore supply vessels, seagoing tows, tank barges, and tank ships. Previous 3-year COI vessel classes include small passenger vessels.

Number of Respondents: The regulation affects 10,973 respondents that currently have 2- or 3-year inspection intervals.

Frequency of Response: Vessel owners need to respond once per COI period. The posting of the certificate constitutes a response. The Coast Guard anticipates that 2,195 vessels will get new COIs per year under the new 5-year inspection interval (10,973 respondents/5 years).

Burden of Response: The estimated annual hour burden created by this regulation is 1,098 hours (2,195 COI per year × 0.5 hours). We expect operators to need 30 minutes to post the certificate on each ship.

Estimate of Total Annual Burden: The annual burden attributed to this rulemaking is $43,920 (1,098 hours times the private industry wage rate of $40 per hour).

Public Comments on Collection of Information: As required by 44 U.S.C. 3507(d), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. The sections are 46 CFR 31.01–15, 31.05–10, 91.01–10, 91.25–5, 107.211, 115.107, 126.250, 126.420, 169.205, 169.207, 176.107, 189.01–10, and 189.25–5 46; and the corresponding approval numbers from OMB are OMB Control Numbers 2115–0007 and 2115–0133.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

We have analyzed this rule under E.O. 13132 and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically

required by law. In particular, the Act addresses actions that may result in expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

This rule deals exclusively with changing inspection intervals and providing voluntary dry-docking alternatives for certain passenger vessels. We considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 52

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 110

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 115

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 125

Administrative practice and procedure, Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 126

Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 132

Fire prevention, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 133

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 134

Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Provisions for liftboats, Vessels.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 195

Marine Safety, Navigation (water), Oceanographic research vessels.

46 CFR Part 199

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 2, 30, 31, 52, 61, 71, 90, 91, 98, 107, 110, 114, 115, 125, 126, 132, 133, 134, 167, 169, 175, 176, 188, 189, 195, and 199 as follows:

PART 2—VESSEL INSPECTIONS

1. Revise the authority citation for part 2 to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3103, 3205, 3306, 3307, 3703; E.O. 12334, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

§ 2.01–3 [Amended]

2. In § 2.01–3(a), remove the words, '', but less than 60 days,''.

§ 2.01–5 [Amended]

3. In § 2.01–5(a), remove paragraphs (a)(3) and (4).

§ 2.01–8 [Amended]

4. In § 2.01–8(b), remove ''§ 176.35–1'' and add, in its place, ''§§ 115.900 and 176.900''.

5. In § 2.01–25—

a. Remove paragraph (a)(1)(v) and redesignate paragraphs (a)(1)(vi) through (viii) as paragraphs (a)(1)(v) through (vii), respectively;

b. In paragraph (b)(1), immediately following the words ''subchapter I (Cargo and Miscellaneous Vessels),'' add the words ''subchapter K (Small Passenger Vessels Carrying more than 150 Passengers or with overnight accommodations for more than 49 Passengers), subchapter L (Offshore Supply Vessels),''; and

c. Revise paragraphs (a)(4), (b)(2), (e)(2), and (f) to read as follows:

§ 2.01–25 International Convention for Safety of Life at Sea, 1974.

(a) * * *

(4) The Federal Communications Commission will issue the following certificates:

(i) Cargo Ship Safety Radio Certificate.

(ii) Exemption Certificate.

* * * * *

(b) * * *

(2) For vessels other than passenger vessels, you must contact the local office of the Federal Communications Commission to apply for the inspection concerning the issuance of a Cargo Ship Safety Radio Certificate.

* * * * *

(e) * * *

(2) The Federal Communications Commission issues the Exemption Certificate, which modifies the Cargo Ship Safety Radio Certificate.

(f) *Availability of Certificates.* The Convention certificates must be on board the vessel and readily available for examination at all times.

* * * * *

PART 30—GENERAL PROVISIONS

6. Revise the authority citation for part 30 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

7. Add § 30.10–2a to read as follows:

§ 30.10–2a Anniversary date—TB/ALL.

The term *anniversary date* means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

PART 31—INSPECTION AND CERTIFICATION

8. Revise the authority citation for part 31 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 588013 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.01–1 [Amended]

9. In § 31.01–1(a), remove the words ''biennially, annually,'' and add, in their place, the words ''every 5 years''.

10. In § 31.01–15, revise the section heading and paragraph (a) to read as follows:

§ 31.01–15 Application for a Certificate of Inspection—TB/ALL.

(a) You must submit a written application for an inspection for certification to the cognizant OCMI. To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the tank vessel's current Certificate of Inspection. When renewing a Certificate of Inspection, you must schedule an inspection for certification within the 3 months before the expiration date of the current Certificate of Inspection.

* * * * *

11. In Section 31.05–10, revise the section heading and paragraph (a) to read as follows:

§ 31.05–10 Period of validity for a Certificate of Inspection—TB/ALL.

(a) A Certificate of Inspection is valid for 5 years.

* * * * *

12. In § 31.10–15, revise paragraph (a) and add paragraph (c) to read as follows:

§ 31.10–15 Inspection for Certification—TB/ALL.

(a) After receiving an application for inspection, the OCMI will inspect a tank vessel in his or her jurisdiction once every 5 years. The OCMI will ensure that every tank vessel is of a structure suitable for the carriage of flammable and/or combustible liquids in bulk and for the proper grade or grades of cargo the vessel carries while in service. If the OCMI deems it necessary, he or she may direct the vessel to be put in motion, and may adopt any other suitable means to test the tank vessel and its equipment.

* * * * *

(c) If the vessel passes the inspection for certification, the OCMI will issue a new Certificate of Inspection.

13. Revise § 31.10–17 to read as follows:

§ 31.10–17 Annual and periodic inspections—TB/ALL.

(a) *Annual inspection.* Your vessel must undergo an annual inspection within 3 months before or after each anniversary date, except as specified in paragraph (b) of this section.

(1) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the annual inspection is the same as the inspection for certification but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your vessel's current Certificate of Inspection.

(3) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(4) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

(b) *Periodic inspection.* Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(1) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 31.10–15(b). The OCMI will ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the periodic inspection, the marine inspector will endorse your vessel's current Certificate of Inspection.

(3) If the periodic inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(4) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

14. Add § 31.10–17a to read as follows:

§ 31.10–17a Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in § 31.10–17 (a) and (b) and your Certificate of Inspection must be endorsed.

§ 31.10–18 [Amended]

15. In § 31.10–18—

a. In paragraph (d), remove the words ''biennially by'' and add, in their place, the words ''at the inspection for certification and the periodic inspection by'' and remove the words ''Prior to the biennial inspection'' and add, in their place, the words ''Before the inspection for certification and periodic inspection'';

b. In paragraph (e), immediately following the words ''inspection for certification'' add the words '', periodic inspection,''; and

c. In paragraph (h), immediately following the words ''inspection for certification'' add the words '', periodic inspection,''.

§ 31.40–1 [Amended]

16. In § 31.40–1, immediately following the words ''international voyage.'' add the words ''(See § 30.01–6 of this chapter.)''.

17. Revise § 31.40–15 to read as follows:

§ 31.40–15 Cargo Ship Safety Radio Certificate—T/ALL.

Every tankship equipped with a radio installation on an international voyage must have a Cargo Ship Safety Radio Certificate. Each radio installation must meet the requirements of the Federal Communication Commission and the International Convention for Safety of Life at Sea.

18. Revise § 31.40–35 to read as follows:

§ 31.40–35 Availability of Certificates.

The Convention certificates shall be on board the vessel and readily available for examination at all times.

19. Revise § 31.40–40 to read as follows:

§ 31.40–40 Duration of Convention certificates—T/ALL.

(a) The following certificates are valid for a period of not more than 60 months.

(1) A Cargo Ship Safety Construction Certificate.

(2) A Cargo Ship Safety Equipment Certificate.

(3) A Safety Management Certificate.

(4) A Cargo Ship Safety Radio Certificate.

(b) An Exemption certificate must not be valid for longer than the period of the certificate to which it refers.

(c) A Convention certificate may be withdrawn, revoked, or suspended at any time when it is determined that the vessel is no longer in compliance with applicable requirements. (See § 2.01–70 of this chapter for procedures governing appeals.)

PART 52—POWER BOILERS

20. Revise the authority citation for part 52 to read as follows:

Authority: 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 52.01–50 [Amended]

21. § 52.01–50(k)(1), immediately following the words ''inspection for certification'' add the words '', periodic inspection''.

PART 61—PERIODIC TESTS AND INSPECTIONS

22. Revise the authority citation for part 61 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

§ 61.05–10 [Amended]

23. In § 61.05–10, in Table 61.05–10, remove the letters ''COI'', wherever they appear, and add, in their place, the number ''2.5''; and, in Table 61.05–10, in footnote number 1, remove the words ''; where COI is used, the intervals coincide with the applicable vessel's inspection for certification''.

24. In § 61.10–5, revise paragraphs (c), (h), and (i) to read as follows:

§ 61.10–5 Pressure vessels in service.

* * * * *

(c) *Special purpose vessels.*

(1) If your vessel's Certificate of Inspection is renewed annually, the following must be examined under operating conditions at each inspection for certification: all tubular heat exchangers, hydraulic accumulators, and all pressure vessels used in refrigeration service.

(2) If your vessel's Certificate of Inspection is renewed less often than annually, the following must be examined under operating conditions twice every 5 years: all tubular heat exchangers, hydraulic accumulators, and all pressure vessels used in refrigeration service.

(3) No more than 3 years may elapse between any examination and its immediate predecessor.

* * * * *

(h) *Pneumatic tests.*

(1) Pressure vessels that were pneumatically tested before being stamped with the Coast Guard Symbol must be examined internally twice every 5 years and examined externally at each Inspection for Certification. No more than 3 years may elapse between any external examination and its immediate predecessor.

(2) For tanks whose design precludes a thorough internal or external examination, the thickness must be determined by a nondestructive method acceptable to the Officer in Charge, Marine Inspection.

