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Federal Register

6–7–00 **Wednesday**
Vol. 65 No. 110 **June 7, 2000**
Pages 36053–36306

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 11, 2000, at 9:00 a.m.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Rules and Regulations

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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.

FEDERAL ELECTION COMMISSION

11 CFR Part 108

[Notice 2000–12]

Filing Copies of Campaign Finance Reports and Statements With State Officers

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On March 22, 2000 at 65 FR 15221, the Commission published the text of revised regulations governing filing of campaign finance reports with State officers and the duties of State officers concerning the reports. The Commission announces that these rules are effective as of June 7, 2000.

EFFECTIVE DATE: The amendment to 11 CFR 108.1, 108.2, 108.3, 108.4, and 108.6 as publiched at 65 FR 15221 (March 22, 2000), are effective as of June 7, 2000.

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

SUPPLEMENTARY INFORMATION: The Commission is announcing the effective date of revised regulations at 11 CFR Part 108, governing filing copies of campaign finance reports and statements with State officers. These rules implement a 1995 amendment to the Federal Election Campaign Act at 2 U.S.C. 439(c) that exempts States meeting certain criteria from receipt and maintenance requirements for reports filed in connection with federal elections.

The statutory amendment specifically covers reports and statements filed with the Commission, *i.e.,* all except those filed by Senate candidates, their authorized committees, and committees that support or oppose them, which are filed with the Secretary of the Senate. The new rules also exempt from State receipt and maintenance requirements reports filed with the Secretary of the Senate that can be accessed electronically from the Commission's Web site, www.fec.gov.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. These rules were transmitted to Congress on March 17, 2000. Thirty legislative days expired in the Senate on May 16, 2000, and the House of Representatives on May 23, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–14241 Filed 6–6–00; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–311–AD; Amendment 39–11744; AD 2000–10–20]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that requires repetitive inspections to detect cracking of the fuselage skin in the areas of the left- and right-hand stringerless sidewall window belts, and repair, if necessary. This amendment is prompted by reports of fatigue cracks found in the fuselage skin where the skin thickness steps from 0.40 to 0.23 inch. The actions specified by this AD are intended to detect and correct cracking of the fuselage skin, which could result in reduced structural integrity of the airplane.

DATES: Effective July 12, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes was published in the **Federal Register** on February 16, 2000 (65 FR 7801). That action proposed to require require repetitive inspections to detect cracking of the fuselage skin in the areas of the left- and right-hand stringerless sidewall window belts, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 235 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be

affected by this AD, that it will take approximately 48 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $336,960, or $2,880 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–10–20 Lockheed: Amendment 39–11744. Docket 98–NM–311–AD.

Applicability: All Model L–1011–385 series airplanes, as listed in Lockheed Service Bulletin 093–53–279, dated May 6, 1998; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the fuselage skin, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Perform an ultrasonic inspection on the fuselage skin in the area of the stringerless sidewall window belts, at the radii on both the forward and aft sides of the machined cutout where the fuselage skin steps from 0.40 to 0.23 inch, to detect cracking in the base of the radii. Accomplish the inspection in accordance with Lockheed Service Bulletin 093–53–279, dated May 6, 1998, at each of the 6 specific inspection zones identified in the service bulletin at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 20,000 total flight cycles; or

(2) Within 600 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

(b) For readings of less than 20 percent obtained at all 6 inspection zones during the ultrasonic inspection required by paragraph (a) of this AD: Repeat the ultrasonic inspection thereafter at intervals not to exceed 1,500 flight cycles.

(c) Except as provided by paragraph (e) of this AD: For any reading of 20 percent or greater and less than or equal to 50 percent obtained at any inspection zone during the ultrasonic inspection required by paragraph (a) of this AD, prior to further flight, perform a low frequency eddy current (LFEC) inspection to measure the depth of the cracking, in accordance with Lockheed Service Bulletin 093–53–279, dated May 6, 1998.

(1) If the results of the LFEC inspection are outside the reject zone, as defined in the service bulletin: Within 1,500 flight cycles, repeat both the ultrasonic and LFEC inspections specified by paragraphs (a) and (c), respectively, of this AD.

(i) If the results of the LFEC inspection specified by paragraph (c)(1) of this AD are outside the reject zone: Within 1,800 flight cycles after the initial crack finding, as detected during the ultrasonic inspection specified in paragraph (a) of this AD, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(ii) If the results of the LFEC inspection specified by paragraph (c)(1) of this AD are within the reject zone: Prior to further flight, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(2) If the results of the LFEC inspection are within the reject zone, as defined in the service bulletin: Prior to further flight, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(d) Except as provided by paragraph (e) of this AD: For any reading of 50 percent or greater obtained at any inspection zone during the ultrasonic inspection required by paragraph (a) of this AD, prior to further flight, perform a LFEC inspection to measure the depth of the cracking, in accordance with Lockheed Service Bulletin 093–53–279, dated May 6, 1998.

(1) If the results of the LFEC inspection are outside the reject zone, as defined in the service bulletin: Within 300 flight cycles, repeat both the ultrasonic and LFEC inspections specified in paragraphs (a) and (c), respectively, of this AD.

(i) If the results of the LFEC inspection specified by paragraph (d)(1) of this AD are outside the reject zone: Within 600 flight cycles after the initial crack finding, as detected during the ultrasonic inspection specified in paragraph (a) of this AD, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(ii) If the results of the LFEC inspection specified by paragraph (d)(1) of this AD are within the reject zone: Prior to further flight, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(2) If the results from the LFEC inspection are within the reject zone, as defined in the service bulletin: Prior to further flight, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(e) For any inspection results that require repair in two adjacent zones: Prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(h) Except as provided by paragraph (e) of this AD, the actions shall be done in accordance with Lockheed Service Bulletin 093–53–279, dated May 6, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on July 12, 2000.

Issued in Renton, Washington, on May 17, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14018 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–56–AD; Amendment 39–11764; AD 2000–11–16]

RIN 2120–AA64

Airworthiness Directives; Ayres Corporation S2R Series and Model 600 S2D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 97–17–03, which currently requires you to accomplish the following on Ayres Corporation (Ayres) S2R Series and Model 600 S2D airplanes: inspect the 1/4-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking; replace any lower spar cap where fatigue cracking is found; and report any fatigue cracking. This AD retains the inspection and replacement (if necessary) requirements of the lower spar caps that are currently required in AD 97–17–03. This AD also makes these inspections repetitive, adds additional airplanes to the Applicability of the AD, changes the initial compliance time for all airplanes, and arranges the affected airplanes into groups (six) based on usage and configurations. The existing AD was the result of an accident of an Ayres S2R series airplane where the wing separated from the airplane in flight. The actions specified by this AD are intended to detect and correct fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

DATES: This AD becomes effective on July 25, 2000.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of July 25, 2000.

ADDRESSES: You may get the service information referenced in this AD from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706–3090. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–56–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 7036082; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

Has FAA taken any action to this point? An accident on an Ayres S2R series airplane where the wing separated from the airplane in flight caused FAA to issue AD 9717–03, Amendment 39–10195 (62 FR 43296, August 18, 1997). AD 97–17–03 currently requires you to accomplish the following:

- Inspect the 1/4-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;
- Replace any lower spar cap where fatigue cracking is found; and
- Report any fatigue cracking to FAA.

Investigation of all resources available to FAA at the time of the accident showed nine occurrences of fatigue cracking in the lower spar caps of Ayres S2R airplanes, specifically emanating from the 1/4-inch and 5/16-inch bolt holes. Investigation of the above-referenced accident revealed that the cause can be attributed to fatigue cracks emanating from the 1/2-inch and 5/16-inch bolt holes in the lower spar caps. Because the Ayres Model 600 S2D airplanes have a similar type design to that of the S2R series airplanes, they were included in the Applicability of AD 97–17–03.

Data indicates that the fatigue cracks on these Ayres S2R series airplanes become detectable at different times based upon the type of engines and design of the airplane. With this in mind, FAA categorized these airplanes into three groups for the Applicability of AD 97–17–03.

Since issuing AD 97–17–03, we received data specifying 29 additional occurrences of fatigue cracks found in the lower spar caps of Ayres S2R and Model 600 S2D airplanes. The data from these occurrences indicate the following:

- Several of these occurrences involved airplanes that had not accumulated enough hours to require the initial inspection of AD 97–17–03;
- Detectable cracks could still develop after the initial inspection on the affected airplanes; and
- Ayres has manufactured additional airplanes that have a similar type design to that of the airplanes affected by AD 97–17–03. The existing AD should also cover these airplanes.

To address the above areas, FAA issued a notice of proposed rulemaking (NPRM) to supersede AD 97–17–03. This NPRM was published in the **Federal Register** on January 13, 1999 (64 FR 2157). The NPRM proposed to supersede AD 97–17–03 with a new AD that would:

- Retain the inspection and replacement (if necessary) requirements of the lower spar caps that are currently required in AD 97–17–03;
- Make these inspections repetitive;
- Add additional airplanes to the Applicability of the AD;
- Change the initial compliance time for all airplanes; and
- Arrange the affected airplanes into four groups instead of three based on usage and configurations.

Was the public invited to comment on the NPRM? The FAA invited interested persons to participate in the making of the amendment. Based on the comments to this NPRM, we changed the NPRM and reopened the comment period through a supplemental NPRM. The supplemental NPRM specifically proposed to organize the affected airplanes into six groups based on usage and configurations, adjust the repetitive inspection intervals, provide alternatives for inspection methods, and include modification alternatives to replacing the spar cap.

The FAA again invited interested persons to participate in the making of this amendment. No comments were received.

The FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except minor editorial corrections.

How do the minor editorial corrections affect the AD? We have determined that the minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD will affect 1,000 airplanes in the U.S. registry.

What is the cost impact of the initial inspection on owners/operators of the affected airplanes? We estimate 3 workhours per airplane to accomplish the initial inspection, at an average labor rate of $60 an hour. Parts to accomplish the initial inspection cost approximately $417 per airplane. Based on these figures, we estimate the cost impact of the initial inspection of this AD on U.S. operators at $597,000, or $597 per airplane.

What about the cost of repetitive inspections and possible repairs and replacements? The figures above only take into account the cost of the initial inspection and do not take into account the cost of repetitive inspections. We have no way of determining how many repetitive inspections each owner/operator of the affected airplanes would incur. These figures are based upon the presumption that no affected airplane operator has accomplished the inspection, and do not take into account the cost for replacement if a crack is found. We have no way of determining the number of wing spar caps that may need to be replaced based upon the results of the inspections.

Regulatory Impact

The regulations adopted herein 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. Therefore, FAA determines that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this action:

(1) is not a ''significant regulatory action'' under Executive Order 12866;

(2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends Section 39.13 is amended by removing Airworthiness Directive (AD) 97–17–03, Amendment 39–10105 (62 FR 43926, August 18, 1997), and by adding a new AD to read as follows:

2000–11–16 Ayres Corporation: Docket No. 98–CE–56–AD, Amendment 39–11764; Supersedes AD 97–17–03, Amendment 39–10105.

(a) *What airplanes are affected by this AD?* Airplanes with the following model and serial number (S/N) designations with or without a –DC or –X suffix, certificated in any category:

GROUP 1 AIRPLANES

Model	Serial numbers
S–2R	5000R through 5099R, except 5010R 5031R, 3038R, 5047R, and 5085R.
S2R–R1820	R1820–001 through R1820–035.
S2R–T34	6000R through 6049R, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–171, T34–180, and T34–181*.
S2R–T15	T15–001 through T15–033**.
S2R–G1	G1–101 through G1–106.

*The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

**The serial numbers of the Model S2R–T15 airplanes could incorporate T15–xxx and T27–xxx. This AD applies to both of these serial number designations as they are both Model S2R–T15 airplanes.

GROUP 2 AIRPLANES

Model	Serial numbers
S2R–R1820	R1820–036.
S2R–T65	T65–001 through T65–017.
S2RHG–T65.	T65–002 through T65–017.
S2R–T34	T34–144, T34–146, T34–168, T34–169, T34–172 through T34–179, and T34–189 through T34–232. And T34–234.*
S2R–T45	T45–001 through T45–014.
S2R–G6	G6–101 through G6–147.
S2R–G10 ...	G10–101 through G10–136, G10–138, G10–140, and G10–141.
S2R–G5	G5–101 through G5–105.

*The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

GROUP 3 AIRPLANES*

Model	Serial numbers
600 S2D	All serial numbers beginning with 600–1311D.
S–2R	1380R and 1416R through 4999R.
S2R–R1340	R1340–001 through R1340–035.
S2R–R3S ...	R3S–001 through R3S–011.
S2R–T11	T11–001 through T11–005.

*Any Group 3 airplane that has been modified with a hopper of a capacity over 410 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine, makes the airplane a Group 1 airplane for the purposes of this AD. The owner/operator must inspect the airplane at the Group 1 compliance time specified in this AD.

GROUP 4 AIRPLANES

Model	Serial numbers
S2R–T34	T34–225, T34–236, T34–237, and T34–238.*
S2R–G1	G1–107, G1–108, and G1–109.
S2R–G10 ...	G10–137, G10–139, and G10–142.

The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

GROUP 5 AIRPLANES

Model	Serial numbers
S2R–T34	T34–239 through T34–266.*
S2RHG–T34.	T34HG–102.
S2R–T15	T15–034 through T15–040.**
S2R–T45	T45–015.
S2R–G1	G1–110 Through G1–114.
S2R–G6	G6–148 through G6–151.
S2R–G10 ...	G10–143 through G10–160.

*The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to both of these serial designations as they are both Model S2R–T34 airplanes.

**The serial numbers of the Model S2R–T15 airplanes could incorporate T15–xxx and T27–xxx. This AD applies to both of these serial designations as they are both Model S2R–T15 airplanes.

GROUP 6 AIRPLANES

Model	Serial numbers
S2R	501R, 5031R, 5038R, 5047R, and 5085R.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fatigue cracking of the lower spar caps. This could result in the wing separating from the airplane with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(1) Repetitively inspect, using magnetic particle, ultrasonic, or eddy current procedures, the 1/4-inch and 5/16-inch bolt hole areas on each lower spar cap for fatigue cracking. Reference paragraph (e)(3) and (e)(4) of this AD (including all subparagraphs) to obtain the initial and repetitive inspection compliance times.

(i) The cracks may emanate from the bolt hole on the face of the spar cap or they may occur in the shaft of the hole.

(ii) You must inspect both of these areas.

(2) If any cracking is found during any inspection required by this AD, you must accomplish the following:

(i) Use the cold work process to ream out small cracks as defined in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; or replace the affected spar cap in accordance with the maintenance manual; or ream the 1/4-inch bolt holes to 5/16 inches diameter as defined in Part I of Ayres Custom Kit No. CK–AG–29, dated December 23, 1997; and

(ii) Submit a report of inspection findings to the Manager, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; facsimile: (770) 703–6097. You must include the airplane serial number and engine model number; the total number of flight hours on the lower spar cap that is cracked; time on the spar cap since last inspection, if applicable; and the type of inspection used for the last inspection. Indicate if cold working has been accomplished or modifications incorporated such as installation of big butterfly plates. Include the time on the spar cap when the cold working or modifications were accomplished. Indicate which bolt hole is cracked and the length of the crack. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) *What is the compliance time of this AD?* The compliance times for each of the actions of this AD are as follows:

(1) Any required repair or replacement: Prior to further flight after the inspection where the crack(s) was/were found.

(2) Reporting requirement:

(i) Submit the report within 10 days after finding any crack(s) during any inspection required by this AD.

(ii) For airplanes where cracking was found during any inspection accomplished in accordance with AD 97–17–03, which is superseded by this AD; or by AD 97–13–11, which was superseded by AD 97–17–03, submit the report within 10 days after the effective date of this AD, unless already accomplished.

(3) Initial Inspection: The following is for the initial inspections required by this AD. The affected airplanes are categorized into six different groups.

(i) Group 1 Airplanes: Required upon the accumulation of 2,000 hours time-in-service (TIS) on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 97–1703 or AD 97–13–11).

(ii) Group 2 Airplanes: Required upon the accumulation of 2,200 hours TIS on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occur later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11).

(iii) Group 3 Airplanes: Required upon the accumulation of 6,400 hours TIS on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11).

(iv) Group 4 Airplanes: Required upon the accumulation of 2,500 hours TIS on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11).

(v) Group 5 Airplanes: Required upon the accumulation of 6,200 hours TIS on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11).

(vi) Group 6 Airplanes: As presented below.

(A) For S/N 5010R: Required upon the accumulation of 5,530 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

(B) For S/N 5038R: Required upon the accumulation of 5,900 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

(C) For S/N's 5031R and 5047R: Required upon the accumulation of 6,400 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

(D) For S/N 5085R: Required upon the accumulation of 6,290 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

(4) Repetitive Inspections: The following chart gives the required repetitive inspection intervals based on the work performed and the method of inspection utilized. Each time is hours TIS intervals after the last inspection:

Work previously performed	Magnetic particle	Ultrasonic	Eddy current
(i) No cracks found previously on wing spar and no optional cold work or bolt hole reaming accomplished.	500 hours TIS	550 hours	700 hours TIS.
(ii) One of the following where the airplane does not have butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II***.	500 hours TIS	550 hours TIS	700 hours TIS
(A) Small cracks repaired through cold work (or done as an option if never cracked) accomplished per SB–AG–39; or			

Work previously performed	Magnetic particle	Ultrasonic	Eddy current
(B) Small cracks repaired through 1/4-inch bolt hole reamed to 5/16 inches diameter (or done as an option if never cracked) per CK–AG–29, Part I; or (C) Small cracks repaired through previous Alternative Methods of Compliance **			
(iii) One of the following where the airplane has butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II ***.	900 hours TIS	950 hours TIS	1,250 hours TIS.
(A) Small cracks repaired through cold work (or done as an option if no cracks found) accomplished per SB–AG–39; or (B) Small cracks repaired through 1/4-inch bolt hole reamed to 5/16 inches diameter (or done as an option if no cracks found) per CK–AG–29, Part I; or (C) Small cracks repaired through previous Alternative Methods of Compliance. **			
(iv) Cracked wing spar found during previous inspection wing spar replacement.	Time for initial and repetitive inspection intervals start over when wing spar is replaced.	Time for initial and repetitive inspection intervals start over when wing spar is replaced.	Time for initial and repetitive inspection intervals start over when wing spar is replaced.

* Aircraft S/N's T45–007DC and T45–10DC had modified splice block assemblies installed at Ayres (Ayres/Kaplan Assembly No. 88–251) and must still follow the repetitive inspection intervals listed here.

** If a crack is found, the reaming associated with the cold work process may remove a crack if it is small enough. Some aircraft owners/operators were issued alternative methods of compliance with AD 97–17–03 to ream the 1/4-inch bolt hole to 5/16 inches diameter to remove small cracks. Ayres CK–AG–29, Part I, also provides procedures to ream the 1/4-inch bolt hole to 5/16 inches diameter. If you use either of these two methods to remove cracks and the airplane is reinspected immediately with no cracks found, you may continue to follow the repetitive inspection intervals listed above.

*** Group 4 and Group 5 airplanes had the butterfly plates installed at the factory and may follow this repetitive inspection interval.

(f) *What procedures must I use to accomplish the actions required in this AD?* (1) Inspections:

(i) For the magnetic particle inspection, utilize the procedures contained in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. Use only sections titled ''Inspection Accomplishment Instructions'' and ''Lower Splice Fitting Removal and Installation Instructions.'' You must follow American Society for Testing Materials (ASTM) E1444–94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046.

Caution: You must firmly support the wings during the inspection to prevent movement of the spar caps when the splice blocks are removed. This will allow easier realignment of the splice block holes and the holes in the spar cap for bolt insertion.

(ii) The FAA must approve ultrasonic or eddy current inspection procedures. To obtain FAA approval, you must send your proposed procedure to the Manager, Atlanta Aircraft Certification (ACO), One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. You are not required to remove the splice block for either the ultrasonic or eddy current inspections, unless corrosion is visible.

(iii) All inspections required by this AD must be accomplished by a Level 2 or Level 3 inspector certified for that inspection method using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410.

(2) Repair: Utilize the procedures contained in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; or in Part I of Ayres Custom Kit No. CK–AG–29, dated December 23, 1997 if necessary to remove small cracks. You must then immediately re-inspect and continue to accomplish the repetitive inspections.

(3) Replacement: Utilize the procedures contained in the maintenance manual.

(g) *Can I comply with this AD in any other way?* (1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Atlanta Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

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

(3) Alternative methods of compliance approved in accordance with AD 97–17–03, which is superseded by this AD; or in accordance with AD 97–13–11, which was superseded by AD 97–17–03, are approved as alternative methods of compliance with this AD, unless otherwise noted in this AD.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 303496; telephone: (770) 703–6082; facsimile: (770) 703–6097.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD, provided that:

(1) The hopper is empty.

(2) Vne is reduced to 126 miles per hour (109 knots) indicated airspeed (IAS).

(3) Flight into known turbulence is prohibited.

(j) *Are any service bulletins incorporated into this AD by reference?* You must accomplish the actions required by this AD in accordance with Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996, and Ayres Custom Kit No. CK–AG–29, dated December 23, 1997. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706–3090. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(k) *Does this AD affect any other AD actions?* This amendment supersedes AD 97–17–03, Amendment 39–10105.

(l) *When does this amendment become effective?* This amendment becomes effective on July 25, 2000.

Issued in Kansas City, Missouri, on May 26, 2000.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14016 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–45–AD; Amendment 39–11765; AD 2000–11–17]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that applies to Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 helicopters and that currently requires initial and repetitive inspections of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar) for cracks or delaminations. This amendment requires the same actions required by the existing AD and corrects an incorrectly stated part number (P/N) in the existing AD. This amendment is prompted by a report of delamination of a Kevlar tie-bar. The actions specified by this AD are intended to detect cracks that could lead to delamination of the Kevlar tie-bar, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective July 12, 2000. The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of June 11, 1998 (63 FR 25158, May 7, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005; telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111; telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–10–04, Amendment 39–10515 (63 FR 25158, May 7, 1998), which applies to Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 helicopters, was published in the **Federal Register** on March 9, 2000 (65 FR 12489). That action proposed to require the same actions required by the existing AD and correct an incorrectly stated P/N in the existing AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 47 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,000 per blade. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $152,280 to replace one blade and perform one inspection on each helicopter.

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10515 (63 FR 25158), and by adding a new airworthiness directive (AD), Amendment 39–11765, to read as follows:

AD 2000–11–17 Eurocopter France: Amendment 39–11765. Docket No. 99–SW–45–AD. Supersedes AD 98–10–04, Amendment 39–10515, Docket No. 97–SW–49–AD.

Applicability: Model SA–365N1, AS–365N2, and SA–366G1 helicopters, with tail rotor blade (blade), Part Number 365A12–010–all dash numbers, 365A12–0020–00, 365A33–2131–all dash numbers, or 365A12–0020–02, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect cracks that could lead to delamination of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar), loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 250 hours TIS, inspect each Kevlar tie-bar for a crack or delamination in accordance with paragraph B, Operational Procedure, of Eurocopter France Service Bulletin 05.00.34, Revision 3, dated November 14, 1996.

(b) If any delamination or cracking is found during any of the inspections required by paragraph (a) of this AD, remove the blade and replace it with an airworthy blade before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

(e) The inspection shall be done in accordance with paragraph B, Operational Procedure, of Eurocopter France Service Bulletin 05.00.34, Revision 3, dated November 14, 1996. The incorporation by reference of that document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of June 11, 1998 (63 FR 25158, May 7, 1998). Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005; telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 12, 2000.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 92–185–33(B)R4, dated December 4, 1996.

Issued in Fort Worth, Texas, on May 26, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–14193 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–1]

RIN 2120–AA66

Modification of the San Francisco Class B Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the San Francisco, CA, Class B airspace area. Specifically, this action raises the airspace ceiling from 8,000 to 10,000 feet mean sea level (MSL); lowers the airspace floor in a few areas; combines and reconfigures several existing areas; and creates some new areas. The FAA is taking this action to enhance safety, to reduce the potential for midair collision, and to improve the management of air traffic operations into, out of, and through the San Francisco Class B airspace area, while accommodating the concerns of airspace users.

EFFECTIVE DATE: 0901 UTC, September 7, 2000.

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

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the **Federal Register's** electronic bulletin board service (telephone: (202) 512–1661) using a modem and suitable communications software.

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register's** web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this final rule. Persons interested in being placed on a mailing list for future NPRM's or final rules should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule in the **Federal Register** (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule in the **Federal Register** (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles (NM) of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders operating outside of the Class B airspace area, but within 30 NM of the primary airport.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule in the **Federal Register** (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule in the **Federal Register** (56 FR 65638). This rule discontinued the use of the term ''Terminal Control Area'' and replaced it with the designation ''Class B airspace area.'' This change in terminology is reflected in this final rule.

Background

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic operations by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) the increased capability to provide aircraft separation service,

thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of these airspace areas normally contain three concentric circles centered on the primary airport extending to 10, 20, and 30 NM, respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Public Input

On March 1, 1999, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (Airspace Docket No. 97–AWA–1; 64 FR 9940) proposing to modify the San Francisco, CA, Class B airspace area. The comment period for this NPRM closed on April 30, 1999.

The FAA received 145 written comments in response to the proposal. All comments received were considered before making a determination on this final rule. An analysis of the comments received and the FAA's response is summarized below.

Discussion of Comments

The FAA received some letters that fully endorsed and supported the entire airspace modification proposal based on the positive benefits expected from aviation safety improvements. On the other hand, an equal number of letters expressed complete opposition to the proposal, viewing it as either unnecessary or overly restrictive. The remaining majority of comments (over 100) focused on one or more specific airspace design issues. The following discussion provides an overview of the key airspace issues of concern, and related FAA decisions reflected in this final rule.

Several commenters noted that the NPRM document was difficult for them to decipher due to the use of true north, rather than magnetic north. The FAA understands how it is possible that this may have confused some readers. However, due to magnetic variation changes over time, it is FAA policy to use reference to true north in airspace rulemaking documents.

The proposed expansion of the Area A southern boundary from 5NM to 6NM from the San Francisco (SFO) VHF Omni-directional Range/Distance Measuring Equipment (VOR/DME) was strongly opposed by nearly all general aviation pilots and by some airport officials. The most common reason cited for opposition was that the proposed modification would adversely affect the Bay Meadows noise abatement departure procedure from San Carlos Airport which supports a busy VFR route used primarily for general aviation flights to Half Moon Bay. One commenter stated that the 5NM boundary line sufficiently protects low altitude arrivals from the northwest entering downwind for Runways 28L and 28R at San Francisco. Another observation was expressed that during operations in the East configuration, departures were not assigned headings any further right than 120 degrees due to steep terrain south of the airport. The predominant viewpoint expressed by those who commented on Area A was that the existing airspace should not be modified.

Based on the information received during the NPRM comment process, and after further airspace analysis, the FAA agrees that the existing Area A southern boundary line should not be modified at this time. The final rule has been revised accordingly.

Several commenters suggested that the floor of the airspace near Mt. Tamalpais should be higher that proposed 4,000 feet MSL. Many expressed concern that the proposed floor would adversely affect hang gliders, paragliders, and other soaring activity, and that the proposed change might increase the potential for conflicts between powered and non-powered aircraft. One commenter believed that the proposed expansions of Area H and Area I were not warranted because only one instrument departure procedure from San Francisco would be encompassed in the proposed airspace areas. Some commenters suggested that a 6,000 feet MSL floor at Mt. Tamalpais would allow recreational soaring to continue in a safe manner at that location.

The FAA agrees that the Mt. Tamalpais area users would be constrained if the proposed expansion of Class B airspace were implemented. Therefore, the FAA has determined, based on a clearer understanding of user needs and additional analysis of the airspace, that the MOLEN departure procedure can be adequately and safely protected in Class B airspace without disrupting activities at Mt. Tamalpais. This final rule establishes a smaller airspace area with a floor of 4,000 feet MSL located southwest of Mt. Tamalpais to provide protection for the MOLEN departures from San Francisco.

Several comments from glider pilots, and the organizations representing them, recommended that the proposed new Class B airspace area between 25NM and 30NM from SFO VOR/DME should be limited to the airspace located south and west of the SFO VOR/DME 082° radial. The reason cited for this recommendation was that northwest winds over Mt. Diablo often extend the viable soaring area to about 10 miles south of the peak. Because very few sailplanes have VOR receivers, the commenters suggested a revision to the proposed airspace boundary line that would allow pilots to use visual reference to Interstate 580 as a guideline for remaining outside Class B airspace.

The FAA appreciates receiving the recommendation of a prominent landmark to enhance safety and reduce deviations. The rationale offered by the commenters is reasonable, and their suggested revision to the airspace boundary line is adopted in this final rule.