(3) If (due to the product carried) your vessel's inspection intervals are prescribed in subchapter D (Tank Vessels), subchapter I (Cargo and Miscellaneous Vessels), or subchapter I–A (Mobile Offshore Drilling Units), you must comply with the pneumatic test regulations there, instead of the ones in this section.

(i) *Safety or relief valves on pressure vessels.*

(1) If your vessel's Certificate of Inspection is renewed annually, the marine inspector must check the settings of the safety or relief valves on all pressure vessels, except cargo tanks, at each inspection for certification.

(2) If your vessel's Certificate of Inspection is renewed less often than annually, the marine inspector must check the settings of the safety or relief valves on all pressure vessels, except cargo tanks, twice every 5 years. No more than 3 years may elapse between any check and its immediate predecessor.

(3) Cargo tank safety or relief valves must be checked at the interval required in subchapter D (Tank Vessels) or subchapter I (Cargo and Miscellaneous Vessels) of this chapter.

§ 61.15–5 [Amended]

25. In § 61.15–5(c), immediately following the words ''inspection for certification'' add the words ''for vessels whose Certificates of Inspection are renewed each year. For other vessels, the setting must be checked twice within any 5-year period, and no more than 3 years may elapse between any check and its immediate predecessor''.

§ 61.15–10 [Amended]

26. In § 61.15–10(a), remove the words ''and at each inspection for

certification'' and add, in their place, the words '', at each inspection for certification, and at each periodic inspection''.

§ 61.15–12 [Amended]

27. In § 61.15–12(a), immediately following the words ''inspection for certification'' add the words ''and periodic inspection''.

28. Revise § 61.20–1(a) to read as follows:

§ 61.20–1 Steering gear.

(a) The marine inspector must inspect the steering gear at each inspection for certification for vessels whose Certificate of Inspections are renewed each year. For other vessels, the marine inspector must inspect the steering gear twice within a 5-year period, and no more than 3 years may elapse between any inspection and its immediate predecessor. The marine inspector may inspect the steering gear more often, if necessary.

* * * * *

§ 61.20–3 [Amended]

29. In § 61.20–3, in paragraph (a), immediately following the words ''inspection for certification'' add the words ''and periodic inspection''; and, in paragraph (b), immediately following the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 61.30–15 [Amended]

30. In § 61.30–15, immediately following the words ''inspection for certification'' add the words '', periodic inspection''.

§ 61.30–20 [Amended]

31. In § 61.30–20, immediately following the words ''inspection for certification'' add the words '', periodic inspection''.

PART 71—INSPECTION AND CERTIFICATION

32. Revise the authority citation for part 71 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

33. Add § 71.25–5(b) to read as follows:

§ 71.25–5 When made.

* * * * *

(b) You must submit your application for the annual inspection at least 30 days before your current certificate of inspection expires.

PART 90—GENERAL PROVISIONS

34. Revise the authority citation for part 90 to read as follows:

Authority: 46 U.S.C. 3306, 3307, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§§ 90.10–1 and 90.10–2 [Redesignated as §§ 90.10–2 and 90.10–3]

35. Redesignate §§ 90.10–1 and 90.10–2 as §§ 90.10–2 and 90.10–3 respectively and add § 90.10–1 to read as follows:

§ 90.10–1 Anniversary date.

The term *anniversary date* means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

PART 91—INSPECTION AND CERTIFICATION

36. Revise the authority citation for part 91 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 91.01–10 [Amended]

37. In § 91.01–10—

a. In the section heading, immediately following the word ''validity'' add the words ''for a Certificate of Inspection'';

b. In paragraph (a), remove the words ''periods of either 1 or 2 years'' and add, in their place, the words ''a period of 5 years''; and

c. In paragraph (c)(2), remove the words ''2 years'' and add, in their place, the words ''5 years''.

38. Revise § 91.25–5 to read as follows:

§ 91.25–5 Application for a Certificate of Inspection.

You must submit a written application for an inspection for certification to the cognizant Officer in Charge, Marine Inspection. To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the tank vessel's current certificate. You must use Form CG–3752, Application for Inspection of U.S. Vessel, and submit it to the Officer in Charge, Marine Inspection at, or nearest to, the port where the vessel is located. When renewing a Certificate of Inspection, you must schedule an inspection for certification within the 3 months before the expiration date of the current Certificate of Inspection.

39. Revise § 91.25–20(a) introductory text to read as follows:

§ 91.25–20 Fire-extinguishing equipment.

(a) At each inspection for certification, periodic inspection and at other times necessary, the inspector will determine that all fire-extinguishing equipment is in suitable condition and may require any tests necessary to determine the condition of the equipment. The inspector will determine if the tests and inspections required by § 91.15–60 of this subchapter have been conducted. At each inspection for certification and periodic inspection, the inspector will check fire-extinguishing equipment with the following tests and inspections:

* * * * *

§ 91.25–25 [Amended]

40. In § 91.25–25(a), immediately following the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 91.25–38 [Amended]

41. In § 91.25–38, immediately following the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 91.25–40 [Amended]

42. In § 91.25–40, immediately following the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 91.25–45 [Amended]

43. In § 91.25–45, immediately following the words ''inspection for certification'' add the words ''and periodic inspection''.

Subpart 91.27—Annual and Periodic Inspections

44. In subpart 91.27, revise the subpart heading to read as set forth above.

45. Revise § 91.27–1 to read as follows:

§ 91.27–1 Annual and periodic inspections.

(a) *Annual inspection.* Your vessel must undergo an annual inspection within the 3 months before or after each anniversary date, except as required in paragraph (b) of this section.

(1) You must contact the cognizant Officer in Charge, Marine Inspection to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the annual inspection is the same as the inspection for certification as specified in § 91.25–10 but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has

occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(3) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the Officer in Charge, Marine Inspection.

(4) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

(b) *Periodic inspection.* Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(1) You must contact the cognizant Officer in Charge, Marine Inspection to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 91.25–10. The Officer in Charge, Marine Inspection will insure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the periodic inspection, the marine inspector will endorse your current Certificate of Inspection.

(3) If the periodic inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the Officer in Charge, Marine Inspection.

(4) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

46. Revise § 91.27–5 to read as follows:

§ 91.27–5 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in § 91.27–1 (a) and (b) and your Certificate of Inspection must be endorsed.

§ 91.27–10 [Removed]

47. Remove § 91.27–10.

48. Revise § 91.27–13 to read as follows:

§ 91.27–13 Alternative annual inspection for offshore supply vessels less than 400 gross tons in foreign ports.

(a) The owner or operator of an offshore supply vessel of less than 400 gross tons, except liftboats as defined in § 90.10–20 of this chapter, may request authorization to conduct an alternative annual inspection in place of the annual inspection described in § 91.27–1(a) of this chapter. You must submit your request to the Officer in Charge, Marine Inspection responsible for conducting inspections in the country in which the vessel is operating and will be examined. To qualify for the alternative annual inspection, you must meet the following requirements:

(1) The request for authorization must be in writing and received by the cognizant Officer in Charge, Marine Inspection before the end of the twelfth month of each COI anniversary year.

(2) The vessel is expected to be continuously employed outside of the United States during the 3 months before and after each anniversary date of the issuance of the COI.

(b) In determining whether to grant authorization for the alternative annual inspection, the Officer in Charge, Marine Inspection will consider the following:

(1) Information contained in previous inspection and drydock examination reports, including the Officer in Charge, Marine Inspection's recommendation for participation in the alternative midperiod examination program, and the alternative annual inspection program.

(2) The nature, number, and severity of any marine casualties or accidents, as defined in § 4.03–1 of this chapter, which the vessel has experienced in the last 3 years.

(3) The nature, number, and severity of any outstanding inspection requirements for the vessel.

(4) The owner or operator's history of compliance and cooperation in the alternative midperiod examination program and the alternative annual inspection program, which includes—

(i) The prompt correction of deficiencies;

(ii) The reliability of previously submitted alternative examination and annual inspection reports; and

(iii) The reliability of representations that the vessel under consideration will be, and other vessels previously examined under this section were, employed outside of the United States for the 3 month period before and after each anniversary date.

(c) If authorization is granted, the officer in Charge, Marine Inspection must provide the applicant written authorization to proceed with the alternative annual inspection, including special instructions when appropriate.

(d) The following conditions must be met for the alternative annual inspection to be accepted by the Coast Guard in lieu of conducting an annual inspection in accordance with § 91.27–1(a) of this subpart.

(1) The alternative annual inspection must be conducted within 3 months before and after each anniversary date.

(2) The alternative annual inspection must be of the scope detailed in § 91.27–1(a) of this subpart and must be conducted by the vessel's master, operator, or a designated representative of the owner or operator.

(3) Upon completion of the alternative annual inspection, the person or persons conducting the inspection must prepare a comprehensive report describing the conditions found. This inspection report must contain sufficient detail to allow an evaluation to be made by the Officer in Charge, Marine Inspection to whom the report is submitted that the vessel is fit for the service and route specified on the certificate of inspection. The report must include reports and receipts documenting the servicing of lifesaving and fire protection equipment, and any photographs or sketches necessary to clarify unusual circumstances. Each person preparing the report must sign it and certify that the information contained therein is complete and accurate.

(4) Unless the vessel's master participated in the alternative annual inspection and the preparation of the inspection report, the master must review the report for completeness and accuracy. The master must sign the report to indicate review and forward it to the vessel's owner or operator who requested authorization to conduct the inspection.

(5) The owner or operator of an offshore supply vessel inspected under this subpart must review and submit the report required by paragraph (d)(3) of this section to the Officer in Charge, Marine Inspection who authorized the owner or operator to conduct the alternative annual inspection. The inspection report must be received by the cognizant Officer in Charge, Marine Inspection before the first day of the fifth month following the anniversary date. The forwarding letter or endorsement must be certified and contain the following information—

(i) That the person or persons who conducted the inspection acted on behalf of the vessel's owner or operator;

(ii) That the inspection report was reviewed by the owner or operator;

(iii) That the discrepancies noted during the during the inspection have been corrected or will be corrected within a stated time frame; and

(iv) That the owner or operator has sufficient personal knowledge of conditions aboard the vessel at the time of the inspection or has made necessary inquiries to justify forming a belief that the inspection report is true and correct.

(e) The form of certification required under this subpart is as follows:

I certify that the above is true and complete to the best of my knowledge and belief.

(f) Deficiencies and hazards discovered during an alternative annual inspection conducted pursuant to this section must be corrected or eliminated, if practical, before the inspection report is submitted to the Officer in Charge, Marine Inspection in accordance with paragraph (d)(5) of this section. Deficiencies and hazards that are not corrected or eliminated by the time the inspection report is submitted must be listed in the report as ''outstanding.'' Upon receipt of an inspection report indicating outstanding deficiencies or hazards, the Officer in Charge, Marine Inspection will inform the owner or operator of the vessel in writing of the time period in which to correct or eliminate the deficiencies or hazards and the method for establishing that the corrections have been accomplished. Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the time specified for correction or elimination, the Officer in Charge, Marine Inspection will initiate appropriate enforcement measures.

(g) Upon receipt of the report required by paragraph (d)(3) of this section, the Officer in Charge, Marine Inspection must evaluate it and make the following determination:

(1) Whether the alternative annual inspection is accepted in lieu of the annual inspection required by § 91.27–1(a) of this subpart.

(2) Whether the vessel is in satisfactory condition.

(3) Whether the vessel continues to be reasonably fit for its intended service and route. The Officer in Charge, Marine Inspection may request any additional information needed to make the determinations required by this section. The Officer in Charge, Marine Inspection will inform the owner or operator in writing of the determinations required by this section.

(h) If the Officer in Charge, Marine Inspection determines, in accordance with paragraph (g) of this section, that the alternative annual inspection is not accepted in lieu of the annual inspection required by § 91.27–1(a) of this subpart, the vessel must be reinspected by the cognizant Officer in Charge, Marine Inspection as soon as practical.

(i) If the Officer in Charge, Marine Inspection determines, in accordance with paragraph (g) of this section, that the alternative annual inspection is accepted in lieu of the annual inspection required by § 91.27–1(a) of this subpart, the master must complete the applicable COI endorsement.

§ 91.60–1 [Amended]

49. In § 91.60–1, immediately following the words ''international voyage.'' add the words ''(See § 91.05–10 of this chapter.)''.

50. Revise § 91.60–15 to read as follows:

§ 91.60–15 Cargo Ship Safety Radio Certificate.

Every vessel equipped with a radio installation on an international voyage must have a Cargo Ship Safety Radio Certificate. Each radio installation must meet the requirements of the Federal Communication Commission and the International Convention for Safety of Life at Sea.

51. Revise § 91.60–35 to read as follows:

§ 91.60–35 Availability of Certificates.

The Convention certificates must be on board the vessel and readily available for examination at all times.

52. Revise § 91.60–40 to read as follows:

§ 91.60–40 Duration of Convention certificates.

(a) The following certificates are valid for a period of not more than 60 months.

(1) A Cargo Ship Safety Construction Certificate.

(2) A Cargo Ship Safety Equipment Certificate.

(3) A Safety Management Certificate.

(4) A Cargo Ship Safety Radio Certificate.

(b) An Exemption certificate must not be valid for longer than the period of the certificate to which it refers.

(c) A Convention certificate may be withdrawn, revoked, or suspended at any time when it is determined that the vessel is no longer in compliance with applicable requirements. (See § 2.01–70 of this chapter for procedures governing appeals.)

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

53. Revise the authority citation for part 98 to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3307, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 98.25–95 [Amended]

54. In § 98.25–95(a)(2), remove the words ''biennial inspection'' and add, in their place, the words, ''inspection for certification and periodic inspection''.

PART 107—INSPECTION AND CERTIFICATION

55. Revise the authority citation for part 107 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3307; 46 U.S.C. 3316; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

56. In § 107.111, add, in alphabetical order, the definition for ''anniversary date'' to read as follows:

§ 107.111 Definitions.

* * * * *

Anniversary date means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

* * * * *

§ 107.201 [Amended]

57. In § 107.201, in paragraph (b) remove the word ''Biennial'', capitalize the word ''inspection'' the first time it appears, and in paragraph (c) remove the word ''Reinspection'' and add, in its place, the words ''Annual and periodic inspections''.

58. Revise § 107.211(d) to read as follows:

§ 107.211 Original Certificate of Inspection.

* * * * *

(d) A Certificate of Inspection is valid for 5 years.

59. In § 107.215—

(a) Revise the section heading to read as set forth below;

(b) In paragraph (a), remove the words ''a biennial'' and add, in their place, the word ''an'';

(c) In paragraph (b), remove the words ''60 days'' and add, in their place, the words ''30 days'';

(d) In paragraph (c) remove the words ''biennial inspection'' and add, in their place, the words ''inspection for certification''; and

(e) Add new paragraph (d) to read as follows:

§ 107.215 Renewal of Certificate of Inspection.

* * * * *

(d) A Certificate of Inspection is valid for 5 years.

§ 107.260 [Amended]

60. In § 107.260(c)(2), remove the number ''48'' and add, in its place, the number ''60''.

61. Revise § 107.269 to read as follows:

§ 107.269 Annual inspection.

(a) Your mobile offshore drilling unit (MODU) must undergo an annual inspection within the 3 months before or after each anniversary date, except as specified in § 107.270.

(b) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the annual inspection is the same as the inspection for certification as specified in § 107.231, except § 107.231(x) and (y), but in less detail unless the cognizant OCMI finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the MODU has occurred, the OCMI will conduct an inspection more detailed in scope to ensure that the MODU is in satisfactory condition and fit for the service for which it is intended. If your MODU passes the annual inspection, the OCMI will endorse your current Certificate of Inspection.

(d) If the annual inspection reveals deficiencies in your MODU's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

62. Add § 107.270 to read as follows:

§ 107.270 Periodic inspection.

(a) Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(b) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 107.231 except § 107.231(x) and (y). The OCMI will insure that the MODU is in satisfactory condition and fit for the service for which it is intended. If your MODU passes the periodic inspection, the marine inspector will endorse your current Certificate of Inspection.

(d) If the periodic inspection reveals deficiencies in your MODU's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

63. In § 107.279, revise paragraphs (b), (c) and (d) to read as follows:

§ 107.279 Certificate of Inspection: Failure to meet requirements.

* * * * *

(b) Withhold renewal of the Certificate of Inspection until the MODU meets the requirements of § 107.231, except § 107.231(x) and (y).

(c) Suspend a valid Certificate of Inspection after an annual or periodic inspection until the MODU meets the requirements of § 107.231, except § 107.231(x) and (y).

(d) Revoke a valid Certificate of Inspection after an annual or periodic inspection if the unit operates without complying with Coast Guard orders to correct unlawful conditions.

64. Add § 107.283 to subpart B to read as follows:

§ 107.283 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in §§ 107.269 and 107.270 and your Certificate of Inspection must be endorsed.

§ 107.405 [Amended]

65. In § 107.405(b), remove the words ''24 months'' and add, in their place, the words ''60 months''.

PART 110—GENERAL PROVISIONS

66. Revise the authority citation for part 110 to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C 1333; 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p.277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under 44 U.S.C. 3507.

67. Revise § 110.30–5 to read as follows:

§ 110.30–5 Inspection for certification.

Electric installations and electric equipment must be inspected at the inspection for certification and periodic inspection to determine mechanical and electrical condition and performance. Particular note must be made of circuits added or modified after the original issuance of the Certificate of Inspection.

PART 114—GENERAL PROVISIONS

68. Revise the authority citation for part 114 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Section 114.900 also issued under 44 U.S.C. 3507.

69. In § 114.400(b), add, in alphabetical order, the definition for ''anniversary date'' to read as follows:

§ 114.400 Definition of terms used in this subchapter.

* * * * *

(b) * * *

Anniversary date means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

* * * * *

PART 115—INSPECTION AND CERTIFICATION

70. Revise the authority citation for part 115 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 115.105 [Amended]

71. In § 115.105(e), in the second sentence, remove the word ''periodic''.

72. Revise § 115.107 to read as follows:

§ 115.107 Period of validity for a Certificate of Inspection.

(a) A Certificate of Inspection is valid for 1 year for vessels carrying more than 12 passengers on international voyages.

(b) A Certificate of Inspection is valid for 5 years for all other vessels.

(c) A Certificate of Inspection may be suspended and withdrawn or revoked by the cognizant OCMI at any time for noncompliance with the requirements of this subchapter.

73. In § 115.404, redesignate existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 115.404 Subsequent inspections for certification.

* * * * *

(b) You must submit your written application for renewal of a Certificate of Inspection to the OCMI at least 30 days prior to the expiration date of the

your current COI, as required in § 115.105.

74. Revise § 115.500 to read as follows:

§ 115.500 When required.

(a) Vessels carrying more than 12 passengers on international voyages must undergo an inspection for certification each year as specified in § 115.404.

(b) All other vessels must undergo an inspection for certification as specified in § 115.404 and an annual inspection as specified in paragraph (b)(1) of this section.

(1) *Annual inspection.* Your vessel must undergo an annual inspection within the 3 months before or after each anniversary date.

(i) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(ii) The scope of the annual inspection is the same as the inspection for certification, as specified in § 115.404 but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(iii) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(iv) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

(2) [Reserved]

75. Revise § 115.502 to read as follows:

§ 115.502 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual inspections within the periods specified in § 115.500 and your Certificate of Inspection must be endorsed.

§ 115.812 [Amended]

76. Section 115.812(a), remove the words ''; except that, they must be inspected once every 3 years instead of at the intervals in § 61.10–5(a), (b), and (d) of this chapter''.

PART 125—GENERAL

77. The authority citation for part 125 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; 49 CFR 1.46.

§ 125.160 [Amended]

78. In § 125.160, add, in alphabetical order, the definition of ''anniversary date'' to read as follows:

§ 125.160 Definitions.

* * * * *

Anniversary date means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

* * * * *

PART 126—INSPECTION AND CERTIFICATION

79. Revise the authority citation for part 126 to read as follows:

Authority: 46 U.S.C. 3205, 3306, 3307; 33 U.S.C. 1321(j); E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 126.250 [Amended]

80. In § 126.250, in the section heading, immediately following the word ''validity'' add the words ''for a Certificate of Inspection''; and in paragraph (a), remove the number ''2'' and add, in its place, the number ''5''.