Several comments were received regarding the FAA proposal to implement Class B airspace in the Sunol gap area, also known as the ''keyhole'', from 15NM to 25NM east of San Francisco. The primary concerns expressed were related to the fact that the area if heavily used as a VFR route to and from the San Francisco area communities. Since the airspace is also frequently subject to marine layer stratus cloud formations during spring and summer, concerns were expressed that VFR traffic might become overly compressed in the area between the proposed airspace floor and the mountainous terrain, thereby increasing collision risks. Some commenters suggested that the floor of the airspace should be 4,000 feet MSL to the east between 15NM and 20NM from the SFO VOR/DME to allow additional altitude for safety.

The FAA agrees with the recommendation and has adopted a floor at 4,000 feet MSL in this final rule in order to reduce the potential for overcrowded airspace along this popular route. This airspace has been combined with adjacent 4,000′ MSL feet floor areas both north and south of it, forming a large Area D. The new airspace will provide adequate Class B coverage for Runway 10 departures, and for Runway 28L/R arrivals during arrival rush periods when aircraft are vectored to final.

In the eastern section of the ''keyhole'' area, between 20NM and 25NM from SFO VOR/DME, several commenters suggested that the airspace floor should be designated at 6,000 feet MSL to accommodate hang glider activity near Mission Ridge, Mt. Alison, and Monument Peak. Many believed that the proposed 5,000 MSL floor would place

too many general aviation flights in unsafe close proximity to numerous Part 103 operators.

The FAA agrees that a higher floor at 6,000 feet MSL in this area will better serve the needs of both the general aviation community and the Part 103 operators while simultaneously providing necessary Class B protection for SFO traffic flows. The area has now been combined with adjacent 6,000′ MSL floor areas to the north and south, forming a large Area E.

Several commenters suggested that the San Francisco Class B airspace modification should be designed to accommodate full protection for Simultaneous Offset Instrument Approach (SOIA) procedures. Concern was expressed that SOIA operations are anticipated to begin at San Francisco International Airport in the near future, and there would be insufficient time to complete another Class B rulemaking action to include the new procedures in a timely manner. Runway 28L SOIA operations would require that aircraft be established on final no closer than 20 miles from the airport, with glideslope intercept at an altitude lower than the current Class B airspace coverage. It was suggested that the area from the SFO VOR/DME 107° radial clockwise to the SFO VOR/DME 167° radial between 20NM and 25NM be lowered to 5,000 feet MSL for protection of anticipated Runway 28L SOIA arrivals.

The FAA acknowledges and appreciates the foresight demonstrated in the suggestion offered by these commenters. However, in formulating final rule decisions on regulatory airspace, the FAA cannot legally impose additional restrictions on access to airspace that would be more stringent than those originally proposed in the NPRM.

The proposed lowering of the airspace floor in the area surrounding Half Moon Bay down to a level of 4,000 feet MSL concerned some users who reported that they accomplish aerobatic training and practice offshore along the Pacific coast. With the existing class B airspace floor at 6,000 feet MSL over much of the area, airspace from 5,900 feet MSL down to 1,500 feet MSL is currently used for teaching, maneuvers requiring extra vertical space. The commenters on this issue suggested a few alternative airspace boundary reconfigurations to allow retention of some airspace available for aerobatic maneuvers.

The FAA has carefully reviewed available airspace options near Half Moon Bay and finds its necessary to establish a 4,000 feet MSL floor in the reconfigured Area D. The airspace is required in order to provide adequate Class B protection for numerous IFR turboprop air taxis carrying passenger to SFO. These aircraft are regularly vectored through airspace over Half Moon Bay at 4,000 feet MSL for radar sequencing into the flow of jets landing at San Francisco. ATC operational requirements dictate the need for these aircraft to be descended to 4,000 feet MSL near Half Moon Bay for effective sequencing into the SFO arrival flow. However, in order to accommodate retention of aerobatic practice in this area, the proposed Area D has been slightly modified in this final rule and a new Area K with a 5,000 feet MSL floor has been designated offshore near the Half Moon Bay airport. It should also be noted that ten miles of shoreline airspace will remain available only a few miles south of the current aerobatic practice area in the vicinity of San Gregorio.

The Aircraft Owners and Pilots Association (AOPA), and some individual pilots, expressed opposition to the various low altitude Class B airspace floor levels proposed over the Pacific Ocean because they were perceived to be barriers that would severely limit access to Victor Airway 27 (V27) for users wishing to transition northbound or southbound along the airway.

The FAA acknowledges that V27 penetrates the new SFO Class B Areas D, E, G, H, J, and K as designated in this final rule. While this could initially appear to limit access for general aviation, V27 actually remains an excellent route for VFR flights. Bay Approach personnel predict that flights requesting VFR transition along V27 at appropriate VFR altitudes will rarely, if ever, be denied access. It is also expected that international traffic transitioning to and from the oceanic environment will no longer need to level off at unnecessary interim altitudes to avoid uncontrolled traffic on V27. Additional safety benefits for VFR aircraft will include more efficient avoidance of heavy jet wake turbulence while under positive air traffic control and separation from other air traffic. These factors are highly consistent with FAA's Class B airspace design criteria that specify the airspace should afford a level of protection appropriate for the large numbers of aircraft and passengers served in the airspace.

Although fewer than 8 percent of all commenters expressed opposition to the proposed airspace ceiling at 10,000 feet MSL, the FAA has nonetheless carefully reconsidered airspace operational requirements with due regard to all comments received on this issue. A variety of reasons were cited by commenters for opposing the higher ceiling. A few commenters felt the higher ceiling could not be justified without more comprehensive traffic count data covering all operations between 8,000 and 10,000 feet MSL, or without presentation of statistical data concerning near-midair collision reports. Some recommended that the current ceiling should remain unchanged to allow VFR traffic unrestricted transition access at 8,500 and 9,500 feet MSL without causing unnecessary frequency congestion or excessive workload requiring more air traffic controllers. One commenter expressed concern that the higher ceiling might preclude overflights by some aircraft not equipped with oxygen. Another said that the proposed ceiling would be overly restrictive, and that a ceiling at 9,000 feet MSL would be adequate.

While reports of near midair collisions have not been filed in the San Francisco area that would explicitly suggest raising the Class B airspace ceiling, such reports would be neither desirable nor necessary to justify the FAA's decision. The Class B airspace program is designed to ensure proactively that specific safety levels within congested terminal airspace are maintained by designating areas wherein all aircraft are subject to standardized operating rules and equipment requirements. The FAA evaluated San Francisco International Airport operations using criteria specified in FAA Order 7400.2D, Procedures for Handling Airspace Matters, and with particular attention to the unique characteristics of air traffic flow in the San Francisco terminal area. The analysis showed that the existing airspace ceiling does not provide adequate regulatory airspace protection consistent with the expectations of the majority of airline passengers and airspace users. The Class B airspace program was developed to ensure that specific protection is afforded within the airspace surrounding high-density commercial airports. Class B airspace operating rules are deemed to provide the level of protection appropriate for the large numbers of aircraft and passengers served by this type of airport. The FAA's thorough analysis of actual airspace utilization within the San Francisco terminal area included usage of available modeling and simulation resources at the Airspace Planning and Analysis Division, ATA–200, Air Traffic Airspace Lab in Herndon, VA. The results of that analysis, along with review of the original facility staff study concerning

this airspace, revealed that all airspace between 8,000 and 10,000 feet MSL is used on a regular basis by air traffic controllers for the purpose of handling instrument operations to and from SFO airport. San Francisco International Airport handled 432,046 total airport operations during 1998 and 19,079,664 passengers enplaned during the same time period. These figures continue a trend of significant growth. Current FAA aviation forecasts for the 1999 to 2010 time period project that the FAA Western-Pacific Region will lead all other FAA regions with a rate of growth of aircraft operations increasing 21.6 percent over the forecast period. Accordingly, this final rule raises the San Francisco Class B airspace ceiling to 10,000 feet MSL.

The Rule

This amendment to 14 CFR part 71 modified the San Francisco Class B airspace area. Specifically, this action raises the airspace ceiling from 8,000 to 10,000 feet MSL; lowers the airspace floor in some areas; combines and reconfigures several existing areas; and creates three new areas. Areas A, B, and C remain unchanged from the existing airspace configuration, except for the new ceiling at 10,000 feet MSL. Area D, with its floor at 4,000 feet MSL, has been combined with other areas including the previous Area H, part of previous Areas E and J, and a new area east of the primary airport. The reconfigured Area E retains its floor at 6,000 feet MSL, and now includes the previous Area I, a small corner from the previous Area J, and a new area east of the primary airport. The only change to the existing Area F is the new ceiling at 10,000 feet MSL. Area G has been slightly modified into a simpler arc configuration. Area K has been renamed Area I. A new Area H, with a floor of 4,000 feet MSL, has been designated over the ocean to the west of Area G. A new Area J, with a floor of 8,000 feet MSL, has been designated 25NM to 30NM from the SFO VOR/DME, forming a new southern and eastern airspace boundary. Lastly, a new Area K, with a floor of 5,000 feet MSL, has been designated over the ocean to the southeast of Area G.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in Paragraph 3000 of FAA Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule: (1) Will generate benefits that justify its minimal costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

The FAA is modifying the San Francisco Class B airspace area by raising the ceiling from 8,000 feet mean sea level (MSL) to 10,000 feet MSL, by combining and reconfiguring the lateral boundaries of several existing areas, by establishing three new areas, and by lowering base altitudes. This action will increase the overall size of the Class B airspace area thereby increasing air traffic control's (ATC) ability to manage and control air traffic complexity in the San Francisco area. The FAA contends that this final rule will improve operational efficiency and enhance aviation safety in the Class B airspace area. The final modifications will also include clearer boundaries defining the Class B airspace areas.

The final rule will impose minimal costs on the FAA or airspace users. Notices will be sent to all pilots within a 100-mile radius of the San Francisco International Airport (SFO) at a total cost of $200.00 for postage. Printing of aeronautical charts which reflect the changes to the Class B airspace area will be accomplished during a scheduled chart printing, and will result in no additional costs for plate modification and updating of charts. No staffing changes will be required to maintain the modified Class B airspace area.

The FAA contends that the final rule will not impose any additional costs on general aviation aircraft operators. Since the San Francisco Class B airspace area will reside within the existing Mode C Veil, no additional avionics equipment will be required for any aircraft operating in the vicinity of the Class B airspace area. Even with the establishment of new areas and the expansion of existing areas, VFR aircraft operators should not have difficulty circumnavigating the Class B airspace area. Additionally, aircraft operators have the options of circumnavigating outside the San Francisco VOR/DME 15 NM arc and operate under the higher floor of 6,000 feet MSL. For those aircraft operators who choose not to circumnavigate or fly below the Class B airspace, standard procedures may be used to enter the San Francisco Class B airspace area.

The FAA has determined that this final rule will be cost-beneficial. The final rule will generate benefits in the form of improved flow of air traffic operations into and out of SFO; clearer airspace boundaries; improved ATC containment of transport aircraft (containment refers to aircraft operating in controlled airspace and receiving ATC separation from other aircraft); and reduced potential for midair collisions in the terminal area.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small

entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an FRA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the final rule will have only a minimal impact on small entities. This determination is based on the premise that potentially impacted aircraft operators regularly fly into airports where radar approach control services have been established such as the SFO Class B airspace area. These operators already have the required equipment, and, therefore, there will be no additional cost to these entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The final rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Federalism Implications

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under E.O. 12612.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

AWP CA B San Francisco, CA

San Francisco International (SFO) Airport
(Primary Airport)
(lat. 37°37′09″N., long. 122°22′30″W.).
San Francisco (SFO) VOR/DME
(lat. 37°37′10″N., long. 122°22′26″W.)
Oakland (OAK) VORTAC
(lat. 37°43′33″N., long. 122°13′25″W.)
Sausalito (SAU) VORTAC
(lat. 37°51′19″N., long. 122°31′22″W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the San Francisco (SFO) VOR/DME extending clockwise from the SFO VOR/DME 247° radial to the SFO VOR/DME 127° radial, and within a 5-mile radius of the SFO VOR/DME between the SFO VOR/DME 127° radial clockwise to SFO VOR/DME 247° radial, excluding that airspace within a 3-mile radius of the Oakland VORTAC and excluding that airspace west of the Pacific coast shoreline.

Area B. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL bounded on the northwest by a 5-mile radius arc of the SFO VOR/DME, on the southeast by a 10-mile radius arc of the SFO VOR/DME, on the northeast by the SFO VOR/DME 107° radial, and on the southwest by the SFO VOR 137° radial excluding that airspace within Area A.

Area C. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded on the northwest by a 10-mile radius arc of the SFO VOR/DME, on the southeast by a 15-mile radius arc of the SFO VOR/DME, on the northeast by the SFO VOR/DME 107° radial and on the southwest by the SFO VOR/DME 137° radial.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL, bounded by a line beginning at the 5-mile DME point on the SFO VOR/DME 137° radial thence southeast along the SFO VOR/DME 137° radial to and counterclockwise along the 15-mile DME arc of the SFO VOR/DME to and northwest along the Oakland VORTAC 305° radial to and northeast along the Sausalito VORTAC 052° radial to and clockwise along the 20-mile DME arc of the SFO VOR/DME to and northwest along the SFO VOR/DME 167° radial to and clockwise along the 15-mile DME arc of the SFO VOR/DME to and northeast along the SFO VOR/DME 247° radial to and counterclockwise along the 5-mile DME arc of the SFO VOR/DME to the point of beginning, excluding that airspace within Area K.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the 15-mile DME point on the SFO VOR/DME 277° radial thence counterclockwise along the 15-mile DME arc of the SFO VOR/DME to and southeast along the SFO VOR/DME 167° radical to and counterclockwise along the 20-mile DME arc of the SFO VOR/DME to and northeast along the Sausalito VORTAC 052° radial, to and clockwise along the 25-mile DME arc of the SFO VOR/DME to and northeast along the SFO VOR/DME 227° radial to and clockwise along the 20-mile DME arc to and northeast along the SFO VOR/DME 277° radial to the point of beginning.

Area F. That airspace extending upward from 2,100 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the

10-mile DME point on the SFO VOR/DME 247° radial thence clockwise along the 10-mile DME arc to and west along the SFO VOR/DME 107° radial to and counterclockwise along the 7-mile DME arc of the SFO VOR/DME to and clockwise along the 3-mile DME arc of the Oakland VORTAC to and counterclockwise along the 7-mile DME arc of the SFO VOR/DME to and southwest along the SFO VOR/DME 247° radial to the point of beginning.

Area G. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL between the 10- and 15-mile radii of the SFO VOR/DME from the SFO VOR/DME 247° radial clockwise to the SFO VOR/DME 107° radial.

Area H. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL between the 15- and 20-mile radii of the SFO VOR/DME from the SFO VOR/DME 277° radial clockwise to the SFO VOR/DME 317° radial.

Area I. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL bounded on the west by a 7-mile radius arc of the SFO VOR/DME and on the east by the Pacific coast shoreline.

Area J. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 25- and 30-mile radii of the SFO VOR/DME from the SFO VOR/DME 082° radial clockwise to the SFO VOR/DME 227° radial.

Area K. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL between the 10- and 15-mile radii of the SFO VOR/DME from the SFO VOR/DME 217° radial clockwise to the SFO VOR/DME 247° radial.

* * * * *

Issued in Washington, DC, on May 30, 2000.

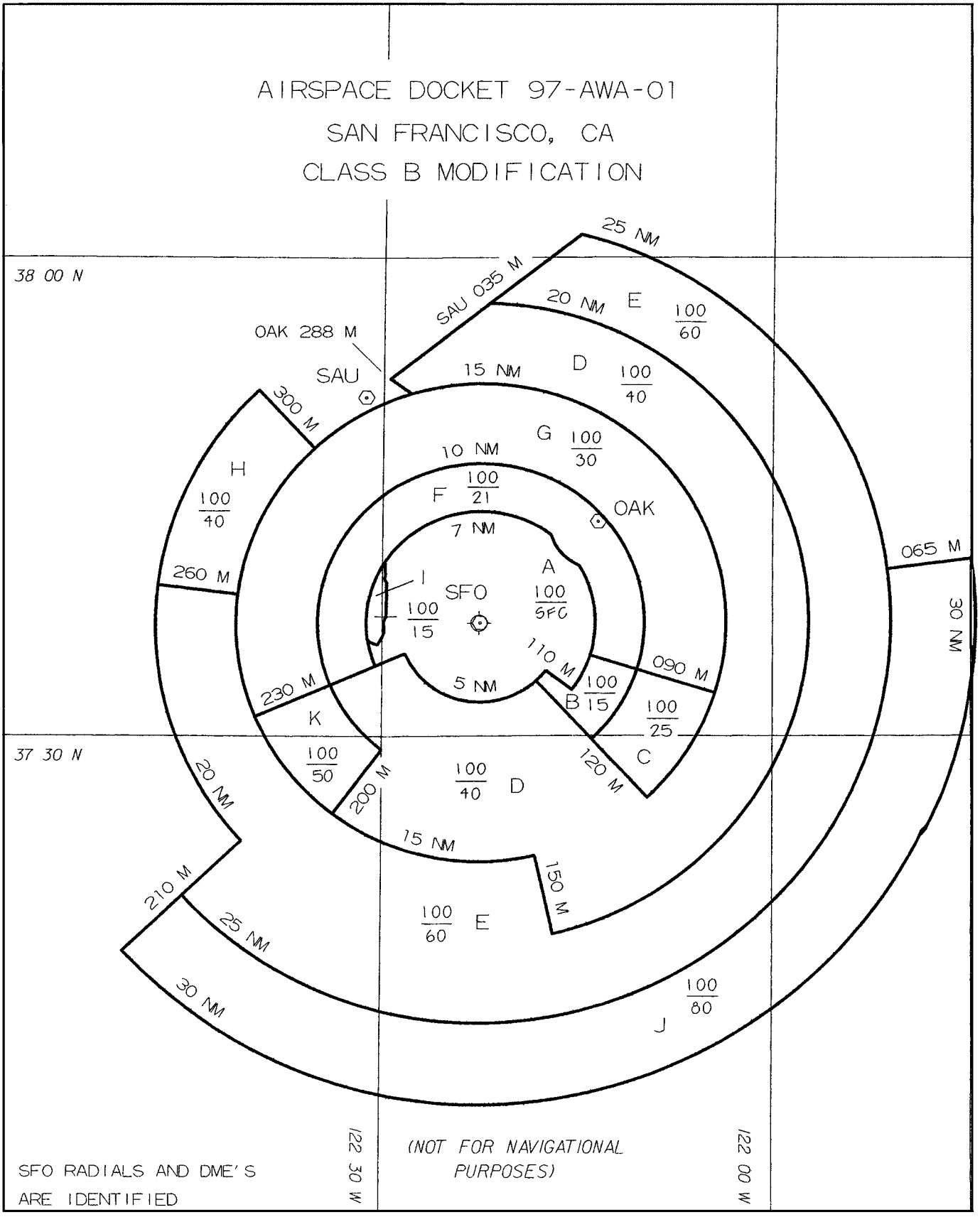
Reginald C. Matthews,

Manager, Airspace and Rules Division.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix—San Francisco Class B Airspace Area.

BILLING CODE 4910–13–M



[FR Doc. 00–14046 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–13–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL52–200014; FRL–6708–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Alabama; Correction

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; correction.

SUMMARY: The United States Environmental Protection Agency (EPA) published in the **Federal Register** on April 10, 2000, a document approving the section 111(d) Plan submitted by the Alabama Department of Environmental Management for the State of Alabama on April 20, 1999. This plan enables the State of Alabama to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units. In the April 10, 2000, rule, EPA inadvertently referenced an incorrect citation to Alabama's state implementation plan in the Code of Federal Regulations. EPA is correcting the citation with this document.

EFFECTIVE DATE: This correction is effective on June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562–9038, Bingham.Kimberly@epa.gov or Scott Davis at (404) 562–9127, Davis.ScottR@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' or ''our'' are used we mean EPA. Our April 10, 2000, (65 FR 18909–18911) rulemaking indicated that we approved the section 111d plan for the State of Alabama. This plan enables the State of Alabama to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units. In that document we inadvertently codified the revisions into 40 CFR 62.100. Our April 10, 2000, document indicated that we were removing 40 CFR 62.104 and renaming the section. In that document we should not have removed 40 CFR 62.104, but instead added a new section 40 CFR 62.105.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of June 9, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the identification of plan for Missouri is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: May 19, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, in FR Doc. 00–8142 published at 65 FR 18909 make the following corrections:

PART 62—[CORRECTED]

1. On page 18911, in the third column, in amendatory instruction 3, correct ''62.104'' to read ''62.105.''

2. On page 18911, in the third column, under the title Air Emissions From Hospital/Medical/Infectious Waste Incinerators, correctly designate § 62.104 as § 62.105.

[FR Doc. 00–13846 Filed 6–6–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson (FEMA Docket No. 7293).	Unincorporated Areas.	May 12, 1999, May 19, 1999, *Birmingham News*.	Mr. Gary White, President of the Jefferson County Board of Commissioners, Courthouse, Room A–360, Birmingham, Alabama 35263.	August 17, 1999 ..	010217 E
Connecticut: Fairfield (FEMA Docket No. 7293).	Town of Wilton	June 17, 1999, June 24, 1999, *Wilton Bulletin*.	Mr. Robert H. Russell, First Selectman of the Town of Wilton, Wilton Town Hall, 238 Danbury Road, Wilton, Connecticut 06897.	September 22, 1999.	090020 C
Florida: Orange (FEMA Docket No. 7293).	City of Ocoee	June 24, 1999, July 1, 1999, *The Orlando Sentinel*.	The Honorable S. Scott Vandergrift, Mayor of the City of Ocoee, City Hall, 150 North Lakeshore Drive, Ocoee, Florida 34761–2258.	June 17, 1999	120185 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Kentucky: Fayette (FEMA Docket No. 7293).	Lexington-Fayette Urban County Government.	June 23, 1999, June 30, 1999, *Lexington Herald*.	The Honorable Pam Miller, Mayor of the Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington-Fayette Government Building, Lexington, Kentucky 40507.	June 16, 1999	210067 C
Illinois:					
Will (FEMA Docket No. 7293).	City of Crest Hill ...	March 25, 1999, April 1, 1999, *The Herald-News*.	The Honorable Donald R. Randich, Mayor of the City of Crest Hill, 1610 Plainfield Road, Crest Hill, Illinois 60435.	June 30, 1999	170699 D
Kane (FEMA Docket No. 7293).	Village of Hampshire.	April 28, 1999, May 5, 1999, *Hampshire Register-News*.	Mr. William Schmidt, Hampshire Village President, P.O. Box 457, 234 South State Street, Hampshire, Illinois 60140.	July 27, 1999	170327 C
Minnesota: Anoka (FEMA Docket No. 7293).	City of Coon Rapids.	April 9, 1999, April 16, 1999, *Coon Rapids Herald*.	The Honorable Lonni McCauley, Mayor of the City of Coon Rapids, 11155 Robinson Drive, Coon Rapids, Minnesota 55433.	July 15, 1999	270011 A
North Carolina: Guilford (FEMA Docket No. 7293).	City of Greensboro	May 25, 1999, June 1, 1999, *News and Record*.	The Honorable Carolyn S. Allen, Mayor of the City of Greensboro, One Governmental Plaza, P.O. Box 3136 Greensboro, North Carolina 27402.	May 17, 1999	375351 C
Ohio: Lake (FEMA Docket No. 7293).	Village of Madison	March 30, 1999, April 6, 1999, *The News-Herald*.	The Honorable David G. Reed, Jr., Mayor of the Village of Madison, 126 West Main Street, Madison, Ohio 44057–0007.	March 23, 1999	390316 B
Pennsylvania: Lancaster (FEMA Docket No. 7293).	Township of East Donegal.	April 28, 1999, May 5, 1999, *Lancaster Newspaper*.	Mr. Allen D. Esbenshade, President, Board of Supervisors, Township Municipal Office, 190 Rock Point Road, Marietta, Pennsylvania 17547.	April 16, 1999	421768 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 16, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–14297 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1-percent-annual-chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the table below and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director for Mitigation has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or

pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima (FEMA Docket No. 7308).	City of Tucson	September 30, 1999, October 7, 1999, *The Arizona Daily Star*.	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	September 10, 1999.	040076
Oklahoma:					
Tulsa (FEMA Docket No. 7308).	City of Tulsa	September 30, 1999, October 7, 1999, *Tulsa World*.	The Honorable M. Susan Savage, Mayor, City of Tulsa, 200 Civic Center, Tulsa, Oklahoma 74103.	September 8, 1999.	405387
Tulsa (FEMA Docket No. 7308).	City of Broken Arrow.	September 28, 1999, October 5, 1999, *Broken Arrow Ledger*..	The Honorable James Reynolds, Mayor, City of Broken Arrow, P.O. Box 610, Broken Arrow, Oklahoma 74013.	September 8, 1999.	400236

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–14296 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7324]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1-percent-annual-chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the

minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Orange	City of Anaheim	January 20, 2000, January 27, 2000, *Anaheim Bulletin*.	The Honorable Tom Daly, Mayor, City of Anaheim, P.O. Box 3222, Anaheim, California 92803.	January 13, 2000	060213
Orange	City of Irvine	January 31, 2000, February 7, 2000, *Orange County Register*.	The Honorable Christina Shea, Mayor, City of Irvine, P.O. Box 19575, Irvine, California 92623–9575.	December 29, 1999.	060222
Orange	City of Irvine	February 24, 2000, March 2, 2000, *The Irvine World News*.	The Honorable Christina Shea, Mayor, City of Irvine, P.O. Box 195575, Irvine, California 92623–9575.	January 27, 2000	060222
Orange	City of Tustin	January 31, 2000, February 7, 2000, *Orange County Register*.	Mr. Thomas Saltarelli, Mayor, City of Tustin, 300 Centennial Way, Tustin, California 92780.	December 29, 1999.	060235
Los Angeles	City of Santa Clarita.	February 17, 2000, February 24, 2000, *The Signal*.	The Honorable Joanne Darcy, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Suite 300, Santa Clarita, California 91355.	January 18, 2000	060729
Colorado:					
Arapahoe	Unincorporated Areas.	February 10, 2000, February 17, 2000, *The Villager*.	The Honorable Steve Ward, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060.	May 17, 2000	080011
Boulder	City of Louisville	February 23, 2000, March 1, 2000, *Louisville Times*.	The Honorable Tom Davidson, Mayor, City of Louisville, 749 Main Street, Louisville, Colorado 80027.	January 19, 2000	085076
Idaho:					
Blaine	City of Bellevue	February 9, 2000, February 16, 2000, *Wood River Journal*.	The Honorable Steve Fairbrother, Mayor, City of Bellevue, P.O. Box 449, Bellevue, Idaho 83313.	January 4, 2000	160021
Blaine	Unincorporated Areas.	February 9, 2000, February 16, 2000, *Wood River Journal*.	The Honorable Mary Ann Mix, Chairperson, Blaine County Board of Commissioners, 206 First Avenue South, Suite 300, Hailey, Idaho 83333 March 1, 2000.	January 4, 2000	165167
Kansas: Miami	City of Paola	February 23, 2000, March 1, 2000, *Miami County Republic*.	The Honorable Floyd J. Grimes, Mayor, City of Paola, 19 East Teoria Paola, Kansas 66071.	May 30, 2000	200224
Nebraska: Colfax	Village of Howells	February 23, 2000, March 1, 2000, *Howells Journal*.	The Honorable Larry Jakubowski, Chairperson, Village of Howells, Board of Commissioners, 128 North Third Street, Howells, Nebraska 68641–0351.	May 30, 2000	310380