81. Revise § 126.420 to read as follows:

§ 126.420 Application for Certificate of Inspection.

You must submit a written application for an inspection for certification to the cognizant OCMI. To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the tank vessel's current certificate. You must use Form CG–3752, Application for Inspection of U.S. Vessel, and submit it to the OCMI at, or nearest to, the port where the vessel is located. When renewing a Certificate of Inspection, you must schedule an inspection for certification within the 3 months before the expiration date of the current Certificate of Inspection.

82. Revise subpart E to read as follows:

Subpart E—Annual, Periodic, and Alternative Annual Inspections

Sec.

126.510 Annual and periodic inspections.
126.520 Certificate of Inspection: Conditions of validity.
126.530 Alternative annual inspection for offshore supply vessels less than 400 gross tons in foreign ports.

§ 126.510 Annual and periodic inspections.

(a) *Annual inspection.*Your vessel must undergo an annual inspection within 3 months before or after each anniversary date, except as required in paragraph (b) of this section.

(1) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the annual inspection is the same as the inspection for certification as specified in § 126.430, but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(3) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(4) Nothing in this subpart limits the marine inspector from making such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

(b) *Periodic inspection.* Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(1) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 126.430. The OCMI will insure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the periodic inspection, the marine inspector will endorse your current Certificate of Inspection.

(3) If the periodic inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(4) Nothing in this subpart limits the marine inspector from conducting such

tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

§ 126.520 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in § 126.510 (a) and (b) and your Certificate of Inspection must be endorsed.

§ 126.530 Alternative annual inspection for offshore supply vessels less than 400 gross tons in foreign ports.

(a) The owner, master or operator of an OSV of less than 400 gross tons may request authorization to conduct an alternative annual inspection in place of the annual inspection described in § 126.510(a) of this subpart. The request must go to the cognizant OCMI assigned responsibility for inspections in the country in which the vessel is operating and will be examined. To qualify for the alternative annual examination, the vessel must meet the following requirements:

(1) The request must be in writing and be received by the OCMI not later than the anniversary date.

(2) The vessel is likely to be continuously employed outside of the United States during the 3 months before and after each anniversary date.

(b) In determining whether to authorize the alternative annual inspection, the OCMI considers the following:

(1) Information contained in previous examination reports on inspection and drydock, including the recommendation of the then cognizant OCMI for participation in the alternative midperiod program and alternative annual examination.

(2) The nature, number, and severity of marine casualties or accidents, as defined in § 4.03–1 of this chapter, involving the vessel in the 3 years preceding the request.

(3) The nature, number, and gravity of any outstanding inspection requirements for the vessel.

(4) The owner's or operator's history of compliance and cooperation in such alternative midperiod examinations and annual inspections, including:

(i) The prompt correction of deficiencies.

(ii) The reliability of previously submitted reports on such alternative midperiod examinations and annual inspections.

(iii) The reliability of representations that the vessel would be, and was, employed outside of the United States during the 3 months before and after each anniversary date.

(c) This OCMI provides the applicant with written authorization, if any, to proceed with the alternative annual inspection, including, when appropriate, special instructions.

(d) The following conditions must be met for the alternative annual inspection to be accepted instead of the annual inspection required by § 126.510 of this subpart:

(1) The alternative annual inspection must occur within the 3 months before or after each anniversary date.

(2) The alternative annual inspection must be of the scope detailed by § 126.510(a) of this subchapter and must be conducted by the master, owner or operator of the vessel, or by a designated representative of the owner or operator.

(3) Upon completion of the alternative annual inspection, the person or persons making the examination must prepare a comprehensive report describing the conditions found. This report must contain sufficient detail to let the OCMI determine whether the vessel is fit for the service and route specified on the Certificate of Inspection. This report must include all reports and receipts documenting the servicing of lifesaving equipment and any photographs or sketches necessary to clarify unusual circumstances. Each person preparing this report must sign it and certify that the information contained therein is complete and accurate.

(4) Unless the master of the vessel participated in the alternative annual inspection and the preparation of the comprehensive report, the master will review the report for completeness and accuracy. The master must sign the report to indicate his or her review and validation and must forward it to the owner or operator of the vessel.

(5) The owner or operator of a vessel examined under this section must review and submit the comprehensive report, required by paragraph (d)(3) of this section, to the OCMI. The report must reach the OCMI before the first day of the fifth month following the anniversary date. The forwarding letter or endorsement must be certified to be true and must contain the following information:

(i) That the person or persons who made the alternative annual inspection acted on behalf of the vessel's owner or operator.

(ii) That the report was reviewed by the owner or operator.

(iii) That the discrepancies noted during the reinspection have been corrected, or will be within a stated time.

(iv) That the owner or operator has sufficient personal knowledge of conditions aboard the vessel at the time of the reinspection, or has conducted inquires necessary to justify forming a belief that the report is complete and accurate.

(e) The form of certification required under this section, for the alternative annual inspection, is as follows:

I certify that to the best of my knowledge and belief the information contained in the report is complete and accurate.

(f) Deficiencies and hazards discovered during the alternative annual inspection conducted pursuant to this section must be corrected or eliminated, if practical, before the examination report is submitted to the OCMI in accordance with paragraph (d)(5) of this section. Deficiencies and hazards that are not corrected or eliminated by the time the examination report is submitted must be listed in the report as ''outstanding.'' Upon receipt of an examination report indicating outstanding deficiencies or hazards, the OCMI must inform the owner or operator in writing of the time period within which to correct or eliminate the deficiencies or hazards and the method for establishing that the corrections have been accomplished. Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the time specified for correction or elimination, the Officer in Charge, Marine Inspection must initiate appropriate enforcement measures.

(g) Upon receipt of the report, the OCMI will evaluate it and determine the following:

(1) Whether the cognizant OCMI accepts the alternative annual inspection instead of the annual inspection required by § 126.510(a) of this subpart.

(2) Whether the vessel is in satisfactory condition.

(3) Whether the vessel continues to be reasonably fit for its intended service and route.

(h) The OCMI may require further information necessary for the determinations required by this section. The OCMI will inform the owner or operator in writing of these determinations.

(i) If the OCMI, in compliance with paragraph (g) of this section, does not accept the alternative annual inspection instead of the annual inspection required by § 126.510(a) of this subpart, he or she will require reinspection of the vessel as soon as practicable. He or she will inform the vessel owner or operator in writing that the alternative examination is not acceptable and that a reinspection is necessary. The owner, master, or operator must make the

vessel available for the reinspection at a time and place agreeable to this OCMI.

(j) If the OCMI determines, in accordance with paragraph (g) of this section, that the alternative annual inspection is accepted in lieu of the annual inspection required by § 126.510(a) of this subpart, the master must complete the applicable COI endorsement.

PART 132—FIRE-PROTECTION EQUIPMENT

83. Revise the authority citation for part 132 to read as follows:

Authority: 46 U.S.C. 3306, 3307; 449 CFR 1.46.

§ 132.350 [Amended]

84. In § 132.350(a)(2), after the words ''inspection for certification'' add the words ''and periodic inspection''.

PART 133—LIFESAVING SYSTEMS

85. Revise the authority citation for part 133 to read as follows:

Authority: 46 U.S.C. 3306, 3307; 449 CFR 1.46.

§ 133.45 [Amended]

86. In § 133.45(b), after the words ''inspection for renewal of certification'' add the words ''and periodic inspection''.

PART 134—ADDED PROVISIONS FOR LIFTBOATS

87. Revise the authority citation for part 134 to read as follows:

Authority: 46 U.S.C. 3306, 3307; 449 CFR 1.46.

§ 134.120 [Amended]

88. In § 134.120, after the words ''inspection for certification'' add the words ''and periodic inspection''.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

89. Revise the authority citation for part 167 to read as follows:

Authority: 46 U.S.C. 3306, 3307, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

90. In § 167.15–20, designate existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 167.15–20 Inspections of nautical school ships.

* * * * *

(b) To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the vessel's current certificate.

PART 169—SAILING SCHOOL VESSELS

91. Revise the authority citation for part 169 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3307, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

92. In § 169.107, redesignate paragraphs (a) through (y) as paragraphs (b) through (z), respectively, and add new paragraph (a) to read as follows:

§ 169.107 Definitions.

(a) *Anniversary date* means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

* * * * *

93. In § 169.205, revise section heading and paragraph (d) to read as follows:

§ 169.205 Obtaining or renewing a Certificate of Inspection.

* * * * *

(d) You must submit a written application for an inspection for certification to the cognizant Officer in Charge, Marine Inspection. To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the vessel's current certificate. Applications are available at any U.S. Coast Guard Marine Safety Office or Marine Inspection Office. When renewing a Certificate of Inspection, you must schedule an inspection for certification within the 3 months before the expiration date of the current Certificate of Inspection.

* * * * *

94. In § 169.207, revise section heading and paragraph (a) to read as follows:

§ 169.207 Period of validity for a Certificate of Inspection.

(a) A Certificate of Inspection is valid for 5 years.

* * * * *

95. Revise § 169.225 to read as follows:

§ 169.225 Annual inspection.

(a) Your vessel must undergo an annual inspection within 3 months before or after each anniversary date, except as specified in § 169.226.

(b) You must contact the cognizant Officer in Charge, Marine Inspection to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the annual inspection is the same as the inspection for certification as specified in § 169.222 but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(d) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the Officer in Charge, Marine Inspection.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

96. Add § 169.226 to read as follows:

§ 169.226 Periodic inspection.

(a) Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(b) You must contact the cognizant Officer in Charge, Marine Inspection to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 169.222. The Officer in Charge, Marine Inspection will insure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the periodic inspection, the marine inspector will endorse your current Certificate of Inspection.

(d) If the periodic inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the Officer in Charge, Marine Inspection.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

97. Revise § 169.227 to read as follows:

§ 169.227 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in §§ 169.225 and 169.226 respectively and your Certificate of Inspection must be endorsed.

§ 169.239 [Amended]

98. In § 169.239, after the words ''inspection for certification'' add the words ''and periodic inspection''.

99. Revise § 169.241(a) introductory text to read as follows:

§ 169.241 Machinery.

(a) At each inspection for certification and periodic inspection, the marine inspector will examine and test the following items to the extent necessary, to determine that they are in proper operating condition and fit for the service for which they are intended:

* * * * *

100. Revise the introductory text in § 169.243 to read as follows:

§ 169.243 Electrical.

At each inspection for certification and periodic inspection, the marine inspector will examine and test the following items to the extent necessary, to determine that they are in proper operating condition, in safe electrical condition, and fit for the service for which they are intended:

* * * * *

101. Revise the introductory text in § 169.245 to read as follows:

§ 169.245 Lifesaving equipment.

At each inspection for certification and periodic inspection the following tests and inspections of lifesaving equipment will be conducted:

* * * * *

§ 169.247 [Amended]

102. In § 169.247(a), after the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 169.251 [Amended]

103. In § 169.251, after the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 169.253 [Amended]

104. In § 169.253(a), after the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 169.255 [Amended]

105. In § 169.255, after the words ''inspection for certification'' remove the words ''and reinspection'' and, in their place, add the words '', periodic inspection, and annual inspection''.

§ 169.257 [Amended]

106. In § 169.257(a) remove the word '', reinspection'' and in § 169.257(a) and (b), after the words ''inspection for certification'' add the words '', periodic inspection, annual inspection,''.

PART 175—GENERAL PROVISIONS

107. Revise the authority citation for part 175 to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under authority of 44 U.S.C. 3507.

108. In § 175.400, add, in alphabetical order, the definition for ''anniversary date'' to read as follows:

§ 175.400 Definition of terms used in this subchapter.

* * * * *

Anniversary date means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

* * * * *

PART 176—INSPECTION AND CERTIFICATION

109. Revise the authority citation for part 176 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

110. Revise § 176.107 to read as follows:

§ 176.107 Period of validity for a Certificate of Inspection.

(a) A Certificate of Inspection is valid for 1 year for vessels carrying more than 12 passengers on international voyages.

(b) A Certificate of Inspection is valid for 5 years for all other vessels.

(c) A Certificate of Inspection may be suspended and withdrawn or revoked by the cognizant OCMI at any time for noncompliance with the requirements of this subchapter.

111. In § 176.404, redesignate the existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 176.404 Subsequent inspections for certification.

* * * * *

(b) You must submit your written application for renewal of a Certificate of Inspection to the OCMI at least 30 days prior to the expiration date of the Certificate of Inspection, as required in § 176.105 of this part.

112. Revise § 176.500 to read as follows:

§ 176.500 When required.

(a) Vessels carrying more than 12 passengers on international voyages must undergo an inspection for certification each year as specified in § 176.404.

(b) All other vessels must undergo an inspection for certification as specified in § 176.404 and annual inspection as specified in paragraph (b)(1) of this section.

(1) *Annual inspection.* Your vessel must undergo an annual inspection within the 3 months before or after each anniversary date.

(i) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(ii) The scope of the annual inspection is the same as the inspection for certification but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(iii) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(iv) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

(2) [Reserved]

113. Revise § 176.502 to read as follows:

§ 176.502 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual inspection within the periods specified in § 176.500(b)(1) and your Certificate of Inspection must be endorsed.

§ 176.812 [Amended]

114. In § 176.812, in paragraph (a), remove the words ''; except that, they must be inspected once every 3 years instead of at the intervals in § 61.10–5(a), (b), and (d) of this chapter''; and, in paragraph (b), remove the number

''§ 61.10'' and add, in its place, the number ''§ 61.05''.

PART 188—GENERAL PROVISIONS

115. Revise the authority citation for part 188 to read as follows:

Authority: 46 U.S.C. 2113, 3306, 3307; 49 U.S.C. App. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 188.10–1 [Redesignated as § 188.10–2]

116. Redesignate § 188.10–1 as § 188.10–2 and add new § 188.10–1 to read as follows:

§ 188.10–1 Anniversary date.

The term *anniversary date* means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

PART 189—INSPECTION AND CERTIFICATION

117. Revise the authority citation for part 189 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 189.01–10 [Amended]

118. In § 189.01–10—

a. In the section heading, immediately following the word ''validity'' add the words ''for a Certificate of Inspection'';

b. In paragraph (a), remove the first sentence and add, in its place, the sentence ''A Certificate of Inspection is valid for 5 years.''; and

c. In paragraph (c)(2), remove the words ''in no case to exceed 2 years'' and add, in their place, the words ''not to exceed 5 years''.

119. Revise § 189.25–5 to read as follows:

§ 189.25–5 Application for a Certificate of Inspection.

You must submit a written application for an inspection for certification to the cognizant OCMI. To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the tank vessel's current certificate. You must use Form CG–3752, Application for Inspection of U.S. Vessel, and submit it to the OCMI at, or nearest to, the port where the vessel is located. When renewing a Certificate of Inspection, you must schedule an inspection for certification within the 3 months before the expiration date of the current Certificate of Inspection.

§ 189.25–20 [Amended]

120. In § 189.25–20(a) introductory text, in the first sentence, remove the words ''inspection for certification and'' add, in their place, the words ''inspection for certification, periodic inspection, and''; and, in the last sentence, immediately following the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 189.25–25 [Amended]

121. In § 189.25–25(a), after the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 189.25–38 [Amended]

122. In § 189.25–38, after the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 189.25–40 [Amended]

123. In § 189.25–40, after the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 189.25–45 [Amended]

124. In § 189.25–45, remove the designation for paragraph (a), and after the words ''inspection for certification'' add the words ''and periodic inspection''.

§ 189.25–47 [Amended]

125. In § 189.25–47(a) and (b), after the words ''inspection for certification.'' add the words ''and periodic inspection.''.

Subpart 189.27—Annual and Periodic Inspections

126. In subpart 189.27, revise the subpart heading to read as set forth above.

127. Revise § 189.27–1 to read as follows:

§ 189.27–1 Annual inspection.

(a) Your vessel must undergo an annual inspection within the 3 months before or after each anniversary date, except as specified in § 189.27–5.

(b) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the annual inspection is the same as the inspection for certification, as specified in § 189.25–10, but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(d) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

128. Revise § 189.27–5 to read as follows:

§ 189.27–5 Periodic inspection.

(a) Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(b) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 189.25–10. The OCMI will insure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the periodic inspection, the marine inspector will endorse your current Certificate of Inspection.

(d) If the periodic inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

129. Revise § 189.27–10 to read as follows:

§ 189.27–10 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in §§ 189.27–1 and 189.27–5 respectively, and your Certificate of Inspection must be endorsed.

130. Revise § 189.60–15 to read as follows:

§ 189.60–15 Cargo Ship Safety Radio Certificate.

Every vessel equipped with a radio installation on an international voyage must have a Cargo Ship Safety Radio Certificate. Each radio installation must meet the requirements of the Federal Communication Commission and the International Convention for Safety of Life at Sea.

131. Revise § 189.60–35 to read as follows:

§ 189.60–35 Availability of Certificates.

The Convention certificates must be on board the vessel and readily available for examination at all times.

132. Revise § 189.60–40 to read as follows:

§ 189.60–40 Duration of Convention certificates.

(a) The following certificates are valid for a period of not more than 60 months (5 years).

(1) A Cargo Ship Safety Construction Certificate.

(2) A Cargo Ship Safety Equipment Certificate.

(3) A Safety Management Certificate.

(4) A Cargo Ship Safety Radio Certificate.

(b) An Exemption certificate must not be valid for longer than the period of the certificate to which it refers.

(c) A Convention certificate may be withdrawn, revoked, or suspended at any time when it is determined that the vessel is no longer in compliance with applicable requirements. (See § 2.01–70 of this chapter for procedures governing appeals.)

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

133. Revise the authority citation for part 195 to read as follows:

Authority: 46 U.S.C. 2113, 3306, 3307; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

134. Revise § 195.11–15 (a) to read as follows:

§ 195.11–15 Plan approval and inspection.

(a) Accommodation, power and chemical stores vans are subject to normal plan submission procedures of subpart 189.55 and to initial construction inspection. They must be inspected at each inspection for certification and periodic inspection.

* * * * *

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

135. Revise the authority citation for part 199 to read as follows:

Authority: 46 U.S.C. 3306, 3307, 3703; 46 CFR 1.46.

§ 199.45 [Amended]

136. In § 199.45(b), immediately following the words ''renewal of certification'' add the words ''and periodic inspection''.

Dated: February 2, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–2812 Filed 2–4–00; 3:40 pm]

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Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Mental Health and Juvenile Justice: Building a Model for Effective Service Delivery; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1259]

RIN 1121–ZB93

Mental Health and Juvenile Justice: Building a Model for Effective Service Delivery

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Announcement of Discretionary Competitive Assistance Grant

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, pursuant to Public Law 105–277, October 19, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, is issuing a solicitation for applications from public or private agencies or organizations to engage in a variety of interrelated research activities designed to (1) improve knowledge about the nature and prevalence of mental health and co-occurring substance abuse disorders among youth in the juvenile justice system and (2) support the development of a comprehensive model for the provision of mental health services to this population.

DATES: Applications must be received no later than 5 p.m. ET on April 10, 2000.

ADDRESSES: Interested applicants must obtain an application kit from the Juvenile Justice Clearinghouse at 800–638–8736. The application kit is also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/about/html#kit.

FOR FURTHER INFORMATION CONTACT: Karen Stern, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention (phone: 202–514–9395; e-mail: sternk@opj.usdoj.gov). Douglas Dodge, Senior Policy Advisor, Office of Juvenile Justice and Delinquency Prevention (phone: 202–616–3652; e-mail: doug@ojp.usdoj.gov).

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this initiative is to substantially improve knowledge about the nature and prevalence of mental health and co-occurring substance abuse disorders among youth in the juvenile justice system and to develop and test a service delivery model based on theoretical and empirical information regarding best practices for meeting the needs of this population.