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nevada: Clark	Unincorporated Areas.	February 17, 2000, February 24, 2000, *Las Vegas Review-Journal*.	The Honorable Bruce Woodbury, Chairperson, Clark County Board of Commissioners, P.O. Box 551601, Las Vegas, Nevada 89155.	January 7, 2000 ...	320003
New Mexico:					
Bernalillo	Unincorporated Areas.	February 25, 2000, March 3, 2000, *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairperson, Board of County Commissioners, Bernalillo County, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	January 19, 2000	350001
Oklahoma:					
Stephens	City of Duncan	February 7, 2000, February 14, 2000, *The Duncan Banner*.	The Honorable Dennis Johnson, Mayor, City of Duncan, P.O. Box 969, Duncan, Oklahoma 73534.	December 29, 1999.	400202
Tulsa	City of Tulsa	February 24, 2000, March 2, 2000, Tulsa World.	The Honorable M. Susan Savage, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, Oklahoma 74103.	May 31, 2000	405381
Texas:					
Tarrant	City of Bedford	February 23, 2000, March 1, 2000, *Fort Worth Star-Telegram*.	The Honorable Rick Hurt, Mayor, City of Bedford, 2000 Forest Ridge Drive, Bedford, Texas 76021.	January 24, 2000	480585
Bexar	Unincorporated Areas.	February 15, 2000, February 22, 2000, *San Antonio Express-News*.	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, Suite 101, San Antonio, Texas 78205–3036.	January 7, 2000 ...	480035
Dallas	City of Carrolton ...	February 11, 2000, February 18, 2000, *Metrocrest News*.	The Honorable Milburn Gravely, Mayor, City of Carrolton, P.O. Box 110535, Carrolton, Texas 75011–0535.	January 7, 2000 ...	480167
Dallas	City of Dallas	February 7, 2000, February 14, 2000, *Dallas Morning News*.	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201.	May 15, 2000	480171
Tarrant	City of Euless	February 23, 2000, March 1, 2000, *Fort Worth Star-Telegram*.	The Honorable Mary Lib Saleh, Mayor, City of Euless, 201 North Ector Drive, Euless, Texas 76039.	January 24, 2000	480593
Tarrant	City of Fort Worth	February 29, 2000, March 7, 2000, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	January 24, 2000	480596
Tarrant	City of North Richland Hills.	February 8, 2000, February 15, 2000, *Fort Worth Star-Telegram*.	The Honorable Charles Scoma, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	January 11, 2000	480607
Tarrant	City of Saginaw	February 29, 2000, March 7, 2000, *Fort Worth Star-Telegram*.	The Honorable Monte Nichols, Mayor, City of Saginaw, P.O. Box 79070, Saginaw, Texas 76179.	January 24, 2000	480610
Bexar	City of San Antonio.	February 25, 2000, March 3, 2000, *San Antonio Express-News*.	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	January 24, 2000	480045

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–14295 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD).
IOWA	
Harrison County (Unincorporated Areas) (FEMA Docket No. 7302)	
Missouri River:	
Approximately 20,000 feet downstream of Highway 30	*1,005
Approximately 10,000 feet upstream of 120th Street ..	*1,032
Maps are available for inspection at the Harrison County, Emergency Management Agency, 116 North 2nd Avenue, Logan, Iowa.	
Polk County (Unincorporated Areas) (FEMA Docket No. 7306)	
Beaver Creek:	
At mouth (approximately 3,950 feet downstream from Northwest Beaver Drive)	*805
Approximately 950 feet downstream from Northwest Beaver Drive	*806
Approximately 5,650 feet upstream of Northwest Beaver Drive	*810
Maps are available for inspection at the Planning Division, 5895 NE 14th Street, Des Moines, Iowa.	
KANSAS	
Holton (City), Jackson County (FEMA Docket No. 7306)	
Banner Creek:	
At Union Pacific Railroad	*1,017
At "P" Road	*1,035
Maps are available for inspection at City Hall, 430 Pennsylvania Avenue, Holton, Kansas.	
Jackson County (Unincorporated Areas) (FEMA Docket No. 7306)	
Banner Creek:	
At its confluence with Elk Creek	*1,002
At "M" Road	*1,092
Maps are available for inspection at the Planning and Zoning Office, 500 Illinois Avenue, Holton, Kansas.	
Reno County and Incorporated Areas (FEMA Docket No. 7306)	
Arkansas River:	
Just downstream of State Route 50	*1,517
Just downstream of Union Pacific Railroad	*1,523
Unnamed Tributary to Sand Creek:	
Just upstream of U.S. Highway 50	*1,519
Just downstream of Main Street	*1,531
Maps are available for inspection at the Public Works Department, 206 W. 1st Avenue, Hutchinson, Kansas.	
Maps are available for inspection at City Hall, 2 South Main, South Hutchinson, Kansas.	
Maps are available for inspection at the Planning Department, 125 E. Avenue B, Hutchinson, Kansas.	
NEVADA	
Mineral County (Unincorporated Areas) (FEMA Docket No. 7302)	
Corey Creek:	
Approximately 50 feet downstream of U.S. Highway 95	*4,253
Approximately 3.6 miles upstream of 1st Street in Hawthorne	*5,028
Corey Creek Overflow:	
Approximately 500 feet upstream of State Highway 359	*4,858
Approximately 1,500 feet upstream of State Highway 359	*4,906

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD).
Maps are available for inspection at the Mineral County Courthouse, Clerk and Treasurer's Office, Corner of 1st and A Street, Hawthorne, Nevada.	
OKLAHOMA	
Roger Mills County and Incorporated Areas (FEMA Docket No. 7306)	
White Shield Creek Tributary "B":	
At its confluence with White Shield Creek	*1,737
Approximately 150 feet upstream of Steele Street	*1,778
White Shield Creek:	
At State Route 34	*1,702
Approximately 50 feet upstream from Steele Street	*1,754
Memorial Park Tributary:	
At its confluence with Sergeant Major Creek	*1,938
Approximately 884 feet upstream from U.S. Highway 283 (Main Street)	*1,977
Dry Creek:	
At its confluence with Sergeant Major Creek	*1,941
Approximately 8,400 feet upstream of confluence with Sergeant Major Creek	*1,985
Sergeant Major Creek:	
At its confluence with Washita River	*1,923
Approximately 8,600 feet upstream from confluence with Dry Creek	*1,974
Washita River:	
At State Route 34	*1,703
Approximately 16,800 feet upstream from its confluence with Sergeant Major Creek	*1,949
Maps are available for inspection at the County Courthouse, Llmales and Broadway Avenue, Cheyenne, Oklahoma.	
Maps are available for inspection at City Hall, 714 Main Street, Hammon, Oklahoma.	
Maps are available for inspection at City Hall, 317 N. Broadway, Cheyenne, Oklahoma.	
OREGON	
Clackamas County (Unincorporated Areas) (FEMA Docket No. 7302)	
Tickle Creek:	
Approximately 2,600 feet downstream of Southeast 362nd Avenue	*672
Approximately 2,350 feet upstream of Southeast 395th Avenue	*1,011
Maps are available for inspection at the Clackamas County Department of Transportation and Development, 902 Abernathy Road, Oregon City, Oregon.	
Sandy (City), Clackamas County (FEMA Docket No. 7302)	
Tickle Creek:	
Approximately 1,980 feet downstream of 362nd Avenue	*684
Approximately 1,620 feet upstream of Highway 211	*946
Maps are available for inspection at the Planning and Development Department, 39250 Pioneer Boulevard, Sandy, Oregon.	
TEXAS	
Kerr County and Incorporated Areas (FEMA Docket No. 7278)	
Stream TC–1:	
Approximately 2,300 feet downstream of Interstate Highway 10	*1,662
Just upstream of Interstate Highway 10	*1,718
Stream QC–2:	
Just downstream of State Highway 16	*1,706
Just upstream of Interstate Highway 10	*1,761
Stream QC–1:	
Just upstream of Leslie Road	*1,688
Approximately 200 feet upstream of Interstate Highway 10	*1,801
Quinlan Creek:	
Just upstream of State Highway 27	*1,606
Approximately 900 feet upstream of Interstate Highway 10	*1,719
Town Creek:	
Just upstream of State Highway 27	*1,624
Approximately 200 feet downstream of Schreiner Road	*1,630
Approximately 900 feet upstream of Interstate Highway 10	*1,689
Elm Creek:	
Approximately 600 feet upstream of Goat Creek Road	*1,649
Approximately 800 feet upstream of Laurel Wood Drive	*1,764
Camp Meeting Creek:	
Approximately 500 feet downstream of Preston Trail	*1,592
Approximately 2,100 feet upstream of Southway Drive	*1,699
Maps are available for inspection at the Upper Guadalupe River Authority, 125 Lehmann Drive, Kerrville, Texas.	
Maps are available for inspection at the City of Kerrville, 800 Junction Highway, Kerrville, Texas.	
WASHINGTON	
Clark County (Unincorporated Areas) (FEMA Docket No. 7250)	
East Fork Lewis River:	
Approximately 17,000 feet downstream of Daybreak Road	*32
Approximately 400 feet downstream of Daybreak Road	*75
Maps are available for inspection at the Clark County Department of Community Development, Development Services Division, Office of Engineering Review, 1408 Franklin Street, Vancouver, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–14293 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 000202022–0156–02; I.D. 012100F]

RIN 0648–AN58

Endangered and Threatened Species: Threatened Status for One Steelhead Evolutionarily Significant Unit (ESU) in California

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

ACTION: Final rule.

SUMMARY: Following completion of a comprehensive status review of west coast steelhead (*Oncorhynchus mykiss*, or *O. mykiss*) populations throughout Washington, Oregon, Idaho, and California, NMFS published a proposed rule to list 10 ESUs as threatened or endangered under the Endangered Species Act (ESA) on August 9, 1996. One of these steelhead ESUs, the Northern California ESU, was proposed for listing as a threatened species. Because of scientific disagreements, NMFS deferred its final listing

determination for five of these steelhead ESUs, including the Northern California ESU, on August 18, 1997. After soliciting and reviewing additional information to resolve these disagreements, NMFS published a final determination in March 1998 that the Northern California ESU did not warrant listing under the ESA because available scientific information and conservation measures indicated the ESU was at a lower risk of extinction than at the time of the proposed rule. Because the State of California did not implement conservation measures that NMFS considered critically important in its decision to not list the Northern California steelhead ESU, NMFS completed an updated status review for the ESU and reassessed the State and Federal conservation measures that were in place to protect the ESU. Based on this reconsideration, NMFS proposed to list the Northern California steelhead ESU as a threatened species under the ESA on February 11, 2000.

After considering public comments on the proposed determination, NMFS now issues a final rule to list the Northern California ESU of steelhead as a threatened species. Within the Northern California ESU, only naturally spawned populations of steelhead (and their progeny) residing below naturally occurring and man-made impassable barriers (e.g., impassable waterfalls and dams) are listed. NMFS has examined the relationship between hatchery and natural populations of steelhead in this ESU and concludes hatchery populations are not essential for recovery; therefore, no hatchery populations are listed. At this time, NMFS is listing only the anadromous life forms of *O. mykiss* in this ESU. NMFS intends to designate critical habitat and promulgate protective regulations under section 4(d) of the ESA for this ESU in separate rulemakings.

DATES: Effective August 7, 2000.

ADDRESSES: Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 401 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, 562–980-4021, or Chris Mobley, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Previous Federal ESA Actions Related to West Coast Steelhead

The history of petitions NMFS has received regarding west coast steelhead is summarized in a final rule and notice of determination for five steelhead ESUs (Lower Columbia River; Central Valley, California; Oregon Coast; Klamath Mountains Province; and northern California ESUs) that was published on March 19, 1998 (63 FR 13347). The most comprehensive petition was submitted by Oregon Natural Resources Council and 15 co-petitioners on February 16, 1994. In response to this petition, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and interested parties in Washington, Oregon, Idaho, and California, and convened a Biological Review Team (BRT), composed of staff from NMFS' Northwest and Southwest Fisheries Science Centers and Southwest Regional Office, as well as a representative of the U.S. Geological Survey Biological Resources Division (formerly the National Biological Service) to conduct a coast-wide status review for west coast steelhead (Busby *et al.*, 1996).

Based on the results of the BRT's status review, an analysis of Federal, State and local conservation measures, and other information which NMFS determined constituted the best scientific and commercial data available, NMFS published a proposed listing determination (61 FR 41541, August 9, 1996) that identified 15 ESUs of steelhead in the states of Washington, Oregon, Idaho, and California. Ten of these ESUs, including the northern California ESU, were proposed for listing as threatened or endangered species, four were found not warranted for listing, and one was identified as a candidate for listing.

On August 18, 1997, NMFS published a final rule listing five ESUs as threatened and endangered under the ESA (62 FR 43937). In a separate notice published on the same day, NMFS determined substantial scientific disagreement remained for five proposed ESUs, including the northern California steelhead ESU (62 FR 43974, August 18, 1997). In accordance with section 4(b)(6)(B)(i) of the ESA, NMFS deferred its decision on these five steelhead ESUs for 6 months for the purpose of soliciting additional data. During this 6-month period of deferral, NMFS received new scientific information regarding the status of these proposed steelhead ESUs. This new information was evaluated by NMFS' BRT which prepared both an updated status review for these five ESUs (Memorandum to William Stelle and William Hogarth from M. Schiewe, December 18, 1997, Status of Deferred and Candidate ESUs of West Coast Steelhead (NMFS, 1997a)), and a review of the associated hatchery populations (Memorandum to William Stelle and William Hogarth from Michael Schiewe, January 13, 1998, Status Review Update for Deferred ESUs of West Coast Steelhead: Hatchery Populations (NMFS, 1998a)).

Based on a review of the updated scientific information for these ESUs, as well as a review and evaluation of Federal, state, and local conservation measures reducing the threats to these ESUs, NMFS issued a final rule (63 FR 13347, March 19, 1998) listing two ESUs as threatened (Lower Columbia River and Central Valley California), and a notice of determination that three ESUs (Oregon Coast, Klamath Mountains Province, and Northern California) did not warrant listing. NMFS' determination that these three ESUs did not warrant listing was based on the best available scientific and commercial data which indicated these ESUs were at a lower risk of extinction than at the time of the proposed listing determination. Even though the risks confronting these ESUs had been reduced to a point at which listing was not warranted, NMFS still expressed concerns about the status of these three ESUs in the notice of determination, and, therefore, identified them as candidate species which the agency would continue to monitor.

NMFS's March 19, 1998 (63 FR 13347), decision not to list the Northern California steelhead ESU was based largely on a determination that sufficient Federal and state conservation measures were in place to reduce threats to the ESU such that the proposed threatened listing was unnecessary. The Federal and state conservation measures upon which NMFS based this determination included: (1) implementation of a March 11, 1998, Memorandum of Agreement (MOA) between NMFS and the State of California (NMFS/California MOA, 1998), with particular importance given to implementation of those provisions in the MOA which were intended to improve non-Federal forest land protections in the ESU (81 percent of land ownership is non-Federal land); (2) implementation of more restrictive in-river harvest regulations by California which were intended to reduce mortality and increase the viability of naturally reproducing steelhead populations; and (3) improved protections to habitat and naturally reproducing steelhead from expanded habitat protection and restoration efforts, improvements in the management of hatchery steelhead stocks, and expanded population monitoring.

At the time of its decision not to list the Northern California ESU, NMFS considered the protection and restoration of freshwater spawning, rearing, and migratory habitat on non-Federal lands to be essential for the long-term survival and recovery of this ESU because non-Federal lands represented such a large portion of the available habitat (63 FR 13347, March 19, 1998). Because of NMFS' concerns regarding the preponderance of private timber lands and timber harvest in the northern California ESU, the NMFS/California MOA contained several provisions calling for the review and revision of California's forest practice rules (FPRs), and a review of their implementation and enforcement by January 1, 2000. NMFS considered full implementation of these critical provisions within the specified time frame to be essential for achieving properly functioning habitat conditions for steelhead in this ESU.

In accordance with the NMFS/California MOA, a scientific review panel was established by the State to review the California FPRs, including their implementation and enforcement. The scientific review panel completed its review and provided the State's Board of Forestry (BOF) with its findings and recommendations in June 1999. In its findings, the review panel concluded that California's FPRs, including their implementation through the existing timber harvest plan process, do not ensure protection of anadromous salmonid habitat and populations. To address these shortcomings, and as specified in the NMFS/California MOA, the California Resources Agency and CalEPA jointly presented the BOF with a proposed rule change package in July 1999. Following several months of public review, the Board of Forestry took no action on the package in October 1999, thereby precluding any possibility of implementing improvements in California's FPRs by January 1, 2000, as the State committed to do in the NMFS/California MOA.

Although NMFS' March 19, 1998, decision not to list the northern California ESU concluded that improvements in steelhead harvest and hatchery management would provide immediate conservation benefits to this ESU, an essential component of the decision was based on NMFS' expectation that changes in the State's FPRs would be implemented by January 1, 2000. Because these critical conservation measures were not being implemented by the State of California, and therefore, were not reducing threats to this ESU that were anticipated at the time of its March 19, 1998, decision not to list the ESU, NMFS determined that a formal reconsideration of the status of this ESU was warranted (December 3, 1999, Memorandum from Rodney R. McInnis and William Stelle, Jr. to Penelope D. Dalton (NMFS, 1999)).

As part of this reconsideration, the Southwest Fisheries Science Center (SWFSC) completed an updated status review for the Northern California steelhead ESU in January, 2000 which concluded that its biological status had changed little since NMFS' steelhead BRT determined in December 1997 that the ESU was likely to become endangered in the foreseeable future. NMFS also conducted a re-evaluation of Federal and state conservation measures that were in place to protect this ESU, including the implementation and success of measures such as the NMFS/California MOA that were considered important factors in the original decision not to list the ESU. Based on the updated status review and re-assessment of conservation measures, NMFS concluded that the Northern California steelhead ESU was likely to become endangered in the foreseeable future, and therefore, proposed to list the ESU as a threatened species under the ESA on February 11, 2000 (65 FR 6960).

Steelhead Life History and Background

Biological information for west coast steelhead (*Oncorhynchus mykiss)* and the northern California ESU in particular can be found in steelhead status assessments conducted by NMFS (Busby *et al.*, 1996; NMFS, 1997a; NMFS, 2000) and in previous **Federal Register** documents (61 FR 41541, August 9, 1996; 63 FR 13347, March 19, 1998; 65 FR 6960, February 11, 2000). A summary of steelhead life history follows.

O. mykiss exhibits one of the most complex suites of life history traits of any salmonid species. Individuals may exhibit anadromy (meaning they migrate as juveniles from fresh water to the ocean, and then return to spawn in fresh water) or freshwater residency (meaning they reside their entire life in fresh water). Resident forms are usually referred to as ''rainbow'' or ''redband'' trout, while anadromous life forms are termed ''steelhead.'' Few detailed studies have been conducted regarding the relationship between resident and anadromous *O. mykiss* and as a result, the relationship between these two life forms is poorly understood. The scientific name for the biological species that includes both steelhead and rainbow trout has been changed from *Salmo gairdneri* to *O. mykiss*. This change reflects the premise that all trouts from western North America share a common lineage with Pacific salmon.

Steelhead typically migrate to marine waters after spending 2 years in fresh water. They then reside in marine waters for typically 2 or 3 years prior to returning to their natal stream to spawn as 4- or 5-year-olds. Unlike other Pacific salmon, steelhead are iteroparous, meaning they are capable of spawning more than once before they die. However, it is rare for steelhead to spawn more than twice before dying; most that do so are females. Steelhead adults typically spawn between December and June (Bell, 1990; Busby *et al.*, 1996). Depending on water temperature, steelhead eggs may incubate in ''redds'' (nesting gravels) for 1.5 to 4 months before hatching as ''alevins'' (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, young juveniles or ''fry'' emerge from the gravel and begin actively feeding. Juveniles rear in fresh water from 1 to 4 years, then migrate to the ocean as ''smolts.''

Biologically, steelhead can be divided into two reproductive ecotypes, based on their state of sexual maturity at the time of river entry and the duration of their spawning migration. These two ecotypes are termed ''stream maturing'' and ''ocean maturing.'' Stream maturing steelhead enter fresh water in a sexually immature condition and require several months to mature and spawn. Ocean maturing steelhead enter fresh water with well developed gonads and spawn shortly after river entry. These two reproductive ecotypes are more commonly referred to by their season of freshwater entry (i.e., summer [stream maturing] and winter steelhead [ocean maturing]). The Northern California ESU contains populations of both winter and summer steelhead.

Two major genetic groups or ''subspecies'' of steelhead occur on the west coast of the United States: a coastal group and an inland group, separated in the Fraser and Columbia River Basins approximately by the Cascade crest (Huzyk & Tsuyuki, 1974; Allendorf, 1975; Utter & Allendorf, 1977; Okazaki, 1984; Parkinson, 1984; Schreck *et al.*, 1986; Reisenbichler *et al.*, 1992). Behnke (1992) proposed classifying the coastal subspecies as *O. m. irideus* and the inland subspecies as *O. m. gairdneri*. These genetic groupings apply to both anadromous and nonanadromous forms of *O. mykiss*. Both coastal and inland steelhead occur in Washington and Oregon. California is thought to have only coastal steelhead while Idaho has only inland steelhead. The northern

California steelhead ESU is part of the coastal grouping.

Historically, steelhead were distributed throughout the North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula. Presently, the species distribution extends from the Kamchatka Peninsula, east and south along the Pacific coast of North America, to at least Malibu Creek in southern California. There are infrequent anecdotal reports of steelhead occurring as far south as the Santa Margarita River in San Diego County (McEwan & Jackson, 1996). In 1999, juvenile *O. mykiss* suspected of being the progeny of steelhead were reported from San Mateo Creek which is in northernmost San Diego County, just north of the Santa Margarita River. Historically, steelhead likely inhabited most coastal streams in Washington, Oregon, and California as well as many inland streams in these states and Idaho. However, during this century, over 23 indigenous, naturally reproducing stocks of steelhead are believed to have been extirpated, and many more are thought to be in decline in numerous coastal and inland streams in Washington, Oregon, Idaho, and California. Forty-three stocks have been identified by Nehlsen *et al.* (1991) as being at moderate or high risk of extinction.

Summary of Comments Received in Response to the Proposed Rule

Following NMFS proposal to list 10 steelhead ESUs in 1996, including the Northern California ESU (61 FR 41541), a total of 16 public hearings were held in California, Oregon, Idaho, and Washington to solicit comments on the proposed rule. During the 90-day public comment period, NMFS received nearly 1,000 written comments on the proposed rule from Federal, state, and local government agencies, Indian tribes, non-governmental organizations, the scientific community, and other individuals. A number of comments addressed specific technical issues pertaining to a particular geographic region or *O. mykiss* population. These technical comments were considered by NMFS' steelhead BRT in its re-evaluation of ESU definitions and status, including the Northern California steelhead ESU, and were discussed in the updated status review report (NMFS, 1997a).

During the 60-day public comment period that followed publication of the proposal to list this ESU (65 FR 6960), NMFS received numerous written comments and also held one public hearing in Eureka, California to solicit comments on the proposal. A total of 20 individuals presented testimony at this public hearing, with the majority expressing their opposition to the proposed listing. During the 60-day public comment period that followed publication of the proposed rule, NMFS received 44 written comments from Federal, state, and local government agencies, Indian tribes, non-governmental organizations, and other individuals. In contrast to the public hearing, the majority of written comments were supportive of the proposal. A number of comments addressed issues pertaining to the designation of critical habitat which was not proposed at the time of the listing proposal. Several commenters requested NMFS promulgate an ESA 4(d) rule that would allow continued catch and release angling opportunities in coastal streams occurring within the Northern California steelhead ESU. At least one commenter resubmitted comments that had originally been submitted to NMFS when this ESU was first proposed for listing in 1996.

A summary of comments received in response to the proposed rule follows.

Issue 1: Sufficiency and Accuracy of Scientific Information and Analysis

Comment 1: Some commenters questioned the sufficiency and accuracy of data NMFS employed in the listing proposal.

Response: Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data, after reviewing the status of the species and taking into account any efforts being made to protect such species. NMFS believes that information contained in the agency's original status review (Busby *et al.*, 1996), together with more recent information (NMFS, 1997a; NMFS, 1998a; NMFS, 2000), represents the best scientific and commercial information presently available for the Northern California steelhead ESU addressed in this final rule. NMFS has made every effort to conduct an exhaustive review of all available information and has solicited information and opinion from all interested parties.

Comment 2: Some comments suggested that the ESA does not provide for the creation of ESUs and that ESUs do not correspond to species, subspecies, or distinct population segments (DPSs) that are specifically identified in the ESA. Further, NMFS' use of genetic information (allozyme- or DNA-derived information) to determine ESU boundaries was criticized. It was argued that allozyme-based electrophoretic data cannot be used to imply either evolutionary significance or local adaptation. Some commenters felt that information was lacking concerning a number of ''key'' criteria for defining the Northern California steelhead ESU, such as phenotypic differences, evolutionary significance, or ecological significance of various summer and winter steelhead populations. Commenters contended that NMFS did not find any life history, habitat, or phenotypic characteristics that were unique to any of the steelhead populations discussed.

Response: General issues relating to ESUs, Distinct Population Segments (DPSs), and the ESA have been discussed extensively in past **Federal Register** documents. Regarding application of its ESU policy, NMFS relies on its policy describing how it will apply the ESA definition of ''species'' to anadromous salmonid species published in 1991 (56 FR 58612, November 20, 1991). More recently, NMFS and the U.S. Fish and Wildlife Service published a joint policy, that is consistent with NMFS' policy, regarding the definition of ''distinct population segments'' (61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids, and therefore, was used for this determination. This policy indicates that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, a species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, does not have to be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a NOAA Technical Memorandum entitled ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon'' (Waples, 1991) and in a more recent scientific paper by Waples (1995).

NMFS identified all west coast steelhead ESUs including the Northern California ESU in the original steelhead status review, using the best available scientific and commercial information. As discussed in the original status review, genetic data were used primarily to evaluate the criterion

regarding reproductive isolation, not evolutionary significance. In some cases, there was a considerable degree of confidence in the ESU determinations. The west coast steelhead status review describes a variety of characteristics that support the ESU delineations for this species, including ecological and life history parameters.

Comment 3: Some commenters suggested that listing of the Klamath Mountains Province (KMP) steelhead ESU was also warranted based on the rationale NMFS provided for its decision to propose listing the Northern California steelhead ESU.

Response: NMFS' decision not to reconsider the KMP steelhead ESU for listing is based on the determination that there are sufficient Federal and state conservation measures in place to reduce the threats to the ESU such that listing is not warranted. The Federal and state conservation measures which NMFS bases this determination on include: (1) the large portion of Federal land ownership in the ESU (64 percent for the entire ESU and 80 percent in the California portion of the ESU) coupled with successful implementation of the Northwest Forest Plan on Federal lands which reduced habitat risks; (2) substantial changes to the management of recreational fisheries and artificial propagation programs by the states of Oregon and California which are reducing impacts to steelhead; and (3) general improvements to habitat conditions throughout the ESU resulting from state-wide conservation strategies and monitoring efforts in both Oregon and California. In California, these efforts include implementation of the California Department of Fish and Game's (DFG) strategic management plan for KMP steelhead ESU, the State's Watershed Protection Program which includes an ongoing habitat restoration program, and the NMFS/California MOA which assures implementation of steelhead angling regulation changes, changes in the management of hatchery steelhead programs, habitat protections on non-Federal land, and expanded steelhead monitoring. In Oregon, these efforts include the implementation of conservation measures contained in the Oregon Plan for Salmon and Watersheds.

Issue 2: Status Assessment for the Northern California Steelhead ESU

Comment 4: Some commenters suggested that risk assessments were made in an arbitrary manner and that NMFS did not rely on the best available science. Several commenters questioned NMFS' methodology for determining whether the Northern California steelhead ESU warranted listing. In some cases, such commenters also expressed opinions regarding whether listing was warranted.

Response: Throughout the status review for west coast steelhead and all subsequent updates, NMFS has solicited and evaluated the best available scientific and commercial data for the species. NMFS believes that these reviews, coupled with considerable input from the public, co-managers, peer reviewers, and other species experts, clearly demonstrate that its listing determinations are not arbitrary, but instead are based on an open and rigorous scientific assessment.

NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU. These factors were considered by NMFS in the original 1996 status review and all subsequent updated reviews (NMFS, 1997a; NMFS, 2000) and served as the basis for agency determinations regarding the biological status of the Northern California steelhead ESU.

Issue 3: Factors Contributing to the Decline of Northern California Steelhead ESU

Comment 5: Some commenters identified factors for decline that were either not identified in the original or updated status reviews or which they believed were not given sufficient weight in the risk analysis. Other commenters contended that recent declines in Northern California steelhead abundance were related to natural factors such as predation and changes in ocean productivity. Furthermore, these commenters contend that NMFS did not show how the present declines were significantly different from natural variability in abundance, nor that abundances were below the current carrying capacity of the marine environment and freshwater habitat.

Response: The status review did not attempt to exhaustively identify factors for decline, except insofar as they contributed directly to the risk analysis. Nevertheless, NMFS agrees that a multitude of factors, past and present, have contributed to the decline of west coast steelhead. Many of the identified risk factors were specifically cited in NMFS' original west coast steelhead status review (Busby *et al.*, 1996) and subsequent listing notices (61 FR 41541; 63 FR 13347; 65 FR 6960). In addition, NMFS has prepared a report that summarizes the factors leading to the decline of steelhead on the west coast entitled: ''Factors for Decline: A supplement to the notice of determination for west coast steelhead'' (NMFS, 1996). This report concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary causes for the decline of steelhead on the west coast. NMFS recognizes that natural environmental fluctuations have likely played a role in the species' recent declines as well. However, NMFS believes other human-induced impacts (e.g., harvest in certain fisheries, artificial propagation, and widespread habitat modification) have played an equally significant role in the decline of steelhead.