Overview

With this program announcement, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) initiates an effort to build on existing research and knowledge in the area of mental health and juvenile justice. This multi year research and development effort will examine current research and theoretical literature on mental health and related substance abuse issues among juvenile offenders; the relationship between mental health and juvenile delinquency; and best practices in the delivery of mental health treatment to the juvenile offender population. This initiative will also examine the prevalence of mental health disorders among youth who enter the juvenile justice system, particularly those in detention and secure corrections. Although juvenile justice administrators and practitioners typically—and understandably—concern themselves with the most severely disordered youth, the intention of this initiative is to address the needs of youth with a broad range of mental disorders. This includes conditions, such as conduct disorder and post-traumatic stress disorder (PTSD), that are common in the juvenile justice population, but it also includes less frequently recognized conditions such as anxiety and depression. It is important to keep in mind that mild and easily treated conditions may evolve into severe and intractable disorders if left untreated. Although the focus of this initiative is on mental disorders, OJJDP recognizes that mental health and substance abuse disorders frequently co-occur, particularly in the delinquent population (Cocozza, 1992; Neighbors, Kempton, and Forehand, 1992). Therefore, information will also be obtained on the prevalence of substance abuse disorders that co-occur with mental health diagnoses. When the initial survey work has been completed, OJJDP will fund multiple demonstration sites to implement and evaluate a service delivery model derived from current theory and best practices. The demonstration program will be evaluated using an experimental design.

This program announcement seeks applications for the first phase of this effort and will fund an organization that can effectively conduct the literature review described above, a survey of mental health and related substance abuse needs among juvenile justice youth in several jurisdictions, and a survey of selected juvenile justice system responses to meet those needs. The organization will then use the information gathered through these three strategies to develop a model of mental health service delivery for youth in the juvenile justice system. The information gathered during this process will be used to support a subsequent program announcement that will solicit sites for model demonstration and evaluation. The successful applicant for the first phase will also assist with the development of a research design for the demonstration sites.

Background

After increasing for a number of years, the juvenile crime rate has been declining since 1995. ''Although the juvenile violent crime arrest rate increased more than 60 percent between 1988 and 1994, it decreased 23 percent between 1994 and 1997. Similarly, the juvenile homicide arrest rate increased substantially between 1988 and 1993 but declined 39 percent between 1993 and 1997'' (1998 *OJJDP Annual Report,* 1999, p. 3). Although these trends are encouraging, juvenile offending continues to occur at a very high rate. A substantial portion of youth who are brought before the juvenile court are detained or placed in secure corrections. In 1996, 58 percent (983,100) of the youth referred to juvenile court were adjudicated delinquent. Twenty-eight percent (275,000) of these youth were sent to residential placement, an increase of 51 percent between 1987 and 1996. OJJDP's *Census of Juveniles in Residential Placement* (OJJDP, 1997) reported that on October 29, 1997, there were 105,790 juveniles committed by the court to out-of-home placements.

Very little is known about the mental health needs of these youth. There has been no large-scale national investigation of mental disorders among juvenile offenders and the lack of methodological consistency across smaller prevalence studies often produces inconsistent results. A review of studies (Cocozza, 1992) found that between 14 percent and 20 percent of youth in the general population suffer from a diagnosable mental disorder at any given time. It is likely that the prevalence rates among the approximately 1.8 million youth who enter the juvenile justice system each year are even higher. In adult studies, the presence of both substance abuse and mental health problems increases the likelihood that an individual will engage in criminal and violent behavior. Although this correlation has not been clearly demonstrated in youth, many of the causes and correlates of juvenile

delinquency are similar to risk factors for developing mental health and substance abuse disorders.

Since the mid-1990's, OJJDP has recognized the critical role that mental health problems play in the lives of youth caught up in the juvenile justice system. As a result, OJJDP has been working for several years on a number of efforts to increase knowledge and improve services in this area.

OJJDP is supporting the GAINS Center on Co-Occurring Disorders in preparing an update of Cocozza's 1992 monograph *Responding to the Mental Health Needs of Youth in the Juvenile Justice System.* This update will provide important information on rates and trends of mental health and substance abuse disorders in the juvenile justice population, and identify programs and strategies for addressing these issues. OJJDP is also supporting the GAINS Center's efforts to provide training and technical assistance to States and localities on juveniles with comorbid substance abuse and mental health disorders through an interagency agreement with the National Institute of Corrections.

OJJDP is providing support for two studies of mental health disorders in the juvenile justice population. Linda Teplin's longitudinal study of 1,800 detained youth in the Cook County (Chicago) Juvenile Detention Center is yielding important information on the prevalence and severity of mental health and substance abuse disorders among detained juveniles. Gail Wasserman is working with incarcerated youth in Illinois and New Jersey to test the utility of a self-administered assessment instrument for identifying mental health disorders among youth in correctional settings.

For the past 2 years, OJJDP has explored the potential value of the Community Assessment Center (CAC) concept. CAC's provide a 24-hour centralized point of intake and assessment for juveniles entering the juvenile justice system. Early identification of mental health and substance abuse disorders can enhance placement and treatment decisions for youth at the ''front end'' of the juvenile justice system.

As part of OJJDP's Performance-Based Standards Demonstration Program, health/mental health standards and outcomes have been developed for the use of participating sites. The overall goal of the standards is to identify and effectively respond to the health and mental health needs of juveniles in confinement, using appropriate diagnostic, treatment, and prevention protocols.

For several years, OJJDP has been working closely with other agencies in the Federal Government to increase capacity for meeting the mental health needs of juvenile offenders. OJJDP has been active in the Federal Partnership for Children's Mental Health, organized by the Center for Mental Health Services (CMHS) of the Substance Abuse and Mental Health Services Administration (SAMHSA) in the U.S. Department of Health and Human Services. For the past 2 years, through an interagency agreement with CMHS, OJJDP has supported the provision of training and technical assistance to the Comprehensive Community Mental Health Services for Children and Their Families sites. The goal of this training is to assist the sites in ensuring that their comprehensive systems of care include youth in the juvenile justice system. OJJDP continued this support in FY 1999 as CMHS rebid its training and technical assistance contract. CMHS' 45 sites, dedicated to developing comprehensive mental health services for seriously emotionally disturbed youth and their families, present an excellent opportunity for improving mental health service delivery to all children, including delinquent and at-risk youth.

If there is a gap in the continuum of services being delivered under current programs funded by CMHS and others, it is the lack of mental health programming for juvenile offenders, particularly those in detention and secure corrections. In addition, for these incarcerated juveniles, the lack of aftercare or reentry programming is of particular concern. Although the lack of services may be most acute for juveniles in detention, secure corrections, and aftercare, OJJDP believes that the best strategy for closing these gaps is to develop a comprehensive model that will address the mental health needs of youth at every point in the juvenile justice system. To that end, OJJDP proposes to address these gaps by developing a research and demonstration effort that will (1) review what is known about theory and best practices in this area, (2) examine the prevalence of mental health and co-occurring substance abuse disorders in a sample of youth in the juvenile justice system, (3) document what services are available to meet the needs of this population, and (4) develop a model that incorporates existing theory and best practices to provide comprehensive mental health services to youth in the juvenile justice system. The model developed under this initiative will subsequently be used in a demonstration and evaluation project that will replicate and evaluate the model at several sites. The model will be evaluated using a variety of outcome measures to determine whether services are being provided in an appropriate, effective, and cost-efficient manner.

Goal

The goal of this initiative is to improve knowledge about the nature and prevalence of mental health and co-occurring substance abuse disorders among youth in the juvenile justice system and to develop a model for the exemplary provision of mental health services for this population. The model will incorporate both current theory and best practices in the areas of screening, assessment, service provision, and quality assurance. The model should include youth at all stages of the juvenile justice system, including, but not limited to, arrest, intake, adjudication, detention, secure corrections, probation, and community-based treatment. Ideally, this model will be used in a subsequent demonstration and evaluation project, which will replicate the model at two to five sites.

Objectives

The objectives of this initiative are:

- To explore the research and theoretical literature related to the delivery of mental health services to youth in the juvenile justice system.
- To enhance the understanding of mental health service needs of youth involved in the juvenile justice system, including gender-specific differences in service needs.
- To increase the knowledge base regarding existing mental health service delivery systems in different parts of the country.
- To improve access to mental health services for youth in the juvenile justice system and to improve the quality and coordination of the services provided.
- To identify or create a model for the delivery of comprehensive mental health services to youth in the juvenile justice system.
- To identify model approaches to service delivery that will overcome interdisciplinary differences by fostering true collaboration between mental health and juvenile justice professionals.
- To increase the quality and cost-effectiveness of organizational structures for providing mental health services to youth at all levels of the juvenile justice system.

Program Strategy

Melton and Pagliocca (1992) note that emotionally disturbed youth in the

juvenile justice system have many of the same mental health needs as emotionally disturbed youth in the general population. However, the identification of needs and the delivery of services to meet those needs pose unique challenges for the juvenile justice system. When designing and selecting programs for youth, juvenile justice administrators must consider a host of goals, including community safety, accountability, incapacitation, and retribution. Some of these goals may complicate or even conflict with the more traditional goals of mental health and substance abuse service delivery. For example, even if a juvenile's mental health needs might be better served by a community-based program, a judge may consider only residential options because of the severity of the youth's offense.

In addition, treatment decisions may be inextricably linked to decisions about such weighty matters as diversion, incarceration, and juvenile transfer. It is also clear that processing by the juvenile justice system can be a traumatizing experience in and of itself. Some youth with no previous history of mental health problems may experience anxiety and depressive symptoms severe enough to require treatment as a result of detention or incarceration.

Although ''the treatment needs of youth do not become magically transformed when they walk through the courthouse door'' (Melton and Pagliocca, 1992, p. 107), meeting those needs will require changes in the ways that both mental health and juvenile justice systems operate. Treatment and sanctions will need to be combined into a seamless system that provides both support and accountability. True interagency collaboration will be essential; these youth do not ''belong'' to one agency or another but are the shared responsibility of juvenile justice, mental health, education, child welfare, and any other institutions that serve the needs of children. Both mental health and juvenile justice practitioners will require training and assistance to understand and accept each other's views, goals, and practices.