NMFS' 1996 status review briefly addressed the impact of adverse marine conditions and climate change, but concluded that there is considerable uncertainty regarding the role of these factors in steelhead abundance. At this time, we do not know whether these climate conditions represent a long-term shift in conditions that will continue into the future or short-term environmental fluctuations that can be expected to reverse soon (NMFS, 1996). A recent review by Hare *et al.* (1999) suggests that these conditions could be part of an alternating 20- to 30-year regime pattern. These authors concluded that although at-risk salmon stocks may benefit from a reversal in the current climate/ocean regime, fisheries management should continue to focus on reducing impacts from harvest and artificial propagation and improving freshwater and estuarine habitats.

NMFS believes there is ample evidence to suggest that the elimination and degradation of freshwater habitats have contributed to the decline of this steelhead ESU (NMFS, 1996). Many of the identified risks and conclusions apply specifically to Northern California steelhead populations. Examples of habitat alterations affecting steelhead include: water withdrawal, conveyance, storage, and flood control (resulting in insufficient flows, stranding, juvenile entrainment, and increased stream temperatures); and logging and

agriculture (resulting in loss of large woody debris, sedimentation, loss of riparian vegetation, and habitat simplification) (NMFS, 1996; Spence *et al.*, 1996; Busby *et al.*, 1996). These human-induced impacts in freshwater ecosystems have likely reduced the species' resiliency to natural factors for decline such as drought and poor ocean conditions. A critical next step in restoring listed steelhead will be identifying and ameliorating specific factors for decline at both the ESU and population level.

With respect to predation impacts on steelhead, NMFS has recently published reports describing the impacts of California sea lions and Pacific harbor seals upon salmonids and on the coastal ecosystems of Washington, Oregon, and California (NMFS, 1997 and 1999b). These reports conclude that in certain cases where pinniped populations co-occur with depressed salmonid populations, salmonid populations may experience severe impacts due to predation. An example of such a situation is at the Ballard Locks, Washington, where sea lions are known to consume significant numbers of adult winter steelhead. These reports further conclude that data regarding pinniped predation are quite limited and that substantial additional research is needed to fully address this issue. Existing information on the seriously depressed status of many salmonid stocks may be sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations (NMFS, 1997 and 1999b).

Issue 4: Consideration of Existing Conservation Measures

Comment 6: Some commenters expressed concerns about NMFS' reliance and characterization of the efficacy of the Northwest Forest Plan (NFP), citing significant differences in management practices between various Federal land management agencies. Numerous commenters noted that an array of state and Federal conservation measures were underway for this and other species (particularly in northern California) and asked that NMFS give them more consideration in its listing determination.

Response: In the listing proposal, NMFS noted that the NFP requires specific management actions on Federal lands, including actions in key watersheds in southern Oregon and northern California that comply with special standards and guidelines designed to preserve their refugia functions for at-risk salmonids (i.e., watershed analysis must be completed prior to timber harvests and other management actions, road miles should be reduced, no new roads can be built in roadless areas, and restoration activities are prioritized). In addition, the most significant element of the NFP for anadromous fish is its Aquatic Conservation Strategy (ACS), a regional-scale aquatic ecosystem conservation strategy that includes: (1) special land allocations (such as key watersheds, riparian reserves, and late-successional reserves) to provide aquatic habitat refugia; (2) special requirements for project planning and design in the form of standards and guidelines; and (3) new watershed analysis, watershed restoration, and monitoring processes. These ACS components collectively ensure that Federal land management actions achieve a set of nine ACS objectives that strive to maintain and restore ecosystem health at watershed and landscape scales, to protect habitat for fish and other riparian-dependent species and to restore currently degraded habitats. NMFS will continue to support the NFP strategy and address Federal land management issues via ESA section 7 consultations.

Additional consideration was given to various conservation efforts in California that have been implemented or are expected to be initiated. See ''Efforts Being Made to Protect West Coast steelhead'' later in this document.

Comment 7: Several commenters expressed their belief that current California Forest Practice Rules (FPR's) were adequate to protect the Northern California steelhead ESU. Several comments expressed concern that NMFS did not adequately review and consider the interim FPR changes adopted by the California Board of Forestry (BOF) for anadromous salmonids in March 2000.

Response: NMFS disagrees with the assertion that the state's FPRs as currently implemented are adequate to protect anadromous salmonids in California. NMFS has reviewed the State FPRs, including those interim changes recently adopted by the Board of Foresty and concludes that they do not adequately protect anadromous salmonids, including steelhead, or provide for properly functioning habitat conditions. In fact, the deleterious impacts of timber harvest and other activities have resulted in recent listings by the Environmental Protection Agency of many north coast California streams as sediment and/or temperature impaired under Section 303(d) of the Clean Water Act.

NMFS' March 19, 1998 (63 FR 13347), decision not to list the Northern California steelhead ESU was based largely on a determination that sufficient Federal and state conservation measures were in place to reduce threats to the ESU such that the proposed threatened listing was unnecessary. The Federal and state conservation measures upon which NMFS based this determination included the implementation of a March 11, 1998, Memorandum of Agreement (MOA) between NMFS and the State of California (NMFS/California MOA, 1998), with particular importance given to implementation of those provisions in the MOA which were intended to improve non-Federal forest land protections in the ESU. At the time of NMFS' decision not to list the Northern California ESU in 1998, NMFS considered the protection and restoration of freshwater spawning, rearing, and migratory habitat on non-Federal lands to be essential for the long-term survival and recovery of this ESU because non-Federal lands represented such a large portion (81 percent) of the available habitat (63 FR 13347, March 19, 1998; 65 FR 6960, February 11, 2000). Because of NMFS' concerns regarding the preponderance of private timber lands and timber harvest in the northern California ESU, the NMFS/California MOA contained several provisions calling for the review and revision of California's FPRs, and a review of their implementation and enforcement by January 1, 2000. NMFS considered full implementation of these critical provisions within the specified time frame to be essential for achieving properly functioning habitat conditions for steelhead in this ESU. In accordance with the NMFS/California MOA, a scientific review panel was established by the state to review the California FPRs, including their implementation and enforcement. The scientific review panel completed its review and provided the state's Board of Forestry with its findings and recommendations in June 1999. In its findings, the review panel concluded that California's FPRs, including their implementation through the existing timber harvest plan process, do not ensure protection of anadromous salmonid habitat and populations. To address these shortcomings, and as specified in the NMFS/California MOA, the California Resources Agency and CalEPA jointly presented the Board of Forestry with a proposed rule change package in July 1999. Following several months of public review, the Board of Forestry took no action on the package in October 1999, thereby precluding any possibility of implementing improvements in California's FPRs by January 1, 2000, as the State committed to do in the NMFS/California MOA.

The California State Legislature, purusant to Senate Bill 621, gave special authority to BOF to adopt new rules twice during the year 2000 for the specific purpose of revising the State's FPRs to meet ESA requirements for salmonids. Following its decision to take no action in October 1999, BOF continued working on revisions to the state's FPRs through March 2000. During this period, NMFS and other groups strongly urged BOF to adopt the entire FPR package as a necessary first step for protecting anadromous salmonid habitat. On March 14, 2000, (the deadline for the Board of Forestry to exercise its authority under SB 621), the Board only adopted a subset of rule changes from the package. These rule changes only apply to those harvest plans approved between July 1, 2000, and December 31, 2000. NMFS has reviewed these recently adopted rule changes and has determined that they are inadequate to protect anadromous salmonids or provide for properly functioning habitat conditions. This position is supported by the scientific review panel report of June 1999. For a more detailed discussion on the adequacy of California's FPRs, including the recently proposed interim FPRs changes, see ''Inadequacy of Existing Regulatory Mechanisms, Land Management'' later in this document.

Comment 8: Several commenters argued that NMFS had not considered existing conservation programs designed to enhance steelhead stocks within the northern California ESU.

Response: NMFS has reviewed existing conservation efforts relevant to the Northern California steelhead ESU and concludes that existing conservation efforts in these areas are not sufficient to preclude listing of the ESU at this time. Several of the plans addressed in comments show promise for ameliorating the risks facing steelhead. However, in most cases, measures described in comments have not been implemented or are in their early stages of implementation and have not yet demonstrated success. Some of these measures are also geographically limited to individual river basins or political subdivisions, thereby improving conditions for only a small portion of the entire ESU.

While existing conservation plans are unable to preclude the need for listing at this time, they are nevertheless valuable for improving watershed health and restoring fishery resources. In those cases where well-developed, reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process. In the case of threatened species, NMFS also has flexibility under ESA section 4(d) to tailor section 9 take regulations based on the contents of available conservation measures. NMFS fully intends to recognize local conservation efforts to the fullest extent possible.

Issue 5: Steelhead Biology and Ecology

Comment 9: Some commenters believe that resident rainbow trout should be included in the Northern California steelhead ESU if it is listed. Several commenters also stated that NMFS should address how the presence of rainbow trout populations may ameliorate risks facing anadromous populations within listed ESUs.

Response: In its August 9, 1996, listing proposal, NMFS stated that based on available genetic information, it was the consensus of NMFS scientists, as well as regional fishery biologists, that resident fish should generally be considered part of the steelhead ESUs, but also concluded that available data were inconclusive regarding the relationship of resident rainbow trout and steelhead. NMFS requested additional data in the proposed rule to clarify this relationship and determine if resident rainbow trout should be included in listed steelhead ESUs.

In response to this request for additional information, many groups and individuals expressed opinions regarding this issue. In most cases these opinions were not supported by new information that resolves existing uncertainty. Two state fishery management agencies (CDFG and WDFW) and one peer reviewer provided comments and information supporting the inclusion of resident rainbow trout in listed steelhead ESUs. In general, these parties also felt that rainbow trout may serve as an important reservoir of genetic material for at-risk steelhead stocks.

While conclusive evidence does not yet exist regarding the relationship of resident and anadromous *O. mykiss*, NMFS believes available evidence suggests that resident rainbow trout should be included in listed steelhead ESUs in certain cases. Such cases include: (1) where resident *O. mykiss* have the opportunity to interbreed with anadromous fish below natural or man-made barriers; or (2) where resident fish of native lineage once had the ability to interbreed with anadromous fish but no longer do because they are currently above human-made barriers, and they are considered essential for recovery of the ESU. Resident fish above long-standing natural barriers, and those that are derived from the introduction of non-native rainbow trout, would not be considered part of any ESU.

NMFS believes resident fish can help buffer extinction risks to an anadromous population by mitigating depensatory effects in spawning populations, by providing offspring that migrate to the ocean and enter the breeding population of steelhead, and by providing a ''reserve'' gene pool in freshwater that may persist through times of unfavorable conditions for anadromous fish. In spite of these potential benefits, presence of resident populations is not a substitute for conservation of anadromous populations. A particular concern is isolation of resident populations by human-caused barriers to migration. This interrupts normal population dynamics and population genetic processes and can lead to loss of a genetically based trait (anadromy). As discussed in NMFS' ''species identification'' paper (Waples, 1991), the potential loss of anadromy in distinct population segments may in and of itself warrant listing the species as a whole.

FWS and NMFS adopted a joint policy to clarify their interpretation of the phrase ''distinct population segment (DPS) of any species of vertebrate fish or wildlife'' for the purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722). DPSs are ''species'' pursuant to section 3(15) of the ESA. Previously, NMFS had developed a policy for stocks of Pacific salmon where an ESU of a biological species is considered ''distinct'' (and hence a species) if (1) it is substantially reproductively isolated from other conspecific population units, and (2) it represents an important component in the evolutionary legacy of the species (November 20, 1991, 56 FR 58612). NMFS believes available data suggest that resident rainbow trout are in many cases part of steelhead ESUs. However, the FWS, which has ESA authority for resident fish, maintains that behavioral forms can be regarded as separate DPSs and that absent evidence suggesting resident rainbow trout need ESA protection, the FWS concludes that only the anadromous forms of each ESU should be listed under the ESA (DOI, 1997; FWS, 1997).

Comment 10: Commenters and some peer reviewers questioned NMFS' inclusion of both summer- and winter-run steelhead in the same ESU. These commenters suggested that summer- and winter-run steelhead be segregated into individual ESUs based on life history differences.

Response: While NMFS considers both life history forms (summer- and winter-run steelhead) to be important components of diversity within the species, new genetic data reinforce

previous conclusions that, within a geographic area, summer- and winter-run steelhead typically are more genetically similar to one another than either is to populations with similar run timing in different geographic areas. This indicates that an ESU that included summer-run populations from different geographic areas but excluded winter-run populations (or vice-versa) would be an inappropriate unit. The only biologically meaningful way to have summer- and winter-run steelhead populations in separate ESUs would be to have a very large number of ESUs, most consisting of just one or a very few populations. This would be inconsistent with the approach NMFS has taken in defining ESUs in other anadromous Pacific salmonids. Taking these factors into consideration, NMFS concludes that summer- and winter-run steelhead should be considered part of the same ESU in geographic areas where they co-occur.

Issue 6: Consideration of ESA Section 4(d) Regulation for Recreational Angling

Comment 11: Numerous commenters requested that if NMFS lists the Northern California steelhead ESU as a threatened species the agency promulgate an ESA 4(d) rule that provides for recreational angling opportunities similar to what is contained in the ESA 4(d) rule NMFS recently proposed for other threatened steelhead ESUs in California (64 FR 73479; December 30, 1999).

Response: The steelhead ESA 4(d) rule that NMFS proposed on December 30, 1999, contains a limitation on the application of the section 9 take prohibitions that would allow recreational angling for steelhead listed as threatened to continue under certain conditions, provided that the State of California prepares a Fishery Management and Evaluation Plan (FMEP) meeting certain criteria and that NMFS approves it. Because the pending steelhead 4(d) rule will be finalized by June 19, 2000, NMFS expects to begin working soon with the State of California and DFG in preparing one or more FMEPs so that recreational angling can continue where it is consistent with the conservation of steelhead listed as threatened. It is NMFS' intent to promulgate an ESA 4(d) rule for the Northern California steelhead ESU which is consistent with the 4(d) rule that will be published on June 19, 2000 so that recreational angling which meets appropriate conservation criteria can continue.

Northern California Steelhead ESU Determination

The Northern California steelhead ESU has been described in previous **Federal Register** documents (61 FR 41541, August 9, 1996; 62 FR 43937, August 18, 1997; 63 FR 13347, March 19, 1998; 65 FR 6960, February 11, 2000) based on analyses conducted by NMFS and summarized in the following documents: ''Status Review for West Coast Steelhead from Washington, Idaho, Oregon, and California'' (Busby *et al.*, 1996); and ''Status Review Update for West Coast Steelhead from Washington, Idaho, Oregon, and California'' (NMFS, 1997a). The relationship between hatchery steelhead populations and naturally spawned steelhead within this ESU was also assessed in: ''Status Review Update for Deferred ESUs of West Coast Steelhead: Hatchery Populations'' (NMFS, 1998a). Copies of these NMFS documents are available upon request (see **ADDRESSES**). NMFS received no new scientific or commercial information as a result of the February 11, 2000, proposal to list this ESU, which indicates that a change in the Northern California ESU is warranted.

The ESU occupies river basins from Redwood Creek in Humboldt County, CA, to the Gualala River, inclusive, in Mendocino County, CA. Dominant vegetation along the coast is the redwood forest, whereas some interior basins, much drier than surrounding areas, are characterized by many endemic species. This area includes the extreme southern end of the contiguous portion of the Coast Range Ecoregion (Omernick, 1987). Elevated stream temperatures are a factor in some of the larger river basins (greater than 20°C), but not to the extent that they are in river basins further south. Precipitation is generally higher in this geographic area than in regions to the south, averaging 100–200 cm of rainfall annually (Donley *et al.*, 1979). With the exception of such major river basins as the Eel, most rivers in this region have peak flows of short duration. Strong and consistent coastal upwelling begins at about Cape Blanco and continues south into central California, resulting in a relatively productive nearshore marine environment.

The northern California ESU includes both winter and summer steelhead, including what is presently considered to be the southernmost population of summer steelhead, in the Middle Fork Eel River. Half-pounder juveniles also occur in this geographic area, specifically in the Mad and Eel Rivers. Snyder (1925) first described the half-pounder from the Eel River; however, Cramer *et al.* (1995) suggested that adults with the half-pounder juvenile life history may not spawn south of the Klamath River Basin. As with the Rogue and Klamath Rivers which are located in the Klamath Mountains Province ESU, some of the larger rivers in this ESU have migrating steelhead year-round, and seasonal runs have been named. River entry ranges from August through June and spawning from December through April, with peak spawning in January in the larger basins and late February and March in the smaller coastal basins.

Based on the review of steelhead hatchery programs in this ESU (NMFS, 1998a), NMFS' steelhead BRT concluded that the following steelhead hatchery stocks are part of this ESU because they were established from indigenous natural populations and there is limited impact from the inclusion of out-of-basin fish in the broodstock: Van Arsdale Fisheries Station stock (Eel River), the Yager Creek stock (Eel River tributary), Ten Mile River stock, and North Fork Gualala River stock. The BRT concluded that the Mad River hatchery summer steelhead stock is not part of the ESU based on its origin from out-of-basin steelhead populations combined with the mixing of Eel River summer steelhead in the broodstock. Rearing of this stock was terminated at the Mad River hatchery in 1996. The majority of the BRT concluded that the Mad River hatchery winter steelhead stock is not part of this ESU although a minority of the BRT was uncertain regarding its relationship to the naturally spawning population. This stock was founded from South Fork Eel River steelhead (within the ESU, but out of the Mad River basin) and some local Mad River steelhead.

Status of Northern California Steelhead ESU

Section 3 of the ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. In its previous status reviews for west coast salmon and steelhead, NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to

historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

Based on these factors and the best available scientific information, NMFS' BRT first reviewed the status of the northern California ESU in its original coast-wide status review for steelhead (Busby *et al.*, 1996). The BRT concluded that the northern California steelhead ESU was likely to become endangered in the foreseeable future. Population abundance was determined to be very low relative to historical estimates (1930's dam counts), and recent trends were downward in most stocks for which data were. The BRT expressed particular concern regarding sedimentation resulting in part from poor land management practices and channel restructuring due to floods. The abundance of the pikeminnow as a predator in the Eel River was also identified as a significant concern. For the Mad River, in particular, the BRT was concerned about the influence of hatchery stocks both in terms of genetic introgression and the potential for ecological interactions between introduced stocks and native stocks.

The status of the northern California ESU was reassessed by NMFS' BRT in an updated status review following the 6-month period of deferral because of scientific disagreements (NMFS, 1997a). Based on this updated status review, NMFS' BRT once again concluded that northern California steelhead ESU was likely to become endangered in the foreseeable future. The BRT reported that there *was very limited abundance data available for this ESU, particularly for winter-run steelhead.* The most complete data set available in this ESU is a time series of winter steelhead dam counts on the Eel River at Cape Horn Dam. The updated abundance data (through 1997) showed moderately declining long-term and short-term trends in abundance, and the vast majority of these fish were believed to be of hatchery origin. These data show a strong decline in abundance prior to 1970, but no significant trend thereafter. Additional winter steelhead data are available for Sweasy Dam on the Mad River which show a significant decline, but that data set ends in 1963. For the seven populations where recent trend data were available, the only runs showing recent increases in abundance in the ESU were the relatively small populations of summer steelhead in the Mad River which has had high hatchery production, and winter steelhead in Prairie Creek where the increase may be due to increased monitoring or mitigation efforts.

As in its original assessment, the BRT continued to be concerned about the risks associated with interactions between naturally spawning populations and hatchery steelhead in this ESU. Of particular concern to the BRT was the potentially deleterious impact to wild steelhead from past hatchery practices at the Mad River hatchery, primarily from transfers of non-indigenous Mad River hatchery fish to other streams in the ESU and the production of non-indigenous summer steelhead. These potentially deleterious hatchery practices for summer steelhead ended in 1996.

Habitat degradation and other factors were also of concern to the BRT in its reassessment of the long-term risks to this ESU. Specific factors which the BRT identified included dams on the upper Eel and Mad Rivers, the likely existence of minor blockages throughout the ESU, continuing impacts of catastrophic flooding on the 1960s, and reductions in riparian and instream habitat and increased sedimentation from timber harvest activities. The BRT also cited poaching of summer steelhead and predation by pikeminnow in the Eel River as factors for concern. NMFS' supplemental review of factors affecting west coast steelhead also identified water diversion and extraction, agriculture, and mining as factors affecting habitat conditions for steelhead in this ESU (NMFS, 1996).

In conjunction with NMFS' reconsideration of the Northern California steelhead ESU, the BRT provided a status review update for this ESU [January 2000 Memorandum from Pete Adams, Southwest Fisheries Science Center [SWFSC] to Rodney R. McInnis, Regional Administrator, SWR (NMFS, 2000)]. Based on a review of updated abundance and trend information that was available for this ESU, the SWFSC concluded that the current status of the ESU has not changed significantly since it was last evaluated by NMFS' BRT in December 1997 (NMFS, 1997a). The Eel River winter and summer steelhead populations, which represent the best available data set for this ESU, are still severely reduced from pre–1960's levels. Updated abundance and trend data show small increases for winter and summer steelhead in the Eel River, but current abundance is still well below estimates in the 1980s, and even further reduced from levels in the 1960s. Redwood Creek summer steelhead abundance remains very low. There are no new data suggesting substantial increases or decreases in populations since the last updated status review was completed. NMFS received no new scientific or commercial data or information as a result of the February 11, 2000, listing proposal which changes the conclusions reached by the SWFSC.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

NMFS has prepared a report that summarizes the factors leading to the decline of steelhead on the west coast entitled: ''Factors for Decline: A supplement to the notice of determination for west coast steelhead'' (NMFS, 1996). This report, available upon request (see **ADDRESSES**), concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary causes for the decline of steelhead on the west coast. NMFS (1996) identified several factors that were considered to have contributed to its decline of the northern California steelhead ESU including: impacts from historic flooding (principally in 1955 and 1964), predation, water diversions and extraction, minor habitat blockages, poaching, timber harvest, agriculture, and mining. NMFS' steelhead BRT also identified the potentially adverse impacts of the release of non-indigenous, hatchery-produced steelhead in this ESU as an important factor, and expressed concerns regarding the lack of reliable abundance and trend data for assessing the status of steelhead in this ESU (NMFS, 1997a).

Finally, NMFS was also concerned about the impacts of recreational angling because of the depressed status of steelhead populations and the uncertainty regarding the status of this ESU (March 11, 1998, Memorandum from William Hogarth to Rolland Schmitten (NMFS, 1998e)). The following discussion briefly summarizes findings regarding factors for decline across the range of west coast steelhead, including the northern California ESU.

The Present or Threatened Destruction, Modification, or Curtailment of Steelhead Habitat or Range

Steelhead on the west coast of the United States have experienced declines in abundance in the past several decades as a result of natural and human factors. Forestry, agriculture, mining, and urbanization have degraded, simplified, and fragmented habitat. Water diversions for agriculture, flood control, domestic, and hydropower purposes have greatly reduced or eliminated historically accessible habitat. Among other factors, NMFS (1996) specifically identified timber harvest, agriculture, mining, habitat blockages, and water diversions as important factors for the decline of steelhead in the northern California ESU. NMFS (1998a) discussed these factors in more detail. Studies estimate that during the last 200 years, the lower 48 states have lost approximately 53 percent of all wetlands and the majority of the rest are severely degraded (Dahl, 1990; Tiner, 1991). Washington and Oregon's wetlands are estimated to have diminished by one-third, while California has experienced a 91 percent loss of its wetland habitat (Dahl, 1990; Jensen *et al.*, 1990; Barbour *et al.*, 1991; Reynolds *et al.*, 1993). Loss of habitat complexity has also contributed to the decline of steelhead. For example, in national forests in Washington, there has been a 58 percent reduction in large, deep pools due to sedimentation and loss of pool-forming structures such as boulders and large woody debris (FEMAT, 1993). Similarly, in Oregon, the abundance of large, deep pools on private coastal lands has decreased by as much as 80 percent (FEMAT, 1993). Sedimentation from land use activities is recognized as a primary cause of habitat degradation in the range of west coast steelhead.

Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Steelhead are not generally targeted in commercial fisheries. High seas driftnet fisheries in the past may have contributed slightly to a decline of this species in local areas, but could not be solely responsible for the large declines in abundance observed along most of the Pacific coast over the past several decades (NMFS, 1996).

Steelhead support an important recreational fishery throughout most of their range. During periods of decreased habitat availability (e.g., drought conditions or summer low flows when fish are concentrated), the impacts of recreational fishing on native anadromous stocks may be heightened.

Although harvest of steelhead in the Northern California ESU was not originally identified as a major factor for decline (NMFS, 1996), NMFS is concerned about the impacts of recreational angling given currently depressed steelhead population levels and the lack of reliable abundance and trend data for accurately assessing the status of individual populations and the ESU as a whole. Because of NMFS' concerns about recreational angling impacts to naturally reproduced steelhead populations in coastal watersheds in California north of the Russian River, the California Department of Fish and Game (DFG) proposed and the California Fish and Game Commission adopted new steelhead angling regulations in 1998 for all watersheds in the northern California ESU. These new regulations prohibit retention of naturally spawned adult steelhead; eliminate fishing for juvenile steelhead in tributary streams; minimize impacts on juvenile steelhead in mainstem rearing and migratory areas through a combination of gear restrictions and delayed seasonal openings; prohibit retention of summer steelhead during their upstream migration and prohibit fishing in their summer holding areas; and provide for directed harvest and retention of hatchery-produced steelhead which are fully marked state-wide. NMFS (1998b,c,d) analyzed these new regulations and concluded that they would substantially reduce fishing effort and reduce mortality to that associated with catch-and-release of naturally produced steelhead in the northern California ESU. These regulations remain in effect and are enforced by DFG.

Disease or Predation

Infectious disease is one of many factors that can influence adult and juvenile steelhead survival. Steelhead are exposed to numerous bacterial, protozoan, viral, and parasitic organisms in spawning and rearing areas, hatcheries, migratory routes, and the marine environment (NMFS, 1996). Specific diseases such as bacterial kidney disease (BKD), ceratomyxosis, columnaris, furunculosis, infectious hematopoietic necrosis virus, redmouth and black spot disease, erythrocytic inclusion body syndrome, and whirling disease, among others, are present and are known to affect steelhead and salmon (Rucker *et al.*, 1953; Wood, 1979; Leek, 1987; Foott *et al.*, 1994; Gould and Wedemeyer, undated). Very little current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases for steelhead (NMFS, 1996). However, studies have shown that naturally spawned fish tend to be less susceptible to pathogens than hatchery-reared fish (Buchanon *et al.*, 1983; Sanders *et al.*, 1992).

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous river systems, thereby increasing the level of predation experienced by salmonids. In the Northern California steelhead ESU, predation from Sacramento pikeminnow that were released into the Eel River is a major problem. Predation from pikeminnow is discussed in more detail in NMFS (1996). The DFG is currently engaged in a program to control pikeminnow predation in the Eel River.

Predation by marine mammals is also of concern in some areas experiencing dwindling steelhead run sizes. NMFS (1997b) reviewed the available literature concerning the impacts of California sea lion and Pacific harbor seal predation on west coast anadromous salmonids, and concluded that there was insufficient data in all but one instance (i.e., Ballard Locks in Puget Sound) to conclude that pinnipeds were having a significant impact on wild salmon or steelhead populations. For this reason, and because of the high likelihood that impacts might be occurring, the study concluded that substantial additional research was needed to address this issue further. Based on this research recommendation, NMFS has initiated several field studies in coastal watersheds on the west coast designed to assess the magnitude of pinniped predation on individual salmon or steelhead populations. In California, these studies are being conducted in the lower Klamath River, Scott Creek, and the San Lorenzo River.

Inadequacy of Existing Regulatory Mechanisms

1. Federal Land and Water Management

The Northwest Forest Plan (NFP) is a Federal land management policy with important benefits for west coast steelhead. While the NFP covers a very

large area, the overall effectiveness of the NFP in conserving steelhead is limited by the extent of Federal lands and the fact that Federal land ownership is not uniformly distributed in watersheds that comprise individual ESUs. The extent and distribution of Federal lands limits the ability of the NFP to achieve its aquatic habitat restoration objectives at watershed and river basin scales, and highlights the importance of complementary salmon habitat conservation measures on non-federal lands within the subject ESUs.

Federal land ownership and management in the Northern California steelhead ESU is very limited; representing only about 19 percent of the total land area. Federal lands (i.e., Redwood National Park, portions of the Six Rivers and Mendocino National Forests, and the Kings Range National Conservation Area) that do occur in this ESU are also highly fragmented, unlike some other steelhead ESUs (e.g., Klamath Mountains Province and Snake River Basin). Although Federal lands are limited in extent and fragmented in this ESU, NMFS believes that implementation of the NFP on the Six Rivers and Mendocino National Forests lands (upper reaches of Eel and Mad Rivers) and implementation of other habitat protections in Redwood National Park (lower reach of Redwood Creek) will provide some limited benefits to steelhead. Nevertheless, long-term habitat protection and the key to achieving properly functioning habitat conditions in this ESU continues to be improvement in non-Federal land management, particularly those lands used for timber harvest.