With this initiative, OJJDP will provide support to a grantee willing to engage in far-reaching efforts to gather empirical and theoretical information with the goal of developing an exemplary model of service delivery. The model ultimately created should encompass a wide variety of services, including, but not limited to, the following: psychological and psychiatric evaluation, psychotherapy, medication management, treatment planning, intensive case management, home-based treatment, family support services, day treatment, crisis intervention services, acute inpatient and residential psychiatric care, therapeutic group homes or foster care, and respite care. Ongoing quality assurance measures should be incorporated. The successful applicant will also need to address the issue of cultural sensitivity in both assessment and treatment. Assessments and treatments that are not performed in a culturally competent manner can produce misdiagnoses and lead to ineffective service provision.

The system should be designed with the ultimate goal of reintegrating youthful offenders into the community. Successful reintegration will require that youth who leave the juvenile justice system continue to receive any necessary services (e.g., mental health, special education, vocational). Therefore, the model will need to address the design of linkages between the juvenile justice system and essential aftercare components. An important aspect of these linkages is how sensitive information can be transferred in a manner that fosters continuity of care while maintaining the youth's right to confidentiality. In addition, meeting the goal of effective reintegration will require high levels of family involvement. Family support—or its absence—contributes strongly to a youth's success or failure once he or she returns from incarceration.

An applicant seeking funding under this initiative must address in the application and be willing to undertake, at a minimum, the tasks described below. Specific tasks may be contracted by the applicant to other agencies or individuals, but only with the express approval of OJJDP. An applicant that plans to use contractors in this manner should (1) clearly spell out the terms of the contract in the application and (2) address the qualifications of the contractor(s) selected to perform each task.

Task I: Literature Review

The applicant must review the relevant literature from the fields of juvenile justice and mental health and any related fields such as substance abuse, criminology, sociology, etc. The purpose of this review is to identify and evaluate both research and theoretical publications related to the mental health needs of youth in the juvenile justice system. Articles addressing the provision of mental health and related substance abuse services to this population are especially pertinent. The applicant may also want to consult literature from the educational and child welfare fields. Like juvenile justice, these fields have also struggled to recognize and address the mental health needs of children and adolescents. Because of the over representation of minority youth in the juvenile justice system, the literature review will also need to address the issue of cultural sensitivity in providing services to this population. Additionally, because of the different needs of females in the juvenile justice system, the literature review should also address the issue of gender-specific services.

The applicant should provide a report, suitable for publication as an OJJDP Bulletin, that synthesizes the relevant literature. Emphasis should be placed on any publications that can contribute to the development of a service delivery model. Gaps in the existing literature should also be identified.

Task II: Survey of Mental Health Needs and Services

Although many researchers have speculated that youth in the juvenile justice system are an under served population with a high level of need, few studies have provided hard data to support or contradict this contention. Linda Teplin in Chicago and Gail Wasserman in New York are currently studying this issue. However, their data are limited to populations in large urban centers. Several States, including Colorado and Virginia, have gathered additional data during brief (1 week), intensive surveys, with the goal of informing State policy and legislation.

For the purposes of this initiative, the applicant should be prepared to conduct three similar surveys in the understudied areas of the South, Southwest, and rural Northwest. Surveys should be conducted within some naturally occurring boundary such as a State, county, district, or parish. Surveys should involve a variety of juvenile justice facilities within that boundary; at a minimum, a juvenile detention center, a secure correctional facility, and a community-based program. For each facility, the applicant will examine (1) the mental health status of youth in the facility, (2) the mental health and related substance abuse services available to these youth, and (3) the number of youth actually receiving these services. The applicant should also explore the continuity of care provided. For example: Do youth who receive psychological assessment also receive treatment based on identified needs? Do those receiving therapy within the institution also have written plans for aftercare? The applicant may also wish to examine

youth and family satisfaction with the services received.

To obtain this information, the applicant will need to review both individual and facility records. However, as noted in *Mental Health Needs of Youth in Virginia's Juvenile Detention Centers* (U.S. Department of Justice, 1994), information contained in detention center records is often ''abysmally weak,'' underestimating both the number of youth in need of services as well as the number of youth who have previously received services. Therefore, in assessing a youth's mental health status, the applicant will want to consider the use of structured interviews or self-administered diagnostic inventories. Given financial and time constraints, it is understood that in-depth psychiatric interviews or psychological assessments may not be possible. For an example of a well-constructed study of this nature, the applicant is encouraged to obtain a copy of the Virginia report from the National Criminal Justice Reference Service at 800–851–3420.

For the purposes of the application, the applicant should identify and discuss the following: (1) Where the surveys will be conducted; (2) what methods will be used to collect data (e.g., self-report inventories, interviews, record reviews); and (3) what information will be obtained. Copies of all instruments or recording forms that will be used to collect data should be included in the application. The applicant should justify the selection of particular sites and the choice of instruments. If the applicant decides to create its own instruments for the site visits, a detailed description of the instrument development process should be included.

The applicant should also be prepared to document the research results in a report suitable for publication as an OJJDP Bulletin.

Task III: Identification of Best Practices

The applicant should be prepared to make between six and nine site visits to localities that are focusing their efforts on meeting the mental health needs of youth in the juvenile justice system. Locations might include CMHS Comprehensive Community Mental Health Services for Children and Their Families Program sites such as ''WrapAround Milwaukee'', which incorporates delinquent youth into its system of care. Alternatively, the applicant could visit one of the three juvenile sites under the Center for Substance Abuse Treatment's Criminal Justice Treatment Networks, a program which seeks to forge a seamless system of juvenile justice, substance abuse, mental health, health, and human services. The applicant should also consider visiting sites that are not part of a Federal demonstration project but have mobilized State and local resources in innovative and effective ways.

OJJDP recommends that the applicant visit a combination of large and small sites, preferably in several different areas of the country. It is possible that some appropriate sites may be identified through the literature review described in Task I. Therefore, the applicant may choose to provide only a partial list of sites in the initial application. If the applicant chooses this approach, it should clearly specify the criteria that will be used to select additional sites. A final list of sites should be submitted to OJJDP for approval within 3 months of receipt of the grant award.

In addition to the list of sites, the application should include a site visit protocol. The protocol should identify individuals who will be interviewed (*e.g.*, agency directors, program directors, key program staff, juvenile court judges, probation officers, family members, etc.) and the type of information that will be obtained. Consideration should be given to tours of facilities and collection of written program materials. Areas which should be explored include, but are not limited to, history of the program; legislation that has positively or adversely affected the program; interdisciplinary barriers that were identified and overcome; program goals and objectives; program structure, components, and operations; program implementation; characteristics of youth (and families) served by the program; costs and funding sources; information-sharing protocols; management information system (MIS) support; quality assurance measures; outcome data; barriers to full and effective implementation; keys to program success; and future planning efforts.

The purpose of these site visits is to identify extant models for delivering mental health and related substance abuse services to youth in the juvenile justice system. The applicant should provide a report of the site visit results, highlighting the strengths and weaknesses of the service systems reviewed.

The applicant should also be prepared to document the site visit results in a report suitable for publication as an OJJDP Bulletin.

Task IV: Model Development

Using the information gathered during Tasks I, II, and III, the applicant will construct a detailed, comprehensive model for delivering a broad array of mental health services to youth in the juvenile justice system. The model should be flexible enough to be readily adapted to a variety of sites. However, any limitations on the model's adaptability should be identified. (For example, the model may not be applicable to very young offenders, i.e., those under 12 years old.)

Applicants should consider the delivery of services at various key points in the juvenile justice system, including (but not necessarily limited to) arrest, detention, adjudication, disposition, secure corrections, community placement, and probation. Applicants should outline the steps necessary to implement the model, giving some consideration to issues of resource acquisition, development, and maintenance; collaboration among existing agencies, institutions, and programs; and the need for political support. Applicants should present possible strategies for sustaining the model under changing political or financial conditions. Relevant legislation that might promote or inhibit implementation of the model should be cited.

The model ideally will involve a high degree of coordination and integration, so that the needs of youth are appropriately met as they move through the different levels of the juvenile justice system. In order to accomplish this goal, it may be necessary for sensitive information to be shared among various service providers. The applicant should address how confidentiality will be appropriately maintained throughout this process. One traditional way of coordinating care is to assign an intensive case manager who will follow the youth throughout his or her time in the juvenile justice system. However, there may be other, equally effective ways of accomplishing the same purpose, and applicants are encouraged to think creatively.

It should be kept in mind that the ultimate goal of providing services is to reintegrate the youth back into the community and ensure that he or she becomes a healthy, productive, and successful member of society. Therefore, the model should address how continuity will be maintained between services provided within the juvenile justice system and those provided once a youth is no longer involved with the system. In linking services within and outside the juvenile justice system, it will also be important to consider how the confidentiality of the youth and family can be maintained without

unnecessarily impeding the continuity of treatment.

Task V: Expert Panel and Model Refinement

Once an initial draft of the model has been prepared, the applicant will convene a panel of relevant subject matter experts to review and evaluate the model. The applicant should include a proposed list of experts in the application. In addition to subject matter experts, the panel should include at least one youth who has been involved in the juvenile justice system and family members of youth in the juvenile justice system. If possible, resumes of agreement from the proposed panelists should be included in an appendix. All panel members must be approved by OJJDP, and the agency may recommend additional panel members at the time of the grant award. The applicant will need to include in the budget the costs associated with convening the expert panel.

Based on the recommendations of the expert panel, the applicant will revise the model as necessary. The final version of the model will be presented in a report suitable for OJJDP publication.

Products

The grantee will produce the following deliverables, as described in Tasks I, II, III, and V, above, all of which must be suitable for publication by OJJDP:

- A report that synthesizes the relevant literature from the fields of juvenile justice and mental health and any related fields such as substance abuse, criminology, sociology, etc. (Task I)
- A report that documents the results of the surveys described in Task II. In addition, this report should compare the data obtained from this project with similar data reported in the literature. (Task II)
- A report that documents the results of the site visits described in Task III. This report should highlight the strengths and weaknesses of the service systems visited. (Task III)
- A report that describes in detail the comprehensive model for delivery of mental health and substance abuse services to youth in the juvenile justice system. This report should also describe how the work of Tasks I through V contributed to the development of the model. In addition, any recommendations or concerns regarding the implementation of the model should be clearly spelled out.