Because threatened coho salmon populations occur on Federal lands located within the Northern California steelhead ESU, NMFS routinely engages the U.S. Forest Service (USFS), Bureau of Land Management (BLM), and Redwood Creek National Park in section 7 consultations to ensure that ongoing or proposed activities do not jeopardize coho salmon or adversely modify its critical habitat. Through this section 7 consultation process, NMFS ensures that the NFP and other protective measures are fully implemented on Federal lands that occur in this ESU. The NFP and measures implemented as a result of the section 7 consultations for coho salmon also benefit steelhead.

The Pacific Gas and Electric Company's (PG&E) Potter Valley hydroelectric project is a major diverter of water from the mainstem Eel River, which is located in the northern California ESU. This water is diverted into the Russian River basin to generate hydroelectric power and provide water for agriculture and urban uses. Pursuant to a Federal Energy Regulatory Commission (FERC) licensing requirement, PG&E implemented a 10-year monitoring program in the Eel River for the purpose of developing recommendations for a flow release schedule and other project facilities and/or operations necessary to protect and maintain fishery resources, including steelhead. This study was completed in 1996, as was construction of a $14 million dollar fish screen facility at the Van Arsdale Dam diversion on the Eel River. Based on the results of the monitoring study, PG&E has developed a preferred alternative for project operations that, along with several other alternatives, are the subject of National Environmental Policy Act (NEPA) review for ongoing FERC license amendment proceedings. NMFS is currently consulting with FERC pursuant to section 7 of the ESA on PG&E's proposed license amendment.

On March 1, 1999, the Pacific Lumber Company (PALCO), the State of California, the Department of the Interior, and the Department of Commerce entered into a complex land purchase, land exchange and Habitat Conservation Plan (HCP) transaction covering the Headwaters Forest, Elk Head Springs Forest and the remainder of Pacific Lumber Company's land holdings in Humboldt County California. The Federal and State governments acquired approximately 10,000 acres of conifer and hardwood forest, over 3,000 acres of which is ancient redwoods, with some trees over 1,000 years old. This land is now subject to Federal and state control under conservation easements. The PALCO HCP addresses non-Federal timber lands in several drainages that occur in the northern portion of Northern California steelhead ESU. These include portions of several tributaries to Humboldt Bay (Elk River, Jacoby Creek, Freshwater Creek, and Salmon Creek), and portions of the Van Duzen River (including Yager Creek), Eel River, Bear River, Salt River, and Mattole River watersheds. The HCP covers 211,000 acres, has a term of 50 years and covers the following federally listed and candidate anadromous salmonid ESUs: (1) Southern Oregon/ Northern California coho salmon (threatened), (2) Northern California steelhead (candidate), and (3) California Coastal Chinook salmon (threatened). The HCP also covers numerous terrestrial species listed under the ESA and California Endangered Species Act.

The HCP's Operating Conservation Program (Program) contains the conservation and management measures and prescriptions necessary to minimize, mitigate and monitor the impacts of take of the covered species resulting from timber operations. The Program incorporates specific conservation plans for all terrestrial and aquatic species covered under the HCP along with measures to conserve habitat diversity and structural components. Monitoring for implementation, effectiveness and trends is a critical component of the Program. The monitoring component includes an independent third party HCP monitor to determine if the provisions of the aquatics plan are effective and whether the aquatic habitat is responding as expected. There is also a provision for adaptive management if the results are not as predicted. An Aquatics Conservation Plan (ACP) is an integral part of the overall Program. The goal of the ACP is to maintain or achieve over time properly functioning aquatic habitat conditions, which are essential to the long-term survival of salmonids. The reduction in land management impacts and habitat improvement that will be realized through implementation of the ACP will also benefit other species.

NMFS believes that the conservation measures contained in the HCP will protect and provide for long-term conservation of steelhead populations occurring on PALCO lands in the northern California ESU.

2. State Land Management

Timber Harvest. The California Department of Forestry and Fire Protection (CDF) enforces California's FPRs on non-Federal (private and State managed forests) lands. These rules are promulgated through the State Board of Forestry (BOF). Timber harvest activities have been documented to result in adverse effects on streams and stream side zones including the loss of large woody debris, increased sedimentation, loss of riparian vegetation, and the loss of habitat complexity and connectivity (NMFS, 1996).

The vast majority of freshwater habitat in the northern California steelhead ESU (approximately 81 percent of total land) is on non-Federal lands, with the majority being privately owned. For the major river basins in this ESU (i.e., Redwood Creek, Mad River, Eel River, Mattole River, Ten Mile River, Noyo River, Big River, Albion River, Navarro River, Garcia River, and Gualala River), private forest lands average about 75 percent of the total acreage, with a range of 42 percent (Eel River) to 94 (Gualala River) percent.

NMFS reviewed the California FPRs in conjunction with its determination to

not list the Northern California steelhead ESU in 1998 (63 FR 13347). That review concluded that although the FPRs mandate protection of sensitive resources such as anadromous salmonids, the FPRs and their implementation and enforcement do not accomplish this objective. Specific problems with the FPRs include: (1) protective provisions that are not supported by scientific literature; (2) provisions that are scientifically inadequate to protect salmonids including steelhead; (3) inadequate and ineffective cumulative effects analyses; (4) dependence upon registered professional foresters (RPFs) that may not possess the necessary level of multi-disciplinary technical expertise to develop THPs protective of salmonids; (5) dependence by CDF on other State agencies to review and comment on THPs; (6) failure of CDF to incorporate recommendations from other agencies; and (7) inadequate enforcement due to staffing limitations. NMFS further concluded that until a comprehensive scientific peer review process was implemented and appropriate changes to the FPRs and the THP approval process were made, properly functioning habitat conditions would not exist on non-Federal lands in the northern California steelhead ESU.

The NMFS/California MOA which was entered into in March 1998 to ensure the conservation of steelhead populations in northern California (i.e., Northern California and KMP steelhead ESUs) contained specific provisions to address NMFS' concerns over the California FPRs. In the NMFS/California MOA, the State committed to: (1) conduct a scientific review of the State's FPRs, including their implementation and enforcement; (2) make appropriate changes in implementation and enforcement of the FPRs based on this review; and (3) make recommendations to the BOF for changes in the FPRs if they were found to be necessary for the conservation of northern California coastal anadromous salmonids. Full implementation of these provisions in the NMFS/California MOA, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's decision previously to not list this ESU.

In accordance with these provisions, a subcommittee of the State's scientific review panel for its Watershed Protection Program was appointed to undertake an independent review of the FPRs. The subcommittee's review and recommendations were completed and presented to the BOF in June 1999. The scientific review panel concluded that California's FPRs, including their implementation through the timber harvest plan process, do not ensure protection of anadromous salmonid populations. Based in part on the scientific review panel report and findings in July 1999, the California Resources Agency and CalEPA jointly presented the BOF with a proposed rule change package designed to address shortcomings in the State's existing FPRs. The BOF circulated the proposed rule package for public review, held several meetings and two public hearings on the proposals from July until October 1999, but failed to take action to adopt any of the proposed FPR changes, thereby precluding any possibility of implementing improvements in California's FPRs by January 1, 2000, as the State committed to do in the NMFS/California MOA.

The California State Legislature, under Senate Bill 621, gave special authority to the BOF to adopt new rules twice during the year 2000 for the specific purpose of revising the State's FPRs to meet ESA requirements for salmon. Public review and revisions of the BOF's FPR package continued from January 2000 to March 2000, during which time NMFS, California Legislature, the California Department of Forestry, the California Department of Fish and Game, the North Coast Water Quality Control Board, environmental groups and others strongly urged the Board to adopt the package in its' entirety as a necessary first step in protecting anadromous salmonid habitat. On March 14, 2000, the deadline for the BOF to exercise its authority under SB 621, the BOF adopted a subset of rule changes from the package which will only apply for those timber harvest plans approved between July 1 and December 31, 2000. During this period, the BOF has committed to work with interested parties in the development of a watershed analysis approach to timber harvest planning.

The interim FPRs changes adopted by the BOF, which sunset December 31, 2000: (1) define watersheds with threatened and impaired values, acknowledging they exist and need special prescriptions; (2) direct analysis on cumulative watershed effects to ensure beneficial uses of water are maintained if in good condition, protected where threatened, and restored where impaired, and that riparian zones be fully protected from site specific and cumulative impacts; (3) require protection and maintenance of stream flow during low water periods, large woody debris recruitment and shade canopy for temperature control; (4) require no measurable increase in sediment load, no decrease in channel or bank stability and no measurable blockage of aquatic migratory route; (5) define the watercourse transition line as 2 times the bankfull depth for confined channels and the outer edge of the active channel boundary for unconfined channels; (6) identify a 150 foot minimum water and lake protection zone for all fish-bearing streams, with 85 percent overstory shade canopy retained post-harvest for the first 75 feet (22.9 meters (m)), and 65 percent shade retained for the outer 75 feet (22.9 m); (7) require a no-cut buffer in channel zones out to the transition line and large woody debris standards including no salvage logging within the water and lake protection zone without an approved plan; (8) request the registered professional forester identify all active erosion sites and provide remediation; (9) prohibit construction of roads, landings and skid trails during the winter months on slopes over 40 percent; (10) provide specific road construction provisions on slopes over 50 percent; and (11) require that all crossings over fish-bearing streams meet 100-year flood standard and allow for passage of all life stages of fish.

NMFS believes the interim rule changes adopted by the Board of Forestry constitute a good first step in addressing many concerns raised during the FPR review process; however, they are currently inadequate to protect anadromous salmonids, including steelhead, and their habitat. Specifically, the interim rule changes are inadequate because they to not address: (1) site-specific variation and long-term riparian functions; (2) non-fishbearing perennial streams and ephemeral streams that carry water during the winter months; (3) rate of timber harvest in a watershed; (4) all other winter operations and wet weather road and skid trail planning; (5) road planning, construction, maintenance and decommissioning; (6) loss of riparian function and chronic sediment inputs from streamside roads; (7) unstable areas except for inner gorges; (8) timber harvest plan preparation, review, implementation, enforcement and technical validity; (9) harvest plan exemptions and (10) watershed analysis, cumulative effects, adaptive management and monitoring. The adopted rules lack these, and other, critical elements recommended by the scientific review panel as necessary to avoid, minimize and/or mitigate adverse cumulative watershed impacts on salmonid populations.

Multi-County Planning Efforts. As a result of the listing of coho salmon in coastal watersheds in northern

California, the counties of Del Norte, Siskiyou, Trinity, Humboldt and Mendocino developed and have implemented a multi-county, regional approach to assessing and improving county-controlled activities in a way that would enhance the quality and increase the quantity of salmonid habitat that is potentially affected by those county activities. NMFS and the State of California have contributed funding to this multi-county planning effort.

This county-level conservation planning approach involves a thorough review of general plans, ordinances, procedures, practices and policies developed and implemented at the county level. Through the assessment and evaluation of these county-controlled mechanisms, a process is being developed that will enable the counties to exert control at the local level over human activities that can adversely affect anadromous salmonid populations and habitat. This multi-county planning effort was memorialized in a Memorandum of Agreement (Multi-County MOA) which was signed by all five counties in late 1997. Under the terms of the Multi-County MOA, the counties agreed to embark on a cooperative planning and restoration effort; assess the adequacy of existing general plans, county policies and practices, zoning and other land use ordinances; review county management procedures that affect anadromous salmonid habitat in each county; recommend changes to specific county ordinances and/or practices as necessary; develop a watershed-based education and technical assistance/training program for local agencies and decision-makers that will foster better understanding of the linkages between land use and county maintenance practices and salmonid habitat; and seek to establish some form of regulatory recognition at the state and/or federal level. As an example, within the range of the northern California steelhead ESU, the northern five counties (Del Norte, Humboldt, Trinity, Siskiyou, and Mendocino Counties) Conservation Planning Group has organized a program to survey approximately 4700 miles of county roads to identify existing and potential barriers to the passage of listed salmonids in northern California streams. These barriers, which include undersized or failed culverts and other types of road crossings over streams, presently block significant amounts of stream habitat that could otherwise support spawning, rearing and migration of listed salmon and steelhead. To date, all coastal streams in Del Norte, Humboldt and Mendocino Counties have been inventoried, and habitat assessment and treatment prioritization reports are being drafted (Pers. Comm. Mark Lancaster, Trinity County Planning Dept. with Miles Croom, NMFS, April 24, 2000). In the coastal streams within Del Norte, Humboldt and Mendocino Counties, some 81 barriers have been identified. When removed, an additional 77 miles of suitable salmonid habitat will become available to listed species. The passage barrier inventory is part of a comprehensive aquatic habitat conservation program being developed by the multi-county group to improve county-level policies and procedures in an effort to reduce sedimentation and erosion, protect water quality, establish priorities for repairing problem sites, and institutionalize the utilization of improved practices at the county level with the goal of conserving aquatic habitat for the survival and recovery of listed salmonids.

This multi-county assessment is being used to document the effectiveness of existing regulations. Where the assessment identifies areas for improvement, the planning effort will develop alternative policies, ordinances and practices that are suitable for maintaining or enhancing anadromous salmonid habitat. The assessment will address the need to focus public works projects on sites that improve fisheries habitat. A watershed-based approach will be used, even where watersheds cross county boundaries, to ensure that enhancement efforts are complementary to natural ecosystem processes.

The outcome of this county-level effort is expected to be a comprehensive and coordinated analysis of local land use regulations. Where it is found that development standards such as subdivision restrictions, zoning, and capital improvement programs may not adequately maintain or restore salmonid habitat, model ordinances will be developed for consideration by each of the participating counties. Conversely, innovative approaches for land use (such as density modifications and standards that preserve habitat functions) or other county activities that have been developed in some counties will be presented as options for the other counties. This collaborative, regionally-based planning effort is based on existing environmental, economic, social and administrative concerns and opportunities. At the same time, the planning effort is designed to be complementary with state and national salmonid recovery efforts. The planning process encourages public participation through direct contact with interested public agencies, landowners, community organizations, environmental groups, industry representatives and others. The public process is being implemented through public hearings, meetings, scoping sessions, forums and other avenues.

Agricultural Activities. Agricultural activity has had multiple and often severe impacts on salmonid habitat. These include depletion of needed flows due to irrigation withdrawals, blocking of fish passage by diversion or other structures, destruction of riparian vegetation and bank stability by grazing or cultivation practices, and channelization resulting in loss of side channel and wetland-related habitat (NMFS, 1996).

Impacts from agricultural and grazing practices have not historically been closely regulated in California. This is an important concern to NMFS because a significant portion of the acreage in the northern California ESU is comprised of farmland. For example, farmland constitutes approximately 25–30 percent of the total acreage of Humboldt and Mendocino counties which in turn constitute much of the northern California ESU. Private lands, and public lands not administered by the Federal government, are now being addressed by the California Rangeland Water Quality Management Program (CRWQMP) which was adopted by the State Water Resources Control Board and CDF in 1995. The CRWQMP is a water quality improvement program based on the voluntary participation of landowners for compliance with state and Federal non-point source pollution reduction requirements. The CRWQMP was initiated as a cooperative effort among the livestock industry, conservation organizations and state and Federal agencies to address the impacts of grazing and land use practices on water quality in streams that flow through private property. Through this Program, private landowners will be able to maintain rangeland productivity and enhance landowners' abilities to manage these lands in a manner that protects water quality standards necessary for the survival and recovery of listed salmonids.

Between 1995–1998, rangeland plans were developed under the CRWQMP for more than 250,000 acres on the north coast ranging from San Francisco to the Oregon border. The State plans to review the implementation status of these plans at intervals of 3, 5 and 10 years, provided resources are available. NMFS is encouraged by these ongoing efforts. Plans that are consistent with this guidance are likely to meet state

water quality standards, but the program is voluntary and it is uncertain to what extent their implementation will contribute to improved habitat conditions and riparian function.

The USDA Natural Resources Conservation Service (NRCS), NMFS, FWS, the U.S. Environmental Protection Agency (EPA), the California Association of Resource Conservation Districts (CARCD), and the State of California (State) have recently developed a joint approach that is expected to encourage the voluntary use of improved conservation management practices for agriculture on private land. Recognizing that recovery of listed and other at-risk salmonid populations depends on the willing participation of private landowners, these agencies have the goal of providing an incentive to landowners to enhance the quality and quantity of habitat needed by species of concern. To accomplish this goal, the agencies have agreed to support cooperative approaches and consensus-building activities, foster communication among agencies and private landowners, share resources and information, and establish strong, effective working relationships that instill trust and promote sound stewardship.

This agreement is the subject of a draft Memorandum of Understanding (MOU) among the partner agencies. Through the procedures described in the MOU, landowners will have the knowledge that practices contained in the NRCS Field Office Technical Guides (FOTG) have undergone ESA section 7 scrutiny by NMFS and FWS. For those practices that NMFS and FWS determine are not likely to adversely affect listed species or critical habitat, the landowner should have confidence that those practices, if implemented in accordance with the FOTG standards and specifications, will not result in any additional permitting requirement or penalties under the ESA. The objective of this MOU is to encourage the adoption of protective land use practices on private lands, to provide some regulatory assurance for landowners, to improve habitat conditions for sensitive species, to continue sustainable economic production on private lands, to facilitate better coordination among the partner agencies and to foster better awareness and support for conservation programs throughout the State. The draft MOU is under review by the State and upon completion is expected to be formally signed by all parties.

3. Dredge, Fill, and In-water Construction Programs

Corps of Engineers Section 404 Program. The Army Corps of Engineers (COE) regulates removal/fill activities under section 404 of the Clean Water Act (CWA), which requires that the COE not permit a discharge that would ''cause or contribute to significant degradation of the waters of the United States.'' One of the factors that must be considered in this determination is cumulative effects. However, the COE guidelines do not specify a methodology for assessing cumulative effects or how much weight to assign them in decision-making. Furthermore, the COE does not have in place any process to address the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

The U.S. Army Corps of Engineers, State, and local governments have developed and implemented procedures reviewing, approving and monitoring gravel mining activities in Del Norte and Humboldt counties which are authorized under a Letter of Permission (LOP) process. This process regulates gravel mining in a substantial portion of the Northern California steelhead ESU (including the Mad, Eel and Van Duzen Rivers) where listed coho salmon and chinook salmon populations also occur. These procedures are designed to provide substantially improved protection for anadromous salmonids and their habitats, including steelhead. Important elements of the process include: a prohibition on gravel mining in the active channel and on trenching except in limited instances, a restriction on gravel operations to the dry season, monitoring of channel cross sections to detect changes in channel morphology and habitat conditions, fisheries monitoring, and gravel mining on a sustained yield basis. An additional element of the process in Humboldt County, which is located in the Northern California ESU, is the participation of an independent scientific review committee which makes annual recommendations on gravel quantities and site design features in order to minimize adverse impacts. Additionally, any channel crossings must be designed to allow for fish passage. NMFS participated in the development of these procedures and has concluded, through section 7 consultation with the COE, that these procedures will not jeopardize the continued existence of coho salmon or steelhead. NMFS recently reinitiated formal consultation with the COE on the LOP process to address the final critical habitat designation for coho salmon and the recent listing of California Coastal chinook salmon as threatened.

State Streambed Alteration Agreements. Section 1603 of the Fish and Game Code in California requires that any person who proposes a project that will substantially divert or obstruct the natural flow or substantially change the bed, channel or river bank of any river, stream or lake, or use materials from a streambed, notify the DFG before beginning any work. The authorization for these activities under section 1603 is called a Lake or Streambed Alteration Agreement. Beginning May 1, 1999, the 1603 process was significantly modified to require a higher level of review by DFG that is in compliance with the California Environmental Quality Act (CEQA). Any proposed project that DFG determines may substantially adversely affect existing fish and wildlife resources will need to comply with the CEQA standard of mitigating project impacts to the level of insignificance. The new standard for project review has resulted in increasing the time needed for project approval from two weeks to 60–120 days.

Although the State has substantially improved the level of project review under the 1603 process to comply with the new CEQA standard, the State has not submitted the program to NMFS for review to determine whether it adequately protects anadromous salmonids. The State currently issues 1603 streambed alteration agreements to project applicants with the disclosure that the applicant may need to obtain incidental take authorization from NMFS. In most cases, however, where a project proposes a stream or watercourse modification and listed species are present, a Clean Water Act, section 404 permit from the Army Corps of Engineers is required. Within the geographic area encompassing the northern California steelhead ESU, the presence of listed coho and chinook salmon populations requires the Corps to consult with NMFS under section 7 of the ESA prior to the issuance of 404 permits.

4. Water Quality Programs

Under Clean Water Act section 303(d), states, territories and authorized Tribes are required to establish lists of impaired water bodies, set priorities for addressing the pollutant source, and write pollutant control plans to achieve and maintain water quality standards. These plans, Total Maximum Daily Loads (TMDLs), provide an effective mechanism for determining the causes of water body impairment, quantifying the various pollutant sources, and setting targets for reducing pollutant discharges. Generally, states are responsible for developing TMDLs and related implementation plans, which are

subject to EPA review and approval. If the EPA disapproves a TMDL or if a state fails to establish one, the EPA is required to step in and establish the TMDL. The TMDL is then implemented through existing regulatory and non-regulatory programs to control, reduce or eliminate pollution from both point and non-point sources.

The TMDL process provides a flexible assessment and planning framework for identifying load reductions or other actions needed to attain water quality standards such as protection of aquatic life, provision of safe drinking water, etc. The TMDL should address all significant stressors (*e.g.*, chemicals, temperatures, sediment loads) that cause or threaten to cause deleterious effects to water quality. The TMDL assessment is the sum of the individual waste load allocations from point sources, load allocations from non-point sources, allocation from natural sources, and an appropriate margin of safety to account for uncertainty. The TMDL may address single or multiple pollutants but must clearly identify the links between the water quality impairment (or threat) of concern, the causes of the threat or concern and the load reductions or conservation actions needed to remedy or prevent the impairment.

As TMDL assessments and implementation plans are developed and approved, the State of California, through the State Water Resources Control Board and the nine Regional Water Quality Control Boards, will adopt and implement the TMDLs. The TMDL contains a problem statement, numeric targets, source analysis, allocations of loads or controls and a monitoring plan. The implementation component includes descriptions of land management practices, remediation activities and restoration projects necessary to attain the goals established in the TMDL assessment. It is through the implementation plan that necessary controls and restoration actions are assigned to specific parties and attainment schedules are promulgated.

In coastal watersheds of northern California, 38 water body segments have been identified as impaired and have been scheduled for development of TMDLs. The schedule for development of TMDLs in northern California extends to the year 2011 (Russian River and Lake Pillsbury). However, the schedule in this area is driven in part by a consent decree (*Pacific Coast Federation of Fishermen's Associations, et al.* v. *Marcus*, No. 95–4474 MHP, March 11, 1997). Under this consent decree, EPA agreed to oversee the development of TMDLs on eighteen rivers on the north coast of California. Twelve of these river basins are located within the northern California steelhead ESU. The consent decree establishes a schedule for developing TMDL criteria for listed rivers. Under this schedule, seven river basins in the northern California ESU would have TMDLs developed within the next two years, with the remaining rivers having TMDLs developed by 2002. This legally-binding schedule is expected to result in significant progress on improving the beneficial uses of these watersheds, where the beneficial use has been identified as habitat for salmonids.

On May 28, 1998, the North Coast Regional Water Quality Control Board approved a TMDL for the Garcia River. The TMDL contains the following elements: (1) findings that the Garcia River is impaired due to sediment and temperature impacts resulting from land use practices, primarily timber operations and related activities, (2) adoption of the Water Quality Attainment Strategy as part of the Water Quality Control Plan for the North Coast Region (Basin Plan) that would eliminate 90 percent of total controllable road-related sediment sources within 20 years and 50 percent of controllable upslope sediment sources within 40 years, (3) numeric targets including specified numerical values for percent fine sediments, frequency of pools in stream habitat profiles, and improving trends in large woody debris, (4) an implementation plan which specifies that either default prescriptions be observed or a site-specific plan be implemented that provides assurances that source reduction targets will be met, (5) assurances that sediment reduction or control goals are capable of being met and that the concept of site-specific planning and implementation by landowners provides a flexible framework, (6) a monitoring plan to verify that conservation practices are implemented and to measure effectiveness.

The TMDL process provides a flexible, adaptive management approach that relies on substantial public input and participation to set targets, identify protection measures and implement and monitor corrective practices. The completion of the Garcia River TMDL, and the initiation of TMDLs for the other listed rivers, represents a significant step forward in improving watershed health for steelhead and other salmonids on the north coast of California. In the long-term, the development and implementation of these TMDLs should be beneficial for steelhead; however, their development and implementation will be difficult and it will take many years to assess their efficacy in protecting steelhead habitat. Furthermore, it is essential that the EPA consults with NMFS on the formulation of TMDLs in waters that contain listed salmonids. Such consultations will help ensure TMDLs adequately address the needs of these species.

5. State Hatchery and Harvest Management

Hatchery Management. In an attempt to mitigate the loss of habitat and enhance fishing opportunities, extensive hatchery programs have been implemented throughout the range of steelhead on the west coast. While some of these programs have succeeded in providing fishing opportunities, the impacts of these programs on native, naturally-reproducing stocks are not well understood. Competition, genetic introgression and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally-reproducing steelhead (NMFS, 1996). Collection of native steelhead for hatchery broodstock purposes often harms small or dwindling natural populations. Artificial propagation can play an important role in steelhead recovery through carefully controlled supplementation programs.

In the past, non-native steelhead stocks have been introduced as broodstock in hatcheries and widely transplanted in many coastal rivers and streams in California (Bryant, 1994; Busby *et al.*, 1996; NMFS, 1997a). Because of problems associated with this practice, DFG has developed and implemented a Salmon and Steelhead Stock Management Policy. This policy recognizes that mixing of non-native stocks with native stocks is detrimental, and seeks to maintain the genetic integrity of all identifiable stocks of salmon and steelhead in California, as well as to minimize interactions between hatchery and natural populations.

NMFS's BRT identified the potentially adverse impacts of interactions between hatchery (Mad River hatchery) and wild steelhead as an important concern with regard to the northern California ESU (NMFS, 1997a). As part of its strategic management plan for this ESU, DFG has implemented several changes in its hatchery practices. In addition, DFG has implemented several additional measures pursuant to the 1998 NMFS/California MOA. These hatchery management measures include:(1) marking of all hatchery steelhead released from the Mad River hatchery and all cooperative rearing facilities in

the Northern California ESU; (2) continuation of long-standing hatchery management practices aimed at minimizing hatchery and wild steelhead interactions including prohibitions on stocking of resident trout in anadromous waters; (3) releasing hatchery steelhead only at times, sizes and places that minimize impacts on naturally produced fish; (4) only releasing hatchery fish that are determined to be healthy; (5) initiation of monitoring efforts intended to measure hatchery fish stray rates; and (6) a joint NMFS/DFG review of the Mad River hatchery including its stocking history, analysis of current broodstock, and its consistency with the strategic management plan for the northern California ESU.

Fisheries Management. In conjunction with the improved hatchery management practices, in-river sport fisheries in the northern California ESU now focus on harvest of marked, hatchery-produced steelhead, and sport fishing regulations have been modified to protect wild adult and juvenile steelhead.

Other Natural or Human-Made Factors Affecting Continued Existence of Steelhead

Natural climatic conditions have exacerbated the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced already limited spawning, rearing and migration habitat. Climatic conditions appear to have resulted in decreased ocean productivity which, during more productive periods, may help offset degraded freshwater habitat conditions (NMFS, 1996).

Efforts Being Made to Protect West Coast Steelhead

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species. Therefore, in making its listing determinations, NMFS first assesses the status of the species and identifies factors that have lead to the decline of the species. NMFS then assesses conservation measures to determine if they ameliorate risks to the species.

In judging the efficacy of existing conservation efforts, NMFS considers the following: (1) the substantive, protective, and conservation elements of such efforts; (2) the degree of certainty such efforts will be reliably implemented; and (3) the presence of monitoring provisions that determine effectiveness and that permit adaptive management. In some cases, conservation efforts may be relatively new and may not have had time to demonstrate their biological benefit. In such cases, provisions for adequate monitoring and funding of conservation efforts are essential to ensure intended conservation benefits are realized.

As part of its west coast steelhead status review, NMFS reviewed an array of protective efforts for steelhead and other salmonids, ranging in scope from regional strategies to local watershed initiatives. NMFS summarized some of the major efforts in a document entitled ''Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act'' (NMFS, 1996c). NMFS also reviewed conservation measures being implemented by the State of California for steelhead at the time of its final listing determination for the northern California, Klamath Mountains Province, and Central Valley steelhead ESUs (63 FR 13347, March 19, 1998). The following sections update the current status of the State of California's conservation efforts for steelhead with particular emphasis on the northern California steelhead ESU.