The application should contain a description of all products that will derive from the project, including, but not necessarily limited to, the reports described above. The grantee should also be prepared to produce a final report that provides an overview of the entire project. Applicants are also strongly encouraged to consider submitting their results for publication in refereed journals.

Eligibility Requirements

OJJDP invites applications from public or private agencies or organizations with a demonstrated capacity to carry out the requirements of this initiative. Private, for-profit organizations must agree to waive any profit or fee. The organization must have demonstrated experience in conducting extensive literature reviews, conducting in-depth sample surveys of juvenile or criminal justice offenders and facilities, carrying out research and program development, and writing reports. Funding will not be provided at this stage for demonstration sites or for sites whose primary function is the provision of mental health and substance abuse services. In the case of joint applications, one applicant must be clearly indicated as primary (for correspondence and award purposes) and the other(s) listed as coapplicants. If contractors will be used for specific project tasks, evidence of their qualifications and willingness to undertake the specified task(s) should be provided.

Selection Criteria

Applications will be evaluated and rated by a peer review panel according to the criteria outlined below. In addition, the extent to which the project narrative makes clear and logical connections among the components listed below will be considered in assessing a project's merits.

Problem(s) To Be Addressed (10 points)

Applicants must include in the project narrative a clear description of the problem(s) to be addressed by the development of a comprehensive model for mental health service delivery within the juvenile justice system. Applicants should provide a discussion of any previous or current efforts in this area and any relevant research.

Goals and Objectives (10 points)

The application must include goals and objectives that are clear, concrete, and relevant to the field of juvenile justice. Goals should derive directly from the problems to be addressed. Objectives should consist of clearly defined, measurable tasks that will enable the applicant to achieve the goals of the project.

Project Design (20 points)

The application should present in detail the design and methodology of the project. Design elements should follow directly from the project's goals and objectives. Applicants should address the requirements of the solicitation, particularly Tasks I through V as described under ''Program Strategy.'' Applicants should also describe how the work undertaken in the various tasks fits together and contributes to the overall goals of the project.

Where data collection is anticipated, the applicant should describe in detail the research strategy, demonstrating adequate understanding of reliability and validity issues.

Project Implementation Plan (20 points)

The application must include a detailed time/task outline that indicates when specific tasks will be initiated and completed. This time line must include, at a minimum, significant milestones in the project and product due dates. The time line should be referenced as appropriate in the narrative but should also be placed in appendix A of the application.

Project Management (15 points)

Applicants must demonstrate the existence of a management structure that will support the achievement of the project's goals and objectives in an efficient and cost-effective manner. In particular, applicants must ensure that the tasks delineated in the project time line (see ''Project Implementation,'' above) are adequately staffed. Applicants must also demonstrate that staff members have sufficient substantive expertise and technical experience to perform the tasks associated with the project.

Resumes for key staff members, including any contractors, should be included in appendix B.

Organizational Capability (15 points)

Applicants should also demonstrate the organizational capacity to complete the work described in the ''Project Design'' section. The applicant should include a description of any similar projects it has undertaken previously. Applicants should also demonstrate knowledge and experience related to juvenile justice and mental health issues. In addition, applicants should provide evidence of their ability to work collaboratively with juvenile justice system practitioners and service

providers, ideally in the context of research investigations. Any applicable letters of cooperation or support should be included in appendix C.

Budget (10 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost-effective in relation to the activities to be undertaken. All budgeted costs should be directly related to the achievement of project goals and objectives. A brief budget narrative should be included in this section.

Award Period

The project period and budget period will be 18 months.

Award Amount

Up to $1 million is available for an 18-month award to one grantee to develop a model of mental health service delivery for youth in the juvenile justice system. The applicant selected for this award will not be eligible to compete for any subsequent demonstration and evaluation grants associated with implementation of the model.

Format

Applicants must submit a program narrative of no more than 30 pages. This page limit does not include the abstract, budget narrative, appendixes, application forms, or assurances. Appendix A should contain the project's time line with dates for initiation and completion of critical project tasks. Appendix B should contain the resumes for the principal investigator and key staff members. Appendix C should include all necessary letters of cooperation or support.

The narrative portion of the application must be submitted on 8½- by 11-inch paper using a standard 12-point font. The application should be double spaced and printed on one side of the paper only. Single-spaced (or 1½-spaced) applications will not be accepted. Margins should be at least 1 inch on the top, bottom, and sides of each page. The narrative should be preceded by an abstract with a maximum length of 400 words.

These requirements are necessary to maintain a fair and uniform set of standards among all applicants. If the application fails to conform to these standards, it will be rejected without further review.

Catalog of Federal Domestic Assistance (CFDA) Number

The CFDA number, required on Standard Form 424, ''Application for Federal Assistance,'' is 16.542. Standard Form 424 is included in OJJDP's Application Kit, which can be obtained by contacting the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The Application Kit is also available online at www.ojjdp.ncjrs.org/grants/about.html#kit.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) Active Federal grant awards supporting this project or related efforts, including other awards from the Department of Justice; (2) any pending applications for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) and (2) with the funding requested in this application. For each Federal award, applicants must include the program or project title, the Federal granting agency, the amount of the award, and a brief description of its purpose.

''Related efforts'' is defined for these purposes as one of the following:

- Efforts for the same purpose (i.e., the proposed project would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal monies or to provide a substance abuse treatment or educational component within an existing juvenile justice project).
- Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. *Note:* In the lower left-hand corner of the envelope, the applicant must clearly write ''Mental Health and Juvenile Justice: Building a Model for Service Delivery.''

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on April 10, 2000.

Contact

For further information, call Karen Stern, Program Manager, Research and Program Development Division, 202–514–9395 or send an e-mail inquiry to STERNK@ojp.usdoj.gov. Alternatively, you may contact Douglas Dodge, Senior Policy Advisor, 202–616–3652, or send an e-mail inquiry to DOUG@ojp.usdoj.gov.

References

Cocozza, J. J., ed. 1992. *Responding to the Mental Health Needs of Youth in the Juvenile Justice System.* Seattle, WA: The National Coalition for the Mentally Ill in the Criminal Justice System.

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Dated: February 2, 2000.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–2927 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–19–P

Federal Register

Wednesday,
February 9, 2000

Part V

Department of Education

Office of Educational Research and Improvement; Jacob K. Javits Gifted and Talented Students Education Program; Notice Inviting Applications for New Awards for Fiscal Years 2000 and 2001

DEPARTMENT OF EDUCATION

[CFDA No. 206A]

Office of Educational Research and Improvement, Jacob K. Javits Gifted and Talented Students Education Program; Notice Inviting Applications for New Awards for Fiscal Years 2000 and 2001

Purpose of Program: To provide grants to help build a nationwide capability in elementary and secondary schools to identify and meet the special educational needs of gifted and talented students; to encourage the development of rich and challenging curricula for all students; and to supplement and make more effective the expenditures of State and local funds for the education of gifted and talented students.

For fiscal years (FY) 2000 and 2001 the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice.

Eligible Applicants: State educational agencies; local educational agencies; institutions of higher education; and other public and private agencies and organizations, including Indian tribes and organizations—as defined by the Indian Self-Determination and Education Assistance Act—and Native Hawaiian organizations.

Applications Available: March 13, 2000.

Deadline for Receipt of Applications: April 24, 2000.

Note: We must receive all applications on or before this date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C.) 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Assistant Secretary for Educational Research and Improvement has determined that proposed rulemaking is not required.

Deadline for Intergovernmental Review: June 23, 2000.

Estimated Available Funds: $1,000,000.

Estimated Range of Awards: $100,000–$215,000.

Estimated Average Size of Awards: $166,000.

Maximum Award: We will reject any application that proposes a budget exceeding $215,000 for a single budget period of 12 months.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total project period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Page Limit: The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 25 pages, using the following standards:

- A page is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch.).

The page limit does not apply to the cover sheet, the budget section, including the narrative budget justification, the assurances and certifications; the one page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in one section.

If, to meet the page limit, you use more than one side of the page, you use a larger page, or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations in 34 CFR parts 299 and 700.

Supplementary Information: It is the Department's intent to fund two cycles of awards from this competition. The first cycle of awards will be made from FY 2000 funds. If applications of high quality remain unfunded, additional awards will be made in the second cycle in 2001, pending availability of FY 2001 funds.

Priorities: This competition focuses on projects designed to meet the priorities in the notice of final priorities for this program, published in the **Federal Register** on April 24, 1996 (61 FR 18214) and repeated in this notice.

Absolute Priority—Model Programs

Under 34 CFR 75.105(c)(3) we consider only applications that meet this absolute priority.

Projects that establish and operate model programs to serve gifted and talented students in schools in which at least 50 percent of the students enrolled are from low-income families. Projects must include students who may not be served by traditional gifted and talented programs, including economically disadvantaged students, limited English proficient students, and students with disabilities. The projects must incorporate high-level content and performance standards in one or more of the core subject areas as well as utilize innovative teaching strategies.

The projects must provide comprehensive ongoing professional development opportunities for staff. The projects must incorporate training for parents in ways to support their children's educational progress. There must also be comprehensive evaluation of the projects' activities.

Competitive Preference Priority—Empowerment Zone or Enterprise Community

Under 34 CFR 75.105(c)(2)(i), we give preference and award five (5) points to an application that meets this competitive priority.

Projects that implement model programs in one or more schools in an Empowerment Zone or Enterprise Community or that primarily serve students who reside in the EZ or EC. Applicants must ensure that the proposed program relates to the strategic plan and will be an integral part of the Empowerment Zone or Enterprise Community program.

For Applications and Further Information Contact: Kelley Berry or Liz Barnes, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502, Washington, DC 20208–5645. *Facsimile machine:* (202) 219–2053. *Telephone:* (202) 219–2096 or (202) 219–2210, respectively. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to either of the program contact persons listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting either person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 8031–8036.

Dated: February 4, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–2947 Filed 2–8–00; 8:45 am]

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A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

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