The state of California's conservation efforts that address steelhead in the northern California ESU include: (1) development of the State's Watershed Protection Program, which includes funding and implementation of an expanded watershed planning and habitat restoration program; (2) implementation of the DFG's strategic management plan for the northern California ESU and (3) implementation of the 1998 NMFS/California MOA which addresses management of coastal steelhead in northern California. The status of these conservation efforts is discussed in more detail below.

California Watershed Protection Program and Implementation of SB 271

In July 1997, California's Governor created the State's Watershed Restoration and Protection Council (WPRC) for the purpose of: (1) overseeing all state activities aimed at watershed protection and enhancement, including the conservation and restoration of anadromous salmonids in California; and (2) directing the development of a California Watershed Protection Program that would provide for the conservation of anadromous salmonids in the state of California. A working group of the WPRC issued a detailed report in December, 1998 entitled ''Protecting California's Anadromous Fisheries.'' The Executive Order that established this program expired in January, 1999; however, continued coordination of the program is occurring under the auspices of the California Biodiversity Council (CBC). NMFS is encouraged that the State initiated a comprehensive, watershed-based approach to salmon management and restoration; however, the California Watershed Protection Program is still under development and has not been implemented as originally envisioned.

To support the Governor's WPRC and its efforts to develop a Watershed Protection Program, DFG implemented a $3 million Watershed Initiative in 1997–98 for coastal watershed projects north of San Francisco, through its Fishery Restoration Grants Program. These projects focused on watershed and riparian habitat restoration, instream habitat restoration; watershed evaluation, assessment, and planning; and restoration project maintenance and monitoring. Beginning in 1998–1999, DFG funded additional staff positions to assist in watershed planning efforts and grant proposal development.

A key element of the State's Watershed Protection Program that is also specified in the 1998 NMFS/California MOA is DFG's implementation of an expanded habitat restoration program for coastal salmonids, including steelhead. In 1997, the California legislature enacted Senate Bill 271 which provided DFG with $43 million over six years for habitat restoration and watershed planning to benefit anadromous salmonids in coastal watersheds, including the geographic area which encompasses the northern California steelhead ESU. The program was initiated in 1997–98 and has expanded since that time. Based on the SB 271 legislation, funding is expected to continue through at least 2002. Substantial funding from this program has been committed to habitat restoration, enhancement, and watershed planning efforts within the northern California steelhead ESU since 1997–98. Throughout Humboldt and Mendocino counties, which constitute much of the geographic area comprising the northern California steelhead ESU, DFG has funded over 200 projects costing in excess of $7.5 million during the past three years (1997–98 through 1999–2000). NMFS participates as an ex-officio member of the Advisory Committee that reviews the distribution of SB 271 grant funding to ensure that available funds are spent on projects that will contribute to the conservation of listed salmonids as well as north coast steelhead. In addition to the

expanded habitat restoration program funded by SB 271, DFG has added additional staff positions to assist in administering the program, provide technical support in the development of watershed plans and habitat restoration projects and implement a new steelhead monitoring and adaptive management program throughout coastal northern California.

Northern California Steelhead ESU Strategic Plan

In February 1998, DFG completed its strategic management plan for steelhead stocks in the northern California ESU (DFG 1998). In March 1998, the State and DFG formally committed to implement this plan as part of the NMFS/California MOA. The plan describes existing and new management measures for recreational steelhead angling, steelhead hatchery programs, and steelhead monitoring, assessment and adaptive management efforts in this ESU. In addition, the plan describes DFG's ongoing efforts to protect and enhance steelhead habitat within this ESU. These management measures were intended to provide immediate protection for steelhead populations in this ESU, while longer-term measures were implemented to protect anadromous fish habitat on non-federal lands through the Watershed Protection Program and the SB 271 habitat restoration program. The main elements of the northern California steelhead strategic management plan are briefly discussed here.

1. Harvest Measures

The strategic management plan includes several harvest management actions which are intended to reduce impacts on adult and juvenile steelhead in the Northern California ESU. These include: (1) no retention of unmarked (i.e., naturally produced) adult and juvenile steelhead in all rivers and streams; (2) fishing closures in steelhead rearing tributaries to protect juveniles; (3) expanded closures in mainstem rivers through May to protect outmigrating juvenile steelhead; and (4) various gear and bait restrictions designed to reduce mortality associated with incidental hooking of steelhead.

In February and March 1998, the California Fish and Game Commission (Commission) adopted emergency changes to the State's inland fishing regulations which were intended to implement the harvest regulation changes contained in the northern California steelhead strategic management plan. In conjunction with the final listing determination for this ESU in March 1998 (63 FR 13347), NMFS reviewed these regulatory changes and concluded that they would substantially reduce impacts to adult and juvenile steelhead and also assist in the conservation of the ESU (NMFS, 1998). These emergency regulations were formally enacted by the Commission in June 1998 following public review and comment, and they currently remain in place. NMFS believes that these angling regulations continue to provide the reduction in impacts and conservation benefits that were expected at the time the decision was made not to list this ESU in March 1998.

2. Hatchery Measures

The strategic plan for the northern California ESU contains a wide range of existing and new hatchery management measures that are intended to reduce the impacts of hatchery steelhead programs on wild steelhead populations in this ESU. Measures incorporated into the plan include: (1) release strategies that require a minimum 6'' size and release at the hatchery rather than off-site; (2) marking of all hatchery-produced fish that are released and the implementation of spawner surveys to assess the extent to which hatchery fish stray into natural spawning areas; (3) a commitment to reduce hatchery releases or implement other changes in hatchery practices if significant straying of hatchery fish is found to occur; (4) a cap on hatchery production to current levels, regular health checks during each rearing cycle and the destruction of diseased fish that cannot be effectively treated; (5) a review of the existing operating procedures for all cooperative rearing facilities permitted by the State; and (6) adoption of a requirement that all cooperative facilities develop and submit five-year management plans to the State for approval. NMFS previously reviewed these existing and new hatchery management measures and concluded that they would substantially reduce potential impacts to wild steelhead (NMFS, 1998d). Because of NMFS concerns regarding the operations of the the Mad River Hatchery which is located in this ESU, DFG also committed in the 1998 NMFS/California MOA to: (1) undertake a comprehensive review of the hatchery program, including its stocking history and genetic analysis of current broodstock; and (2) develop a plan to eliminate any adverse impacts of hatchery operations on northern California steelhead if necessary.

The DFG implemented a statewide mass-marking program for its hatchery steelhead programs beginning in 1997 which includes the hatchery steelhead programs in the northern California steelhead ESU. DFG is also requiring all cooperative rearing programs that produce steelhead in this ESU to mark all released fish. This marking program has continued since its implementation in 1997 and DFG is committed to continuing this program into the future. The DFG and the NMFS have also initiated a comprehensive review of DFG's hatchery programs in this ESU (Mad River Hatchery and cooperative rearing programs), with the objective of ensuring that these programs are compatible with the conservation of naturally produced steelhead. This review is expected to be completed in 2000. Comprehensive monitoring of stray rates for hatchery produced fish has not been implemented in this ESU, but DFG expects to begin a north coast steelhead monitoring program in 2000.

3. Steelhead Monitoring and Adaptive Management

The strategic management plan for the northern California ESU identifies ongoing and expanded monitoring programs to assess steelhead abundance. A commitment to implement these programs is contained in the 1998 NMFS/California MOA. A key element of this monitoring program was a commitment to establish a joint scientific and technical team including representatives from DFG and NMFS to design appropriate detailed monitoring programs for steelhead in this ESU. NMFS considered these monitoring efforts critically important given the uncertain status of steelhead populations in these ESUs, and indicated that adequate State funding was critical to implementing the program (63 FR 13347, March 19, 1998). As part of the NMFS/California MOA, both DFG and NMFS committed to seek adequate funding for this program. The DFG has taken significant steps to implement this expanded steelhead monitoring program in the northern California steelhead ESU, but the full program has not been yet fully developed or implemented. The DFG has committed significant fiscal resources to hire and redirect existing staff resources to create a north coast steelhead monitoring team and program that will address the northern California steelhead ESU as well as areas further north in California, and has established a scientific and technical team to guide development of this effort. A set of comprehensive monitoring proposals have been developed which are under review by the scientific and technical team. NMFS expects the finalized monitoring program for this ESU to be implemented in early 2000.

NMFS/California Memorandum of Agreement

NMFS evaluated a wide range of conservation efforts that California had adopted or was in the process of developing in conjunction with NMFS' decision not to list the northern California steelhead ESU (63 FR 13347, March 19, 1998). NMFS concluded that DFG's harvest and hatchery programs for this ESU would increase adult escapement, increase juvenile survival, and reduce adverse impacts of hatchery populations on wild fish. In the near-term, NMFS expected these measures would contribute to improved survival and population stability for steelhead. In addition, DFG's monitoring and adaptive management programs were expected to provide State and Federal managers with the ability to assess the status of steelhead populations and their response to harvest and hatchery management changes. However, NMFS was also concerned that California's habitat protection efforts, (e.g., development of a Watershed Protection Program and implementation of the expanded habitat restoration program established by SB 271), were not adequate to secure properly functioning habitat conditions for this ESU over the long-term. To address these concerns, NMFS entered into a MOA with the State (NMFS/California MOA, 1998).

Under the terms of the NMFS/California MOA, the State committed to a broad range of measures including: (1) compliance with existing State regulations, with particular emphasis on the management measures contained in the strategic management plans for north coast steelhead; (2) implementation of harvest and hatchery management measures contained in the strategic management plan for northern California steelhead; (3) implementation of a monitoring evaluation and adaptive management program for steelhead, including those elements contained in the strategic management plan for northern California steelhead; (4) continued implementation of a California Watershed Protection Program, including the SB 271 watershed planning and habitat restoration program in coastal watersheds, and the joint review and revision of the State's forest practice rules (FPRs) in conjunction with a scientific review panel to ensure that the revised FPRs were adequate to conserve anadromous salmonids, including steelhead. As previously discussed, because of the preponderance of private timber lands and timber harvest activity in the northern California ESU, NMFS considered this to be a critically important provision in the MOA.

Many of the provisions in the NMFS/California MOA relating to the northern California steelhead ESU have been or are being implemented by the State; however, critically important provisions related to revision of the FPRs have not been implemented. The current status of the State's effort to implement the MOA, with particular regard to the Northern California steelhead ESU, is discussed here.

1. Compliance with existing State regulations

In accordance with section 4 of the NMFS/California MOA, the DFG made recommendations to the Fish and Game Commission to implement detailed angling regulation changes contained in the strategic management plan for northern California steelhead. The Commission adopted these recommendations on an emergency basis in February 1998 and permanent regulations became effective in August 1998. Within this ESU, these regulations specifically prohibit retention of naturally spawned adult steelhead, prohibit fishing for naturally produced juvenile steelhead in tributary streams, minimize the angling impacts on juvenile steelhead in mainstem rearing areas through gear/bait restrictions, prohibit retention of summer steelhead and prohibit fishing in their summer holding areas and provide for the retention of marked, hatchery-produced steelhead.

2. Harvest and Hatchery Management

In accordance with section 6 of the NMFS/California MOA, two provisions have been implemented. First, the DFG recommended and the Fish and Game Commission adopted permanent regulations that provide only for the retention of non-listed, hatchery-produced steelhead. Second, the DFG has implemented a state wide mass marking program for hatchery produced steelhead. This program was initiated with brood year 1997 steelhead released in winter 1998, and the marking program has continued annually since that time. This program has resulted in complete marking of all steelhead produced at the Mad River Hatchery, which is located in this ESU. In addition, DFG is requiring that all cooperative rearing programs that produce steelhead mark them prior to release.

Three additional provisions contained in section 6 of the NMFS/California MOA have not yet been implemented, but are either in progress or will be initiated shortly. To date, DFG has not implemented a process for establishing recovery and strategic goals for north coast steelhead, including this ESU, nor has it initiated a monitoring program to measure stray rates of hatchery produced steelhead. However, the DFG has established a North Coast Steelhead Monitoring Program to develop and implement a monitoring program, which will include the northern California steelhead ESU, and a joint scientific and technical team to provide guidance to the program. DFG has developed a preliminary monitoring program and is consulting the joint scientific and technical team to refine the program and explore options for establishing recovery and strategic goals within this ESU. NMFS anticipates that this program will commence in 2000. Although the monitoring program specified in the NMFS/California MOA has not been fully implemented, DFG has continued to carry out several monitoring and research programs on the north coast, primarily in the Klamath Mountains Province ESU, which have provided data useful for the management of steelhead. Finally, NMFS and DFG have recently undertaken a state-wide review of the State's hatchery programs, including the Mad River Hatchery which is located in this ESU, as well as the State's cooperative rearing program which has a small number of projects within this ESU. This review is expected to be completed by June 2000.

3. Monitoring Evaluation and Adaptive Management

In accordance with section 7 of the NMFS/California MOA, the DFG has implemented, at least in part, two key provisions. First, the DFG has established a joint scientific and technical team to assist it with the development of a comprehensive monitoring program for steelhead on the north coast, including the northern California ESU. The NMFS/California MOA called for this program to be developed by June 1998; however, as discussed in the preceding section, DFG has not yet completed development of the study plan or initiated a comprehensive monitoring program. Second, the DFG has secured the necessary funding to establish a north coast steelhead monitoring program, including the dedication of professional staff and the acquisition of necessary equipment and facilities. A preliminary monitoring program plan has been developed by the monitoring program staff, and this plan is currently under review by the joint scientific and technical team.

4. California's Watershed Protection Program

Section 9 of the NMFS/California MOA commits the State to continue

development of its Watershed Protection Program, with a specific element addressing salmonid conservation, and to coordinate with NMFS in establishing a scientific review panel that would advise the State in its development of this program. In addition, Section 9 commits the State to direct personnel and fiscal resources to implement an expanded habitat restoration program in coastal watersheds using SB 271 funds. Details of the State's Watershed Protection Program and DFG's efforts to implement expanded watershed planning and habitat restoration in coastal watersheds were described previously (see Efforts Being Made to Protect West Coast Steelhead).

Section 9 of the NMFS/California MOA contains several measures relating to the review and revision of the State's FPRs because of NMFS's concerns regarding the effects of State-regulated timber harvest freshwater habitat conditions for anadromous salmonids, including steelhead in the Northern California ESU. Specifically, the NMFS/California MOA calls for: (1) a joint review of the FPRs by NMFS and the State, including their implementation and enforcement, (2) the State to make appropriate changes in implementation and enforcement, if necessary, (3) the State, in consultation with NMFS, to make recommendations to the BOF for changes in the FPRs necessary to conserve anadromous salmonids, and (4) the BOF to complete action on the recommended changes in the FPRs by January 2000. Full implementation of these NMFS/California MOA provisions, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's decision to not list the northern California steelhead ESU. For details of the State's current FPRs, including the recently adopted interim FPR changes, see Inadequacy of Existing Regulatory Mechanisms.

Listing Determination

Section 3 of the ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

In December 1997, the NMFS' steelhead BRT concluded that the Northern California steelhead ESU was likely to become endangered in the foreseeable future based on a review of the best available biological information (NMFS, 1997). Based on a review of updated abundance and trend information that was available for this ESU, NMFS's SWFSC (NMFS, 2000) concluded that the current biological status of the ESU has changed little since it was last evaluated in 1997. Updated abundance and trend data show small increases for winter and summer steelhead in the Eel River, but current abundance is well below estimates in the 1980s and even further reduced from levels in the 1960s. Redwood Creek summer steelhead abundance remains very low. There are no new data suggesting substantial increases or decreases in populations since the last updated status review was completed. The Eel River winter and summer steelhead populations, which represent the best available data set for this ESU, are still severely reduced from pre–1960s levels.

As discussed elsewhere in this final rule, California has implemented several of the conservation measures that NMFS relied upon in making its decision not to list the northern California ESU. Specifically, the State has enacted substantial changes to the State's in-river angling regulations in 1998 to protect coastal steelhead populations including steelhead in this ESU. These regulations, with slight modification, remain in effect, and NMFS believes they continue to provide the substantial protection and conservation benefits that were expected to occur at the time of the decision not to list this ESU. The State has also implemented, or begun to implement, several other conservation measures for this ESU, including extensive watershed planning and/or habitat restoration through the SB 271 program, marking of hatchery produced steelhead and other improvements in hatchery practices, and steelhead monitoring. Although implementation of some of these measures has been delayed, as is the case for the steelhead monitoring program, NMFS continues to believe that these efforts will collectively benefit steelhead in this ESU and eventually contribute to an improved understanding of its status.

Although these conservation efforts are expected to benefit steelhead in this ESU, NMFS continues to believe that improved habitat protection and restoration of properly functioning freshwater habitat conditions for spawning, rearing, and migration are essential to the long-term survival and recovery of this ESU. Because Federal land ownership is both fragmented and limited in this ESU (approximately 19 percent of ESU), the key to achieving habitat protection and properly functioning habitat conditions in this ESU is the improvement of land management activities on non-Federal lands (approximately 81 percent of ESU). To ensure improved protection of habitat on non-Federal lands in this ESU, the NMFS/California MOA contained several provisions for the review and modification of the State's FPRs. Full implementation of these provisions, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's previous decision not to list this ESU. Because the State has not implemented changes in the FPRs necessary to protect steelhead in this ESU, NMFS believes that critically important conservation measures are not being implemented to reduce the threats to this ESU from timber harvest activities on non-Federal lands. Consequently, NMFS concludes that existing State and Federal conservation measures collectively fail to provide for the attainment of properly functioning habitat conditions necessary to provide for the long-term protection and conservation of this ESU.

Based on a review of the best available information, therefore, NMFS concludes that the Northern California steelhead ESU warrants listing as a threatened species at this time. In arriving at this determination, NMFS carefully considered the December 1997 scientific conclusions of the BRT regarding this ESU, the results of an updated status review for the ESU (NMFS, 2000), the status of State and Federal conservation efforts directed at protecting steelhead in this ESU, including implementation of provisions contained in the NMFS/California MOA.

NMFS previously examined the relationship between hatchery and natural populations of steelhead in this ESU, and also assessed whether any hatchery populations are essential for their recovery. At this time, NMFS does not believe any specific hatchery populations in this ESU are essential for recovery and therefore none are listed. Accordingly, only naturally reproduced populations of steelhead and their progeny in this ESU are listed as a result of this determination.

However, the determination that a hatchery stock is not essential for recovery at this time does not preclude it from playing a role in recovery in the future if such a conservation measure is warranted. Any hatchery population that is part of the ESU is potentially

available for use in recovery if circumstances warrant it. In this context, an essential hatchery population is one that is vital to incorporate into recovery efforts. If in the future any hatchery population in this ESU is determined to be essential for recovery and is integrated into recovery efforts, NMFS will consider taking the administrative action of listing that hatchery population.

NMFS' ''Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act'' (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, ''progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA.''

For unlisted hatchery populations that are part of the Northern California ESU, NMFS believes it may be desirable to incorporate naturally spawned, listed fish into the broodstock to ensure that its genetic and life history characteristics do not diverge significantly from natural populations. Therefore, NMFS may allow the collection of broodstock for this use if it is consistent with an acceptable conservation plan (e.g., Hatchery and Genetic Management Plan) for the ESU. If listed fish are used as broodstock consistent with an acceptable conservation plan, NMFS may determine that it is not necessary to consider the progeny of intentional hatchery x listed crosses as listed fish (except in those cases where the hatchery population is listed as well). NMFS believes this is consistent with NMFS' interim policy and with the policy and purposes of the ESA.

At this time, NMFS is only listing the anadromous life forms of *O. mykiss*.

Prohibitions and Protective Measures

Section 4(d) of the ESA requires NMFS to issue protective regulations it finds necessary and advisable to provide for the conservation of threatened species. Section 9 of the ESA prohibits violations of protective regulations for threatened species promulgated under ESA section 4(d). The ESA 4(d) protective regulations may prohibit, with respect to the threatened species, some or all of the acts which section 9 of the ESA prohibits with respect to endangered species. These ESA section 9 prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. NMFS intends to develop and promulgate an ESA 4(d) protective regulation for the northern California steelhead ESU in a separate rulemaking. The process for completing the ESA 4(d) rule will provide the opportunity for public comment on the proposed protective regulations.

In the case of threatened species, NMFS has flexibility under ESA section 4(d) to tailor the protective regulations to provide for the conservation of the species. Even though existing conservation efforts and plans are not sufficient to preclude the need for listing at this time, they are nevertheless valuable for improving watershed health and restoring fishery resources. In those cases where well-developed, reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process, starting with the protective regulations. For example, the interim ESA 4(d) rule for the Southern Oregon/Northern California coho (62 FR 24588, May 7, 1997) does not prohibit habitat restoration activities conducted in accordance with approved plans or fisheries under an approved state management plan. NMFS recently proposed ESA 4(d) regulations for 14 ESUs of steelhead and salmon (64 FR 73479). Any future ESA 4(d) protective regulation for the Northern California steelhead ESU is likely to be comparable to the 4(d) regulations proposed for steelhead, and therefore, contain limitations on the section 9 take prohibitions for activities such as recreational angling, artificial propagation, habitat restoration, scientific research and other activities when they are conducted in accordance with approved conservation plans.

Sections 7(a)(2) and 7(a)(4) of the ESA require Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or adversely modify critical habitat or proposed critical habitat. Examples of Federal actions likely to affect steelhead in the Northern California ESU include authorized land management activities of the USFS and BLM, operation of hydroelectric and storage projects permitted by FERC, and activities permitted by the Corps of Engineers. Such activities may include timber sales and harvest, permitting livestock grazing, hydroelectric power generation, and flood control. Other Federal actions, including the Corps section 404 permitting activities under the CWA and section 10 permitting under the Rivers and Harbors Act, and FERC licenses for non-Federal development and operation of hydropower may also require consultation.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for listed chinook salmon and steelhead for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches and collection of adult fish for artificial propagation programs.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities which may incidentally take listed species so long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or academic research not receiving Federal authorization or funding, logging, road building, grazing, and diverting water into private lands.

Take Guidance

NMFS and the FWS published in the **Federal Register** on July 1, 1994 (59 FR 34272), a policy that NMFS shall identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. NMFS believes that the following actions are not likely to be prohibited in an ESA 4(d) rule and therefore will not result in a violation of section 9:

1. Possession of steelhead from any steelhead ESU listed as threatened which are acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

2. Federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

Activities that NMFS believes could potentially harm steelhead in the northern California ESU and, therefore, may be prohibited in a 4(d) rule applying section 9 take prohibitions, include, but are not limited to:

1. Land-use activities that adversely affect steelhead habitat in the proposed ESU (e.g., logging, grazing, farming, urban development, road construction in riparian areas and areas susceptible to mass wasting and surface erosion).

2. Destruction/alteration of the steelhead habitat in the proposed ESU, such as removal of large woody debris and ''sinker logs'' or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

3. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting steelhead in the proposed ESU.

4. Violation of discharge permits.

5. Pesticide applications.

6. Interstate and foreign commerce of steelhead from the listed ESU and import/export of steelhead from any ESU without a threatened or endangered species permit.

7. Collecting or handling of steelhead from the listed ESUs. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

8. Introduction of non-native species likely to prey on steelhead in the listed ESU or displace them from their habitat.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of steelhead in the northern California ESU under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of the section 9 take prohibitions, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. Pursuant to 4(b)(6)(C)(ii), if critical habitat is not then determinable, however, NMFS may extend the designation for up to one year after the date of the final rule listing the species. While NMFS has completed its initial analysis of the biological status of steelhead in the Northern California ESU, it has not performed the full analysis necessary for designating critical habitat at this time. Since critical habitat is not now determinable for the Northern California ESU, NMFS intends to develop a critical habitat proposal for designation within the next year.

References

A complete list of all cited references is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). See NOAA Administrative Order 216–6.

Executive Order 12866 and Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866.

Executive Order 13132—Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with State and local government agencies in the course of assessing the status of the Northern California steelhead ESU, and considered, among other things, state and local conservation measures. State and local governments have expressed support both for the conservation of the Northern California steelhead ESU and for activities that affect this ESU. The history and content of this dialogue, as well as the basis for this action, is described in the proposed rule, and in other Federal Register Documents preceding this action. (See 61 FR 41541, August 9, 1996; 62 FR 43974, August 18, 1997, and 63 FR 13347, March 19, 1998). NMFS staff have had numerous discussions with various governmental agency representatives regarding the status of this ESU, and have sought working relationships with agencies and others in order to promote salmonid restoration efforts. In addition, NMFS' staff have given presentations to interagency forums and other interested groups considering conservation measures. NMFS has engaged in informal and formal contacts with affected state, local or regional entities, giving careful consideration to all written or oral comments received. As one part of that process, NMFS held public hearings on the proposed action. NMFS also consulted with appropriate elected officials in the establishment of a final rule.

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d) or proposing to designate critical habitat. Prior to finalizing ESA 4(d) regulations for this ESU, or proposing to designate critical habitat, NMFS will comply with all relevant NEPA and RFA requirements.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: May 31, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, Section 223.102 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.102, paragraph (a)(22) is added to read as follows:

§ 223.102 Enumeration of threatened species.

* * * * *

(a) * * *

(22) *Northern California steelhead (Oncorhynchus mykiss).* Includes all naturally spawned populations of steelhead (and their progeny) in coastal river basins ranging from Redwood Creek in Humboldt County, California to the Gualala River, inclusive, in Mendocino County, California.

[FR Doc. 00–14196 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 110
Wednesday, June 7, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–308–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Powered by Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes powered by Pratt & Whitney engines. This proposal would require modification of the nacelle strut and wing structure. This proposal is prompted by reports indicating that the actual operational loads applied to the nacelle are higher than the analytical loads that were used during the initial design. Such an increase in loading can lead to fatigue cracking in primary strut structure prior to an airplane reaching its design service objective. The actions specified by the proposed AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut.

DATES: Comments must be received by July 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–308–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–308–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–308–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the airplane manufacturer has accomplished a structural reassessment of the damage tolerance capabilities of the Boeing Model 757 series airplane powered by Pratt & Whitney engines. This reassessment indicates that the actual operational loads applied to the nacelle strut and wing structure are higher than the analytical loads that were used during the initial design. Subsequent analysis and service history, which includes numerous reports of fatigue cracking on certain strut and wing structure, indicate that fatigue cracking can occur on the primary strut structure before an airplane reaches its design service objective of 20 years or 50,000 flight cycles. Analysis also indicates that such cracking, if it were to occur, would grow at a much greater rate than originally expected. Fatigue cracking in primary strut structure would result in reduced structural integrity of the strut.

Explanation of Relevant Service Information

Boeing recently has developed a modification of the strut-to-wing attachment structure installed on Model 757 series airplanes powered by Pratt & Whitney engines. This modification significantly improves the load-carrying capability and durability of the strut-to-wing attachments. Such improvement also will substantially reduce the possibility of fatigue cracking and corrosion developing in the attachment assembly.

The FAA has reviewed and approved Boeing Service Bulletin 757–54–0034, dated May 14, 1998, which describes procedures for modification of the nacelle strut and wing structure. The modification consists of replacing many of the significant load-bearing components of the strut (*e.g.,* the side link fittings assemblies, the midspar fittings, the side load fittings, certain fuse bolt assemblies, *etc.*) with improved components.

The service bulletin contains a formula for calculating an optional compliance threshold for the specified modification. This formula is intended to be used as an alternative to the 20-year calendar threshold specified in the service bulletin.

In addition, Table I of the service bulletin also identifies two related service bulletin modifications that must be accomplished before or at the same time as the modification in Boeing Service Bulletin 757–54–0034:

• *Boeing Service Bulletin 757–54–0027:* The FAA has reviewed and approved Boeing Service Bulletin 757–54–0027, Revision 1, dated October 27, 1994, which describes procedures for visual and eddy current inspections of the fuse pins of the diagonal brace and upper link, and installation of new 15–5PH fuse pins and new shoulder bolts for the diagonal brace and upper link.

• *Boeing Service Bulletin 757–54–0036:* The FAA has reviewed and approved Boeing Service Bulletin 757–54–0036, dated May 14, 1998, which describes procedures for replacement of the upper link with a new, improved part that will increase the strength and durability of the upper link installation. That service bulletin also describes procedures for modification of a wire support bracket attached to the upper link.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although Boeing Service Bulletin 757–54–0034 specifies that the manufacturer may be contacted for disposition of certain damage conditions that may detected during accomplishment of the modification, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 317 airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 800 work hours per airplane to accomplish the proposed modification of the nacelle strut and wing structure described in Boeing Service Bulletin 757–54–0034, dated May 14, 1998, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $13,344,000, or $48,000 per airplane.

It would take approximately 26 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757–54–0027, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $433,680, or $1,560 per airplane.

It would take approximately 90 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757–54–0036, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $1,501,200, or $5,400 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 99–NM–308–AD.

Applicability: Model 757 series airplanes powered by Pratt & Whitney engines, line numbers 1 through 735 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Modifications

(a) Modify the nacelle strut and wing structure on both the left and right sides of the airplane, in accordance with Boeing Service Bulletin 757–54–0034, dated May 14, 1998, at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 37,500 total flight cycles, or within 20 years since the date of manufacture, whichever occurs first. Use of the optional threshold formula described in paragraph I.D. of the service bulletin is an acceptable alternative to the 20-year threshold.

(2) Within 3,000 flight cycles after the effective date of this AD.

(b) Prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD; as specified in paragraph I.D., Table I, ''Strut Improvement Bulletins,'' on page 5 of Boeing Service Bulletin 757–54–0034, dated May 14, 1998; accomplish the actions specified in Boeing Service Bulletin 757–54–0027, Revision 1,

dated October 27, 1994, and Boeing Service Bulletin 757–54–0036, dated May 14, 1998, as applicable, in accordance with those service bulletins.

(c) If any damage to airplane structure is found during the accomplishment of the modification required by paragraph (a) of this AD; and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on June 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14315 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 724, 773, 774, 778, 842, 843, and 846

RIN 1029–AB94

Application and Permit Information Requirements; Permit Eligibility; Definition of Ownership and Control; the Applicant/Violator System; Alternative Enforcement Actions

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

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: On December 21, 1998 (63 FR 70580), we, the Office of Surface Mining (OSM), proposed a rule to amend our permanent program regulations for surface coal mining operations under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, *et seq.*, as amended (SMCRA or the Act). We are reopening the comment period for the proposed rule in light of a judicial decision in a case decided after the close of the comment period. The comment period was originally scheduled to close on February 19, 1999, but was subsequently extended to March 25, 1999 (64 FR 8763; Feb. 23, 1999), then to April 15, 1999 (64 FR 15322; March 31, 1999), and ultimately to May 10, 1999 (64 FR 23811; May 4, 1999). Shortly thereafter, on May 28, 1999, the U.S. Court of Appeals for the District of Columbia Circuit handed down a decision in *National Mining Ass'n* v. *U.S. Dept. of the Interior,* 177 F.3d 1 (D.C. Cir. 1999) (*NMA* v. *DOI II*). Because we incorporated certain provisions and concepts into our December 21, 1998 proposed rule, which were later invalidated by the court, we feel it advisable to obtain input from the public on the effects of the appeals court's decision on our proposed rule. By this notice, we are reopening and extending the comment period for an additional 30 days to seek comments on the effects of the court decision on our proposed rule so that we can ensure that our final rule is consistent with the *NMA* v. *DOI II* decision.

DATES: We will accept written comments until 5 p.m., Eastern time on July 7, 2000. We will consider only those comments received within the allowed time period.

ADDRESSES: You may mail or hand-deliver comments to the Office of Surface Mining, Administrative Record Room 101, 1951 Constitution Avenue, NW., Washington, DC, 20240. You may also submit comments to OSM via the Internet at: osmrules@osmre.gov. Comments sent via the Internet should be in an ASCII, Word, or WordPerfect file, and you should avoid using special characters and any form of encryption. Please also include ''Attn: RIN 1029–AB94'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 208–2847.

FOR FURTHER INFORMATION CONTACT: Stephen J. McEntegart, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, DC, 20240. Telephone: (202) 208–2968; e-mail: smceteg@osmre.gov.

SUPPLEMENTARY INFORMATION

I. Public Comment Procedures

Written comments submitted by mail, electronically, or in person, should be specific, confined to issues pertinent to this reopening, and explain the bases for the comments. Please submit three copies of your comments if possible. We must stress that we will consider only comments which are germane to the effects of the *NMA* v. *DOI II* decision on our December 21, 1998 proposed rule: conversely, we will not consider comments which do not pertain to the effects of the court decision and which could have been submitted during the previous comment periods. All of the comments we received thus far are part of the rulemaking record, and we will consider both those comments and comments received under the new comment period associated with this notice before issuing a final rule. Therefore, commenters should not resubmit earlier comments.

We are specifying a 30 day deadline for comments, which we believe is appropriate because of the limited nature of this reopening; the fact that the pertinent appeals court's rulings are, for the most part, subject to straightforward interpretation; the fact that we previously extended and reopened the comment period serial times for the initial proposed rule; and our desire to expedite promulgation of a final rule. In view of the above considerations, we will not extend the comment period beyond 30 days.

II. Summary of *NMa* v. *DOI II* as it Affects our December 21, 1998 Proposed Rule

In June 1997, NMA filed suit in the U.S. District Court for the District of Columbia, challenging the validity of our April 21, 1997, interim final rule (IFR) (62 FR 19450) on broad grounds. On June 15, 1998, the district court issued a decision upholding the IFR in its entirety. *National Mining Ass'n* v. *Babbitt,* No. 97–1418 (AER) (D.D.C. June 15, 1998).

On May 28, 1999, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in NMA's appeal of the district court's ruling. *National Mining Ass'n.* v. *U.S. Dep't of the interior,* 177 F.3d 1 (D.C. Cir. 1999) (*NMA* v. *DOI II*). The court upheld several provisions of the IFR, but invalidated others. Three of the court's holding invalidating provisions of the IFR are pertinent to this reopening because we incorporated the invalidated provisions and/or underlying concepts into the proposed rule. Since our final rule must be consistent with *NMA* v. *DOI II,* we invite your comments on

how these three holdings affect our proposed rule. These three holdings are described below.

First, the court held that ''[f]or violations of an operation that the applicant 'has controlled' but no longer does, * * * the Congress authorized permit-blocking only if there is 'a demonstrated pattern of willful violations' '' under section 510(c) of SMCRA. *Id.* at 5. In other words, if an applicant severs its ownership or control relationship to an operation with a current violation, OSM, in general, may not consider that violation in making a permit eligibility decision under section 510(c) of the Act. Stated differently, in addition to the violation being current and ongoing, the applicant must also own or control the operation with a violation at the time of application; if the ownership or control relationship has been terminated, OSM may not deny a permit (absent a pattern of willful violations), even if the violation remains current and ongoing. *NMA* v. *DOI II*, 177 F.3d at 5. OSM may consider such past ownership or control of operations with violations only in determining whether there has been a ''demonstrated pattern of willful violations'' warranting permanent permit ineligibility under section510(c).

This holding affects 773.15(b)(3) and 773.16(a) of our proposed rule; therefore, we invite your comments on the effect of the court's ruling on these provisions.

Second, the court found that the IFR's provision requiring permit denials based on *indirect* ownership or control of operations with violations is impermissibly retroactive because our 1988 ownership and control rule imposed a ' ''new disability,' permit ineligibility, based on 'transactions or considerations already past. . . .' '' *Id.* at 8. As such, the court held that the IFR is retroactive ''insofar as it block [*sic*] permits based on transactions (violations and control) antedating November 2, 1988, the [1988] Ownership and Control Rule's effective date.'' *Id.*

However, the court explained that the IFR is not retroactive to the extent it allows permit denials when an applicant acquires control of an operation with an ongoing, pre-rule violation on or after the effective date of the 1988 ownership and control rule. *Id.* at n.12. This is so because one of the relevant transactions—assumption of control—will have occurred on or after November 2, 1988; as such, as of November 2, 1988, the applicant would be on notice that this type of transaction, which post-dates the effective date of the 1988 rule, could affect his or her eligibility to receive a permit.

This holding affects sections 773.15(b)(3) and 773.16(a) of our proposed rule; therefore, we invite your comments on the effect of the court's ruling on these provisions.

Finally, with regard to the IFR's suspension and rescission provisions relative to improvidently issued permits, the court agreed with OSM that section 201(c) of SMCRA, 30 U.S.C. 1211(c), expressly authorizes OSM to suspend or rescind improvidently issued permits. In addition to that express authority, the court also found that OSM retained ''implied'' authority to suspend or rescind improvidently issued permits ''because of its express authority to deny permits in the first instance.'' *Id.* at 9. However, the court decided that OSM may only order cessation of State-permitted operations pursuant to the procedures established under section 521 of SMCRA, 30 U.S.C. 1271. Specifically, OSM may order immediate cessation of State-permitted operations if those operations pose an ''imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm . . .'' SMCRA § 521(a)(2), 30 U.S.C. 1271(a)(2). Absent these circumstances, and after OSM complies with the ten-day notice procedure contained in 30 CFR 843.21(c), OSM may order cessation of a State-permitted operation only if it: (1) Provides a notice of violation to the permittee or his agent; (2) establishes an abatement period; (3) provides opportunity for a public hearing and (4) makes a written finding that abatement of the violation has not occurred within the abatement period. *Id.* at 9–10; SMCRA § 521(a)(3), 30 U.S.C. 1271(a)(3). This holding affects section 843.21(d) of our proposed rule; therefore, we invite your comments on the effect of the court's ruling on these provisions.

The court's holdings in the rest of the *NMA* v. *DOI II* litigation do not affect our proposed rule because either; (1) OSM prevailed on the particular issued; or (2) the issue has become moot in that our proposal does not contain a similar provision. The court decision is available from two commercial legal research services (Lexis and Westlaw), as well as from the United States Court of Appeals for the District of Columbia Circuit's website (Internet address: http://www.cadc.uscourt.gov). For your convenience, we are posting a copy of the court's decision on our website at: http//www.osmre.gov. We will also be happy to mail or fax you a hard copy of the decision at your request; please address requests to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 1, 2000.

Kathrine L. Henry,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 00–14355 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO–032–FOR]

Colorado Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Colorado proposes revisions to rules concerning definitions; permit application requirements; comment period for revisions; requirements for permit approval or denial; and performance standards for sedimentation ponds, discharge structures, impoundments, stream buffer zones, coal exploration, and coal processing plants and support facilities not located at or near the mine site or not within the permit area for the mine. Colorado intends to revise its program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t., July 7, 2000. If requested, we will hold a public hearing on the amendment on July 3, 2000. We will accept requests to speak until 4 p.m., m.d.t., on June 22, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to James F. Fulton at the address listed below.

You may review copies of the Colorado program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive

one free copy of the amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202.

Michael B. Long, Director, Division of Minerals and Geology, Department of Natural Resources, 1313 Sherman St., Room 215, Denver, CO 80203, Telephone: (303) 866–8106.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 844–1400, extension 1424. Internet: JFULTON@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program.
II. Description of the Proposed Amendment.
III. Public Comment Procedures.
IV. Procedural Determinations.

I. Background on the Colorado Program.

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. You can find background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado's program and program amendments at 30 CFR 906.11, 906.15, 906.16, and 906.30.

II. Description of the Proposed Amendment

By letter dated May 12, 2000, Colorado sent us a proposed amendment to its program (administrative record No. CO–691) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado sent the amendment in response to May 7, 1986, and June 19, 1997, letters (administrative record Nos. CO–282 and CO–686) that we sent to Colorado in accordance with 30 CFR 732.17(c); required program amendment codified at 30 CFR 906.16(d) and (e); and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Colorado proposes to:

(1) Add, at Rule 1.04(31a), a definition of ''cumulative impact area'' that means the area which includes, at a minimum, the entire projected lives through bond release of: the proposed operation; all existing operation; any operation for which a permit application has been submitted; all other operations required to meet diligent development requirements for leased federal coal, for which there is actual mine development information available;

(2) Revise, at Rule 1.04(71), the definition of land use, to clarify that all of the land uses described may include land used for support facilities which are adjacent to, or are in integral part of the land use;

(3) Delete, at Rule 1.04(115a), the definition of ''sediment treatment facilities and replace it with, at Rule 1.04(81a), a definition of 'other treatment facilities' that means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as, but not limited to, clarifiers or precipitators, that have a point source discharge and are utilized: (i) to prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or (ii) to comply with all applicable State and Federal water-qualify laws and regulations;''

(4) Add, at Rule 1.04(86a), a definition of ''permit impoundment'' that means a impoundment which is approved, and if required, by other State and Federal agencies for retention as part of the post-mining land use;

(5) Add, at Rule 1.04(93a), a definition of ''point of compliance'' that means any geographic location at which compliance with applicable ground water quality standards established by the Water Quality Control Commission must be attained and where this compliance will be demonstrated by compliance monitoring of the groundwater or by other valid means;

(6) Revise, at Rule 1.04(115), the definition of ''sedimentation pond'' to clarify that it is an impoundment used as a primary sediment control structure to remove solids from water to meet water-quality standards or effluent limitations before the water leaves the permit area;

(7) Add, at Rule 1.04(137a), a definition of ''temporary impoundment'' that means an impoundment used during surface coal mining and reclamation operations, but not approved to remain as part of the approved post-mining land use;

(8) Revise Rule 2.05.2(1) through (6), concerning water quality standards and effluent limitations, to add references to other treatment facilities;

(9) Revise Rule 2.05.3(4)(a), concerning permit application requirements, to require information concerning other treatment facilities;

(10) Revise Rule 2.05.3(4)(a)(iii), concerning permit application requirements, to (1) refer to an impoundment with a capacity of more than 100 acre-feet rather than a reservoir with a capacity of more than 1000 acre-feet, and (2) incorporate by reference the applicable requirements of the State Engineer codified at C.R.S. 37–87–105;

(11) Revise Rule 2.05.3(4)(a)(iv), concerning permit application requirements, to incorporate by reference (for sedimentation ponds or impoundments that meet or exceed the criteria of the Mine Safety and Health Administration (MSHA)), the MSHA requirements codified at 30 CFR 77.216(a), 77–216–1 and 77.216–2;

(12) Add, at Rules 2.05.3(4)(a)(v), (vi) and (vii), concerning permit application requirements, to require (1) submission of any plans that must be submitted to and approved by with the State Engineer or MSHA, (2) that all impoundments meeting the Class B or Class C criteria for dams in the Soil Conservation Service Technical Release No. 60 (TR60) comply with the requirements for impoundments that meet or exceed the size or other criteria of 30 CFR 77.216(a) (and to incorporate by reference TR60), and (3) require a stability analysis for each impoundment that either meets the Class B or Class C criteria for dams in TR60 or meets the size or other criteria of 30 CFR 77.216(a);

(13) Make editorial revisions at Rule 2.05.3(4)(b), concerning design requirements for sedimentation ponds;

(14) Revise Rule 2.05.3(8)(a)(iii), concerning permit application requirements for plans for coal mine waste and non-coal processing waste, to refer to impoundments with a capacity of 100 acre-feet rather than reservoirs with a capacity of more than 1000 acre-feet;

(15) Add Rules 2.05.3(8)(a)(v) and (vi), concerning plans for coal mine waste and non-coal processing waste, to require (1) that all impoundments meeting the Class B or Class C criteria for dams in the Soil Conservation Service TR60 comply with the requirements for impoundments that meet or exceed the size or other criteria of 30 CFR 77.216(a), and (2) require a stability analysis for each impoundment that either meets the Class B or Class C criteria for dams in TR60 or meets the size or other criteria of 30 CFR 77.216(a);

(16) Revise Rule 2.05.6(3)(b)(iv) and (iv)(A), concerning the plan for surface and ground water monitoring, to require (1) identification of points of compliance and (2) monitoring of manganese;

(17) Make editorial revisions at Rule 2.06.8(5)(b)(ii)(B), concerning underground mining activities;

(18) Revise Rule 2.07.3(3)(b) to refer to the National Resource Conservation

Service rather than the Soil Conservation Service;

(19) Revise Rule 2.07.3(3)(c) to clarify that written comments regarding technical revisions may be submitted within 10 days of the initial newspaper publication;

(20) Revise Rule 2.07.6(2)(c), concerning the assessment (for permit approval or denial) of probable cumulative impacts of all anticipated mining on the hydrologic balance, to add references to cumulative impact area and material damages;

(21) Revise Rule 4.05.6, concerning sedimentation ponds, to (1) apply the requirements to other treatment facilities and (2) simplify by reorganizing the section and removing certain requirements that are applicable to impoundments in general and are not specific to sedimentation ponds or other treatment facilities (these requirements are set forth at Rule 4.05.9 which is applicable to impoundments in general);

(22) Revise Rule 5.05.7, concerning discharge structures, to add a reference to other treatment facilities;

(23) Revise Rule 4.05.9, concerning impoundments, to (1) clarify and simplify by reorganizing and removing redundant requirements and (2) add, at Rules 4.05.9(2)(d), (e)(i), and (ii), (6), (8)(a), (10), and (21) requirements, concerning spillways, embankments, freeboard, and inspections, for impoundments meeting the Class B or Class C criteria for dams in the Soil Conservation Service TR60;

(24) Revise Rule 4.05.9, concerning impoundments, to add a new Rule 4.05.9(18) that (1) waives the requirement for quarterly inspections by a registered engineer, but requires annual inspections by a qualified person, for impoundments which are (a) not the primary sediment control for area, (b) located in reclaimed terrain to enhance the postmining land use, and (c) either completely incised or do not exceed 2 acre-feet in capacity and do not have embankments larger than five feet in height; and (2) requires that (a) the above waiver be approved and (b) such a waiver cannot be approved unless a written safety demonstration is submitted by a professional engineer which shows that the impoundments will not present any threat to human health and safety, or significant threat to the environment (all other impoundments-related rules are applicable and Colorado is required to field verify the safety demonstration and may rescind the waiver, for good cause if conditions change over time);

(25) Revise Rule 4.05.13(1), concerning ground water monitoring, to add requirements concerning monitoring points of compliance;

(26) Revise Rule 4.05.18, concerning stream buffer zones, to (1) require that no land within 100 feet, or greater distance if required, of a perennial stream, an intermittent stream, or an ephemeral stream with a drainage area greater than one square mile, by surface and underground coal mining operations, unless authorized, and (2) require, upon a waiver of buffer zone, Colorado to find that (a) surface coal mining operations will not cause or contribute to the violation of applicable water quality standards, (b) during and after mining, the water quantity and quality, and other environmental resources of the stream shall not be adversely affected, and, (c) if there will be a temporary or permanent stream channel diversion, the diversion will comply with Rules 4.05.3 and 4.05.4;

(27) Revise Rule 4.21.4(10), concerning performance standards for coal exploration, to add the requirements that coal exploration (1) include sediment control measures such as those listed in 4.05.5 or sedimentation ponds which comply with 4.05.6 and 4.05.9, and (2) if the operation has the potential to negatively impact the quality of groundwater for which quality standards have been established by the Water Quality Control Commission, be conducted so as to ensure compliance with applicable ground water standards at points of compliance which shall be established according to the provisions of 4.05.13(1); and

(28) Revise Rule 4.28.3, concerning coal processing plants and support facilities not located at or near the mine site or not within the permit area for the mine, by adding paragraph (16) that requires establishment of points of compliance, if the operation has the potential to negatively impact the quality of groundwater for which quality standards have been established by the Water Quality Control Commission.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), OSM requests your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Colorado program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Denver Field Division.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. CO–032–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844-1400, extension 1424.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., on June 22, 2000. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the

audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 2000.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 00–14356 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS NO NM–039–FOR]

New Mexico Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions pertaining to a previously proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions to New Mexico's proposed rules pertain to the definitions of ''material damage'' and''occupied residential dwelling and associated structures'' and subsidence control during underground mining. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.d.t. June 22, 2000.

ADDRESSES: You should mail or hand deliver written comments to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated November 13, 1998, New Mexico submitted a proposed amendment (administrative record No. NM–804) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(o), (w), (x), (y) and (aa), and at its own initiative.

OSM announced receipt of the proposed amendment in the December 3, 1998 **Federal Register** (63 FR 66772), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–808). Because no one requested a public hearing or meeting, none were held. The public comment periods ended on January 4, 1999.

During our review of the November 13, 1998 amendment, OSM identified concerns and notified New Mexico of the concerns by letter dated January 7, 1999 (administrative record No. NM–815). New Mexico responded in a letter dated December 1, 1999, by submitting a revised amendment (administrative record No. NM–816).

We announced receipt of the proposed amendment in the December 22, 1999, **Federal Register** (63 FR 71698), and invited public comment on its adequacy (administrative record No. NM–818). The public comment period ended on January 21, 2000.

During our review of the December 1, 1999, revisions, OSM identified concerns and notified New Mexico of the concerns by letter dated March 28, 2000 (administrative record no. NM–827). New Mexico responded in a letter dated April 26, 2000, by submitting a revised amendment (administrative record No. NM–829).

New Mexico proposes further revisions to 19 NMAC 8.2 107.M(1) and 0(2), definitions of ''material damage'' and ''occupied residential dwelling and associated structures''; 19 NMAC 8.2 2071, subsidence control; and 19 NMAC 8.2 918.D, detailed plans of underground mine workings.

Specifically, New Mexico prposes to revise;

(1) The definitions of ''material damage'' and ''occupied residential dwelling and associated structures'' at 19 NMAC 8.2 107.M(1) and O(2) to be applicable to the rules at 19 NMAC 8.2 2067;

(2) Subsidence control at 19 NMAC 8.2 2071.A, by providing that the Director of the New Mexico program may (a) allow underground mining activities beneath or adjacent to beneath or adjacent to any perennial stream or impoundment having a storage volume of 20 acre-feet or more, if the Director, on the basis of detailed subsurface information, determines that subsidence will not cause material damage, or a reduction in a reasonably forseeable use, to streams, water bodies and associated structures, and (b) if material damage occurs, suspend underground mining until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities;

(3) Subsidence control at 19 NMAC 8.2 2071.B, to (1) require that underground mining activities beneath any aquifer, perennial stream or water body that serves as a significant source of water supply to a public water system must be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata, and (2) to provide that the Director of the New Mexico program will prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the aquifer and other water supplies unless a finding can be made, base on detailed documentation, that subsidence will not cause material damage to, or reduce the reasonable foreseeable use of, these features;

(4) Subsidence control at 19 NMAC 8.2 2071.C, to prohibit underground mining activities from being conducted beneath or in close proximity to any public buildings, including but not limited to churches, schools, hospitals, courthouses and government offices, unless the Director of the New Mexico program, on the basis of detailed subsurface information, determines that subsidence from those activities will not cause material damage, or reduce a reasonably foreseeable use, to these structures and specifically authorizes the mining activities;

(5) Subsidence control at 19 NMAC 8.2 2071.D, to correct a typographical error by replacing the term ''permanent'' with ''perennial''; and

(6) Requirements for detailed plans of underground mine workings at 19 NMAC 8.2 918.D, by adding a paragraph that (1) requires that an permittee shall submit, consistent with a schedule approved by the Director of the New Mexico program, a detailed plan of actual underground workings that includes maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority, and (2) provides, upon request of the operator, that the information submitted with the detailed plan may be held as confidential, in accordance with the requirements of 19 NMAC 8.2 1104.

In addition, New Mexico explained that the State contains few bodies of water 20-acre feet or more that are not man-made impoundments and that there are no naturally occurring bodies of water 20-acre feet or more in the coal fields in New Mexico. Therefore, New Mexico's proposed revisions at 19 NMAC 8.2 2071 refer to ''impoundments'' rather than ''naturally occurring bodies of water 20-acre feet or more.''

III. Public Comment Procedures

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. NM–039–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248–5096.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102 (2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 2000.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 00–14357 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS NO NM–040–FOR]

New Mexico Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions pertaining to a previously proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions to New Mexico's proposed rules pertain to the Coal Mine Reclamation Program Vegetation Standards (including success standards, sampling techniques, and normal husbandry practices), time frames within the liability period for demonstrating success of revegetation, and annual report requirements. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATE: Written comments must be received by 4:00 p.m., m.d.t., July 7, 2000. If requested, we will hold a public hearing on the amendment on July 3, 2000. We will accept requests to speak until 4:00 p.m., m.d.t., on June 22, 2000.

ADDRESSES: You should mail or hand deliver written comments to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated December 1, 1999 (administrative record No. NM–816), New Mexico submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(o), (w), (x), (y) and (aa), and at its own initiative.

OSM announced receipt of the proposed amendment in the December 22, 1999 **Federal Register** (64 FR 71700), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–819). Because no one requested a public hearing or meeting, none were held. The public comment periods ended on January 21, 2000.

During our review of the December 1, 1999, amendment, OSM identified concerns and notified New Mexico of the concerns by letter dated February 17, 2000 (administration record no. NM–825). New Mexico responded in two letters dated April 26, 2000, by submitting (1) revisions to the December 1, 1999, amendment (administrative record No. NM–830) and (2) additional rule revisions never before submitted (administrative record No. NM–828).

New Mexico proposes further revisions to (1) sections I.D., II.B.1, and IV of New Mexico's proposed Coal Mine Reclamation Program Vegetation Standards; (2) requirements for demonstrating success of ground cover and productivity of revegetation at 19 NMAC 8.2 2065.B(1); and (3) the definitions of ''augmented seeding'' and ''interseeding'' at 19 NMAC 8.2 107.A(20) and 107.I(8).

New Mexico proposes new revisions to (1) the requirements for annual reports at 19 NMAC 8.2 507.A(1); and (2) the requirements for demonstrating (a) that the land has the capability of supporting livestock grazing at 19 NMAC 8.2 2064; (b) the success of ground cover and productivity at 19 NMAC 8.2 1065.B(2) and (3); and (c) the success of crop production at 19 NMAC 2065.B(5)(iii).

Specifically, New Mexico proposes to revise:

(1) Section I.D, Establishment and Monitoring of Revegetation Success Standards, of New Mexico's proposed Coal Mine Reclamation Program Vegetation Standards to clarify that the success of revegetation on reclaimed lands will be measured against the general revegetation requirements at 19 NMAC 8.2 2060 in addition to standards derived from an unmined reference area or technical standards;

(2) Section II.B.1, Sampling Techniques, of New Mexico's proposed Coal Mine Reclamation Program Vegetation Standards to require an operator to implement techniques to improve the reliability of the ocular estimation method;

(3) Section IV, Normal Husbandry Practices, of New Mexico's proposed Coal Mine Reclamation Program Vegetation Standards to (a) specify the land uses, time frames, and size limitations, if any, applicable to each approved normal husbandry practice, and (b) to clarify that in order for repair of erosional features to be considered a normal husbandry practice, the erosional features must be characteristic of unmined lands in the regions and the damage must not be caused by a lack of planning, design, or implementation of the mining and reclamation plan.

(4) 19 NMAC 8.2 2065.B(1) to provide that ground cover and productivity may be equal to the technical standards developed in accordance with New Mexico's proposed Coal Mine Reclamation Program Vegetation Standards, as an alternative to an approved reference area;

(5)(a) 19 NMAC 8.2 107.A(20), the definition of ''augmented seeding'' to mean ''seeding in excess of the normal husbandry practices approved in the Director's Coal Mine Reclamation Program Vegetation Standards, or reseeding with fertilization or irrigation, or reseeding in response to unsuccessful revegetation in terms of adequate germination or establishment or permanence,'' and (b) 107.I(8), by adding the definition ''interseeding'' to

mean ''a secondary seeding practice into established vegetation cover in order to take advantage of climatic conditions that favor species requiring special conditions for germination and establishment, or to improve or alter the composition between forage species and shrubs, or between warm and cool season grasses;''

(6) 19 NMAC 8.2 507.A(1), to require in an annual report, a current topographic or orthophotographic map with five foot contour intervals of the same scale as the mining and reclamation sequence maps found in the approved permit with five foot contour intervals, on a single sheet, or series of sheets, each sheet of the map being no larger than four feet by four feet, with the scale and all lines and symbols clearly described in the legend;

(7) 19 NMAC 8.2 2064 to require that an operator demonstrate, for at least two of the last four years rather than the last two years, that the reclaimed land has the capability of supporting livestock grazing at rates approximately equal to that for similar non-mined lands when the approved postmining land use is range or pasture land;

(8) 19 NMAC 8.2 2065.B(2), concerning the liability period in areas of more than 26.0 inches average annual precipitation, to require that ground cover and productivity shall equal or exceed the approved standard for two of the last four years, rather than the last two years, of the responsibility period;

(9) 19 NMAC 8.2 2065.B(3), concerning the liability periods in areas of less than or equal to 26.0 inches average annual precipitation, to require that ground cover and productivity shall equal the approved standard for at least two of the last four years, starting no sooner than year eight, rather than the last two years, of the responsibility period; and

(10) 19 NMAC 8.2 2065.B(5)(iii), concerning the demonstration of success of areas to be used for cropland, to require that crop production from the mined area shall be equal to or greater than that of the approved standard for two of the last four growing seasons, rather than the last two consecutive growing seasons, of the five or ten year liability period, starting no sooner than year eight of the ten year liability period.

III. Public Comment Procedures

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. NM–040–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248–5096.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law.

Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on June 22, 2000. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

This rule does not have Federalism implication. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse

effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 2000.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 00–14358 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 00–7145]

[RIN No. 2127–AH61]

Federal Motor Vehicle Safety Standards; Head Impact Protection

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

ACTION: Extension of comment period.

SUMMARY: This document grants a request to extend the comment period on an agency proposal to amend the upper interior impact requirements of its standard on occupant protection in interior impact by modifying the minimum distance between certain target points on vertical surfaces inside a vehicle and by adding target points for pillar-like structures that do not meet the definition of ''pillar,'' i.e., certain door frames and vertical seat belt mounting structures.

DATES: Extended comment closing date: Comments on the April 5, 2000 proposal, 65 FR 17842, Docket No. 00–7145, must be received by the agency on or before close of business on July 5, 2000.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Alternatively, you may submit your comments electronically by e-mail at http://dms.dot.gov.

You may call the Docket at 202–366–9324, and visit it from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Dr. William Fan, Office of Crashworthiness Standards, at (202) 366–4922, facsimile (202) 366–4329, electronic mail ''bfan@nhtsa.dot.gov''. For legal issues, you may call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION: On April 5, 2000, NHTSA published a notice of proposed rulemaking proposing to amend the upper interior impact requirements of Standard No. 201, Occupant Protection in Interior Impact, in several respects. One proposal addressed the minimum distance between certain target points on vertical surfaces inside a vehicle. Compliance with the upper interior impact requirements is determined, in part, by measuring the forces experienced by a test device known as the Free Motion Headform (FMH) when it impacts certain target points in the vehicle interior. To ensure that the damage caused by the testing of one target point does not overlap the testing of nearby target points, the standard specifies that tested targets be at least a certain distance apart; currently 150 mm (6 inches). We proposed expanding this minimum distance to 200 mm (8 inches) for tests performed on certain vertical surfaces in order to alleviate concerns that the current distance is not large enough to prevent the FMH impact area for one target point from overlapping the FMH impact areas for nearby target points in the same vehicle. We also proposed adding target points for pillar-like structures that do not meet the definition of ''pillar,'' i.e., certain door frames and vertical seat belt mounting structures and are therefore not currently subject to Standard No. 201. We tentatively concluded that these structures are the equivalent of ''pillars'' now covered by the Standard.

The NPRM specified a comment closing date of June 5, 2000 (60 days after date of publication). However, on May 16, 2000, we received a request for an extension of the comment closing date from Advocates for Highway and Auto Safety (Advocates). Advocates stated that it wished to provide comments on our proposal, but was unable to do so in a timely fashion due

to the organization's limited resources and a competing need to comment on a number of other pending regulatory proposals affecting highway and highway safety. Therefore, Advocates requested an additional 60 days for submission of its comments.

Particularly because Advocates is a prominent public interest organization dedicated to the consideration of issues related to highway and vehicle safety, the agency is interested in its comments. Thus, in order to provide the Advocates and other interested parties ample time and opportunity to express their views on the proposed amendments to Standard No. 201, NHTSA believes that there is good cause for the extension of the comment period. However, the agency does not believe that an extension of 60 days is warranted or would be in the public interest. NHTSA has determined that it is appropriate to extend the comment period for 30 days and that such extension is consistent with the public interest. Accordingly, the Advocates request to extend the comment period for an additional 60 days is denied, but the comment period is extended for a period of 30 days to July 5, 2000.

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

Issued on June 2, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–14277 Filed 6–2–00; 12:34 pm]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 65, No. 110
Wednesday, June 7, 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

Forest Service

Information Collection; Request for Comments; Woodsy Owl Official Licensee Royalty Statement

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to reinstate an information collection. The information will enable the Forest Service to collect royalty fees for the commercial use of the Woodsy Owl symbol and to assess the effectiveness of licensing the Woodsy Owl symbol for commercial use. Information will be collected from individuals and from for-profit businesses and non-profit organizations.

DATES: Comments must be received in writing on or before August 7, 2000.

ADDRESSES: All comments should be addressed to the Office of Education Conservation, National Symbols Coordinator, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

Comments also may be submitted via facsimile to (202) 690–5658 or by email to: Education_Conservation/wo@fs.fed.us.

The public may inspect comments received at the Office of Education Conservation, Room 1SE, Forest Service, USDA, 201 14th Street SW., Washington, D.C. Visitors are urged to call ahead to (202) 205–5681 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Roberta Hilbruner, Conservation Education, at (202) 205–5681.

SUPPLEMENTARY INFORMATION:

Background

The Woodsy Owl-Smoky Bear Act of 1974 established the Woodsy Owl symbol and slogan, authorized the Forest Service to manage the use of the slogan and symbol, authorized the licensing of the symbol for commercial use, and provided for continued protection of the symbol by stating that Woodsy Owl may only be used by permission of the Forest Service. Part 272 of Title 36 of the Code of Federal Regulations authorizes the Chief of the Forest Service to approve commercial use of the Woodsy Owl symbol and to collect of royalty fees for such use. Woodsy Owl may be replicated as a plush toy and the Woodsy Owl symbol or logo may be replicated on items such as tee shirts, mugs, pins, figurines, ornaments, storybooks, stickers, and toys.

The message to the public inherent with the Woodsy Owl symbol is about caring for the environment (Thus the slogans ''Give a Hoot, Don't Pollute'' and ''Lend a Hand, Care for the Land''). The goal of Woodsy Owl is to inspire children to observe the natural world around them, teach children ecological principles, and motivate children to join in specific actions to help care for the environment.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: Woodsy Owl Official Licensee Royalty Statement.

OMB Number: 0596–0087.

Expiration Date of Approval: October 31, 1999.

Type of Request: Reinstatement of an information collection previously approved by the Office of Management and Budget.

Abstract: The Forest Service National Symbols Coordinator will evaluate the data to determine if an individual, corporation, or organization, requesting a license to use the Woodsy Owl symbol commercially, should be granted a license or, if currently licensed, to determine the royalty fee the licensed entity must pay to the agency based on a percentage of the licensee's total sales and whether the licensed entity has met its stated objectives.

An individual or corporation may apply for a Woodsy Owl license by contacting Forest Service personnel by telephone, fax, e-mail, or by writing to the address listed in the address section of this notice. In the course of communicating with the potential applicant, the agency will learn how long the individual, corporation, or organization has been in business; the products the individual, corporation or organization sells or plans to sell; the geographical location from which the products will be sold; the projected sales volume; and how the individual, corporation, or organization plans to market the products.

If Forest Service personnel determine that granting a license to the individual, corporation, or organization for the purpose of using the Woodsy Owl symbol for commercial use would be in the best interest of the agency and would promote the Woodsy Owl messages, a license contract would be mailed to the individual, corporation or organization. The contract would have to be completed and returned to the Forest Service. Once the contract has been by signed by an authorized Forest Service employee and by the individual or the corporate or organizational representative, the newly licensed entity will have to submit to the Forest Service the agreed upon advanced guaranteed royalty payment. The individual, corporation, or organization also will submit a quarterly report to the agency, using the Woodsy Owl Licensee Royalty Statement Form, along with any royalty fees garnered from sales that have exceeded the advanced guaranteed royalty payment.

When making the quarterly reports, individuals, corporations, or organizations will be asked to provide information that includes the following: a list of each item that will be sold with the Woodsy Owl symbol; the projected sales of each item; the price at which each item will be sold; the total sales amount subject to the agency royalty fee; the royalty fee due based on sales quantity and price; a description and itemization of any deductions, such as fees waived or previously paid as part of the advance royalty payment which is their sales quantity guarantee; the new total royalty fee the business or organization must pay after deductions; the running total amount of royalties accrued in that fiscal year; and the typed name and signature of the business or organizational employee certifying the truth of the report.

Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: For-profit businesses and non-profit organizations currently holding a Woodsy Owl license or applying for such license.

Estimated Annual Number of Respondents: 10.

Estimated Annual Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 20 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) 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; (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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 1, 2000.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 00–14218 Filed 6–6–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Upper Deckers Creek Watershed, Preston and Monongalia Counties, West Virginia

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice than an environmental impact statement is not being prepared for the Upper Deckers Creek Watershed Project, Preston and Monongalia Counties, West Virginia.

FOR FURTHER INFORMATION CONTACT: William J. Hartman, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone 304–284–7545.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, William J. Hartman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is water quality improvement through acid mine drainage remediation. Planned actions include mine spoil regrading, highwall elimination, revegetation, limestone channels, passive treatment systems, grouting, and addition of limestone fines to streams.

The Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William J. Hartman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

William J. Hartman,

State Conservationist.

[FR Doc. 00–14266 Filed 6–6–00; 8:45 am]

BILLING CODE 3410–16–M

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: U.S. Census Bureau.

Title: 2001 Residential Finance Survey.

Form Number(s): D–2900, D–2900(L), D–2901, D–2901(L), D-2901(FE)(L), D–2902, D–2902(L), D–2904, D–2905(L).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 77,500 hours.

Number of Respondents: 330,000.

Avg Hours Per Response: 14 minutes.

Needs and Uses: The Residential Finance Survey (RFS) provides data about the financing of nonfarm, privately-owned residential properties in the United States. RFS data, in conjunction with statistics from other sources, are used in assessing public policies affecting real estate, mortgage banking, economic policy, social welfare, and related areas of concern, and in developing and evaluating proposals about them. The data are particularly useful to economists and financial analysts who guide and counsel home and apartment builders, financial institutions and institutional investors, producers of building materials, real estate companies, community planners, and government planners at the Federal, state, and local levels.

The RFS has been conducted as part of the decennial census since 1950. A continuation of the RFS is necessary because the dramatic changes in the real estate finance market which have taken place in the 1990's give no indication of abating in the next decade. The changes in the next 5 to 10 years may be even more dramatic than those of the past decade. It is essential for policy planning and formulation within the government and for accurate market analysis in the private sector that timely, accurate, and comprehensive benchmark data be available on the financing of residential properties.

Affected Public: Individuals or households, Businesses or other for-profit organizations, Federal Government.

Frequency: One-time only.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Section 141.

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, Department of Commerce, room 5033, 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: June 1, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–14221 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–07–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: U.S. Census Bureau.

Title: Manufacturers' Shipments, Inventories, and Orders Survey.

Form Number(s): M–3(SD), M3–SD(I), M3–1–L1.

Agency Approval Number: 0607–0008.

Type of Request: Revision of a currently approved collection.

Burden: 24,000 hours.

Number of Respondents: 6,000 monthly.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: The Census Bureau conducts the M3 survey, one of the principal Federal economic indicators, to collect monthly manufacturing data from a sample of firms in the manufacturing sector of the economy. Data requested are shipments, new orders, unfilled orders, total inventory, materials and supplies, work-in-process and finished goods. The data are used to analyze short- and long-term trends in the manufacturing sector and as related to other sectors of the economy. The shipments and inventory data are essential inputs into the gross domestic product accounts, while the orders data are direct inputs into the leading economic indicator series. The survey also provides valuable and timely data for economic planning and analysis to business firms, trade associations, research and consulting agencies, and academia on the domestic manufacturing sector.

In this request, the total annual burden hours are revised upward to reflect an increase in the survey panel. The conversion of the survey from the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS) will result in new and reconfigured industry categories, which will require a larger survey panel to ensure sufficient coverage in all industries.

Affected Public: Businesses, large and small, or other for profit organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Sections 131 and 182.

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, Department of Commerce, room 5033, 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: June 1, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–14222 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and rescission in part.

SUMMARY: In response to a request from the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain circular welded steel pipes and tubes from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United States, and the period May 1, 1998 through April 30, 1999. We find that Yieh Hsing Enterprise Co. Ltd., (Yieh Hsing) made sales of subject merchandise below normal value; if these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and the normal value. Regarding six other companies, we rescind the review.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) A statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas 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) 482–5222 or (202) 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 amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1999, the petitioners, Allied Tube & Conduit Corp., Wheatland Tube Company, and the Sawhill Tubular Division of Armco Inc., requested reviews of seven Taiwanese companies: An Mau Steel Co. (now renamed Sheng Yu Steel Co. Ltd., and hereafter referred to as Sheng Yu), Far East Machinery Co., Ltd. (FEMCO), Kao Hsing Chang Iron & Steel Corporation (KHC), Tai Feng Industries Ltd. (TFI), Yieh Hsing, Yu Din Steel Co. Ltd. (Yu Din), and Yieh Loong Co., Ltd. (Yieh Loong).

We initiated the reviews on June 30, 1999 (64 FR 35124). In response to our requests for information, FEMCO, ShengYu, and Yieh Loong reported that they made no U.S. sales or shipments of subject merchandise during the period of review (POR). On inquiry by the

Department, Customs did not report any shipments by these companies during the POR. On September 2, 1999, petitioners withdrew their request as to Yu Din, KHC and Yieh Loong. Concerning TFI, that company ceased operations in November 1983. *See* Circular Welded Carbon Steel Pipes and Tubes from Taiwan; Final Results of Administrative Review of Antidumping Duty Order, 51 FR 43946 (December 5, 1986). For these reasons we rescind the review with respect to FEMCO, KHC, Sheng Yu, TFI, Yieh Loong and Yu Din, in accordance with 19 CFR 351.213(d).

In the most recently completed review of Yieh Hsing, the Department disregarded below-cost home market sales which failed the cost test. *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review*, 64 FR 69488 (December 13, 1999). Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, the Department has a reasonable basis to believe or suspect that Yieh Hsing made sales in the home market below the cost of production in the current review period. Accordingly, in accordance with section 773(b) of the Act, on January 24, 2000, the Department initiated an investigation of sales below cost.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On January 28, 2000, the Department extended the time limit for the preliminary results to May 30, 2000. *See Extension of Time Limits for Antidumping Duty Administrative Review*, 65 FR 6359 (February 9, 2000).

Period of Review

The review covers the period May 1, 1998 through April 30, 1999. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4½ inches in outside diameter. These products are commonly referred to in the industry as ''standard pipe'' and are produced to various American Society for Testing Materials specifications, most notably A–53, A–120, or A–135. Standard pipe is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Fair Value Comparisons

To determine whether sales of subject merchandise in the United States were made at less than fair value, we compared export price (EP) to the normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

The Department treated Yieh Hsing's sales to the United States as EP sales, as defined in section 772(a) of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and the constructed export price methodology was not warranted by the facts of the record. We based EP on the delivered, packed prices to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, foreign brokerage charges, and ocean freight in accordance with section 772(c) of the Act.

Normal Value

In order to determine whether there were sufficient sales of certain circular welded carbon steel pipes and tubes in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of home market sales of foreign like product to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Yieh Hsing's aggregate volume of HM sales of the foreign like product were greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on HM sales. In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also made deductions from NV for HM inland freight, early payment discounts, and other discounts. We made an adjustment to NV for differences in credit expenses, pursuant to section 773(a)(6)(C) of the Act. We made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act.

Sales Below Cost Investigation

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. We found that, for certain models, 20 percent or more of the home market sales were sold at below-cost prices. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made (1) In substantial quantities within an extended period of time and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted-average per unit COP for the POR). We used the remaining above-cost sales as the basis of determining NV if such sales existed, in accordance with section 773(b)(1).

Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated constructed value (CV) based on the sum of the respondent's cost of materials, fabrication, and general expenses. In accordance with section 773(e)(2)(A) of the Act, we based selling, general, and administrative (SG&A) expenses and profit on the amounts incurred and realized by Yieh Hsing in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. For selling expenses, we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing in CV.

Product Comparisons

Where there were no contemporaneous sales of identical or similar foreign like product in the comparison market to compare to U.S.

sales, we compared U.S. sales to most similar home market merchandise or to CV.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT). *See, e.g.*, Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 , 61732–33 (November 19, 1998). Yieh Hsing provided information with respect to its selling activities in both markets. Yieh Hsing offers each of its three categories of home market customers the same degree of sales support, including general technical advice and sale-specific warranty service. We therefore determine that Yieh Hsing sells to one level of trade in the home market. For its U.S. customers, Yieh Hsing provided freight and delivery arrangements, but no other services; otherwise, the levels of customer assistance and sales support which Yieh Hsing provided its home market and U.S. customers were not significantly different. For these reasons we determine that Yieh Hsing's sales in the two markets were at the same LOT, and no LOT adjustment is warranted.

Sales Comparisons

To determine whether sales of certain circular welded carbon steel pipes and tubes in the United States were made at less than NV, we compared EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777(A)(d)(d) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Where there were no above-cost sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to most similar home market merchandise, based on the information provided by Yieh Hsing in response to our antidumping questionnaire.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period May 1, 1998 through April 31, 1999:

Manufactuer/ Exporter	Period	Margin (percent)
Yieh Hsing	5/1/98–4/30/99	1.63

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–009 of the main Department of Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b), we have calculated an importer/customer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the quantity of those same sales. This Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of certain circular welded carbon steel pipes and tubes from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for Yieh Hsing will be the rate established in the final results of this administrative review, except that no cash deposit will be required if the rate is *de minimis*, i.e., less than 0.50 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 9.7%, the ''all others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.401(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14351 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–836]

Polyvinyl Alcohol from Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by Kuraray Co., Ltd., a producer and exporter of polyvinyl alcohol from Japan, the Department of Commerce is conducting an administrative review of the antidumping duty order on polyvinyl alcohol from Japan. The period of review is May 1, 1998, through April 30, 1999.

We preliminarily find that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Wojcik-Betancourt, at (202) 482–0629, or Brian Smith, at (202) 482–1766, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department of Commerce's (''the Department'') final regulations at 19 C.F.R. Part 351 (April 1999).

Case History

On May 14, 1996, the Department of Commerce (''the Department'') published in the **Federal Register** an antidumping duty order on polyvinyl alcohol (''PVA'') from Japan (61 FR 24286). On May 19, 1999, the Department published a notice providing an opportunity to request an administrative review of this order for the period May 1, 1998, through April 30, 1999 (64 FR 27235). On May 28, 1999, we received a request for an administrative review from Kuraray Co., Ltd. (''Kuraray''). On June 30, 1999, we published a notice of initiation of this review for Kuraray (64 FR 35124).

On July 9, 1999, we issued an antidumping questionnaire to Kuraray. The Department received a response from the company in September 1999.

On October 4, 1999, the petitioner submitted a timely allegation, pursuant to section 773(b) of the Act, that Kuraray had made sales in the home market at less than the cost of production (''COP''). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Kuraray had sold PVA in the home market at prices at less than the COP. Accordingly, we initiated a COP investigation with respect to Kuraray, pursuant to section 773(b) of the Act (*see* Memorandum from Team to Louis Apple, Office Director, dated November 10, 1999).

We issued supplemental questionnaires to Kuraray in November 1999 and January 2000. Responses to these questionnaires were received in December 1999 and February 2000, respectively.

On January 21, 2000, the Department published a notice postponing the preliminary results of this review until May 30, 2000 (65 FR 3418). The Department conducted verification of the company's response from February 21 through March 17, 2000, pursuant to section 782(i)(2) of the Act. In April 2000, the Department issued its verification report.

Scope of Review

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Review

The period of review (''POR'') is May 1, 1998, through April 30, 1999.

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by Kuraray. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports placed in the case file.

Fair Value Comparisons

To determine whether the respondent's sales of the subject merchandise to the United States were made at below normal value, we compared, where appropriate, the export price and constructed export price (''CEP'') to the normal value, as described below. In accordance with section 777A(d)(2) of the Act, we compared, where appropriate, the export prices and CEPs of individual transactions to the monthly weighted-average price of sales of the foreign like product made in the ordinary course of trade (*see* section 773(a)(1)(B)(i) of the Act).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Kuraray covered by the description in the ''Scope of the Review'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise made in the home market in the ordinary course of trade, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order: viscosity, hydrolysis, particle size, tackifier, defoamer, ash, color, volatiles, and visual impurities.

Export Price and Constructed Export Price

During the POR, Kuraray sold subject merchandise to the U.S. market (1) directly through its wholly-owned U.S. affiliate (Kuraray America Inc.) (hereafter referred to as Kuraray America); (2) through Kuraray America via its wholly-owned home market affiliate (Kuraray Trading Co., Ltd.) (hereafter referred to as Kuraray Trading); or (3) directly through unaffiliated Japanese trading companies.

With respect to one Japanese trading company through which Kuraray sells the subject merchandise, the petitioner requested that the Department examine whether Kuraray and that company are affiliates. Based on the verified data on the record, we preliminarily find that Kuraray and that Japanese trading company are not affiliates under the criteria outlined in section 771(33) of the Act and 19 C.F.R. 351.102(b) (*see* Memorandum Regarding Affiliation from Team to Louis Apple, Office Director, dated May 30, 2000). We are also treating the sales made by Kuraray to the Japanese trading company during the POR as export price transactions, in accordance with section 772(a) of the Act.

However, we carefully examined the totality of circumstances surrounding the U.S. sales process for those U.S. sales which Kuraray made through its

U.S. affiliate. Based on the evidence on the record, we found that Kuraray either sells the subject merchandise directly to its U.S. affiliate, or through Kuraray Trading, which in turn sells the subject merchandise to the U.S. affiliate. For U.S. sales made only through its U.S. affiliate, the U.S. customer contacts Kuraray's U.S. affiliate, who then places the order with Kuraray. Kuraray arranges for delivery of the goods from Japan to the unaffiliated U.S. customer and issues its invoice to its U.S. affiliate for payment of the goods. Even though Kuraray's U.S. affiliate does not have a warehouse, it takes title to the goods once it pays Kuraray for the goods. The U.S. affiliate then issues its sales invoice to the unaffiliated U.S. customer and collects payment for the goods (*see* verification exhibits K–49 and K–50, and exhibits KA–15 through KA–17 of the April 19, 2000, Verification Report).

For U.S. sales made through Kuraray Trading and the U.S. affiliate, the U.S. affiliate still transmits the U.S. customer's order to Kuraray. However, Kuraray sells the goods to Kuraray Trading in Japan. Kuraray Trading then issues the U.S. affiliate its sales invoice. Kuraray Trading arranges for delivery of the goods from Japan to the unaffiliated U.S. customer, and the U.S. affiliate takes title to the goods once it pays Kuraray Trading for the goods. The U.S. affiliate also issues its sales invoice to the unaffiliated U.S. customer and collects payment for the goods (*see* verification exhibits KT–8 through KT–10, and KA–10 through KA–12 of the April 19, 2000, Verification Report).

Given the facts on the record, the Department preliminarily determines that, because the U.S. affiliate purchased the merchandise from Kuraray and/or Kuraray Trading and sold the merchandise to the unaffiliated purchaser, these sales were made in the United States and, thus, should be treated as CEP transactions (*see Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, Final Results of Administrative Review*, 65 FR 13359 (March 13, 2000) and accompanying Decision Memorandum at Comment 12; and *Porcelain-on-Steel Cookware from Mexico, Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Decision Memorandum at Comment 2) *(Porcelain-on-Steel Cookware from Mexico)*.

For Kuraray's U.S. sales not made through its U.S. affiliate (*i.e.*, made through an unaffiliated trading company in Japan), we calculated export price based on the reported packed FOB price between Kuraray and the unaffiliated trading company in Japan because Kuraray had knowledge that the sale was destined for the U.S. market (*see* verification exhibit K–58 of the April 19, 2000, Verification Report). We made deductions, as appropriate, from the starting price for foreign inland freight from the plant to the port of exportation, foreign warehousing expenses, foreign inland insurance, and foreign brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

For Kuraray's U.S. sales made through its U.S. affiliate, we based CEP on packed CIF or delivered prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight from the plant to the port of exportation, foreign inland insurance, foreign brokerage and handling expenses, international freight, palletization charges, foreign warehousing expenses, U.S. brokerage and handling expenses, U.S. Customs duties (which include harbor maintenance and merchandise processing fees), and U.S. inland freight expenses (freight from port to the customer), in accordance with section 772(c)(2)(A) of the Act.

We made the following adjustments to Kuraray's U.S. expense data based on our verification findings: (1) we corrected the reported amounts for foreign warehousing expenses, credit expenses, U.S. indirect selling expenses, U.S. indirect selling expenses incurred in the home market, and packing expenses; and (2) we corrected invoice-specific information with respect to gross unit price, entered value, foreign brokerage and handling expenses, international freight, and U.S. Customs duties (*see* pages 14–21 and 29–33 of the April 19, 2000, Verification Report for further discussion).

In accordance with section 772(d)(1) of the Act, we deducted from CEP direct and indirect selling expenses that were associated with Kuraray's economic activities occurring in the United States and associated with the sale to the U.S. customer. We also deducted from CEP an amount for profit, in accordance with section 772(d)(3) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.,* the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with 19 C.F.R. 351.404(b). We determined that the quantity of foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States because Kuraray made sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on home market sales in Japan.

Based on our verification findings, we made the following adjustments to Kuraray's home market expense data: (1) we denied an adjustment for the rebate claimed by Kuraray Trading because the company was unable to demonstrate that the claimed amounts were actually paid to, or deducted from, the amounts owed by certain customers; (2) we corrected the reported amounts for one type of rebate offered by Kuraray, inland freight expenses from the plant to the warehouse, warehousing expenses, indirect selling expenses incurred by Kuraray Trading, and packing expenses; and (3) we corrected invoice-specific information with respect to payment dates (*see* pages 22–33 of the April 19, 2000, Verification Report for further discussion).

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined normal value based on sales in the comparison market at the same level of trade (''LOT'') as the export price or CEP transaction. The normal value LOT is that of the starting-price sales in the comparison market from which we derive selling, general and administrative (''SG&A'') expenses and profit. For export price, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed export sale from the exporter to the affiliated importer.

To determine whether normal value sales are at a different LOT than export price or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the normal value level is more remote from the factory than the CEP level and there is no basis for determining whether the

difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We note that the U.S. Court of International Trade (''CIT'') has held that the Department's practice of determining LOT for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1241–42 (CIT 1998) (*Borden*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgement in *Borden* on the LOT issue. *See Borden, Inc.* v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT June 4, 1999). The government has filed an appeal of *Borden* which is pending before the U.S. Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated by the Department's regulations at section 351.412.

In this case, Kuraray reported two customer categories (*i.e.*, distributors and end users) and three channels of distribution (sales through unaffiliated distributors to end users, direct sales to end users, and sales through its affiliate to end users) for its home market sales. In its response, Kuraray claims that its sales to unaffiliated home market customers (*i.e.*, end users and distributors) are at the same LOT as its sales made through affiliated customers because Kuraray provides the same selling services to its unaffiliated and affiliated customers. Specifically, Kuraray identified the following selling services to both types of customer: (1) salespeople visits; (2) inventory maintenance; (3) after-sale service and technical advice; (4) advertising; (5) freight and delivery; and (6) handling of rejected merchandise. Based on our review of the record evidence, we agree with the respondent's claim that all home market sales are at the same LOT (*see* exhibit A.3.k. of the December 1, 1999, submission).

Kuraray had both export price and CEP sales in the U.S. market. Kuraray reported that its export price sales were made through one channel of distribution (*i.e.*, sales through unaffiliated Japanese trading companies to U.S. end users). Kuraray also reported that its CEP sales were also made through two channels of distribution (*i.e.*, sales through its U.S. affiliate *via* its home market affiliate and sales through its U.S. affiliate only), which we have treated as one LOT because there is no apparent difference in the selling functions performed by Kuraray. In analyzing Kuraray's selling activities for its export price sales, we found that the export price sales involved basically the same selling functions associated with the home market LOT described above (*i.e.*, inventory maintenance, freight and delivery, and handling of rejected merchandise). Therefore, based upon this information, we preliminarily determine that the LOT for all export price sales is the same as that in the home market.

For sales which we re-categorized as CEP sales, after making the appropriate deductions under section 772(d) of the Act, we found that there are no remaining expenses associated with selling activities performed by Kuraray that are reflected in the CEP price. In contrast, the normal value prices include selling expenses attributable to selling activities performed by Kuraray for the home market, such as sales support and freight and delivery functions (*see* exhibit A.3.k. of the December 1, 1999, submission). Accordingly, we have concluded that CEP is at a different LOT from the normal value LOT.

We then examined whether a LOT adjustment or CEP offset may be appropriate. In this case, Kuraray only sold at one LOT in the home market; therefore, there is no information available to determine a pattern of consistent price differences between the sales on which normal value is based and the comparison market sales at the LOT of the export transaction, in accordance with the Department's normal methodology as described above (*see Porcelain-on-Steel Cookware from Mexico* and accompanying Decision Memorandum at Comment 6). Further, we do not have information which would allow us to examine pricing patterns based on respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

Cost of Production Analysis (''COP'')

Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales made by Kuraray in the home market.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by grade, based on the sum of the cost of materials and fabrication, G&A expenses, and packing costs. We relied on the submitted COPs except that we have adjusted Kuraray's reported per-unit costs to account for the overstatement of acetic acid amounts. We also revised Kuraray's G&A and interest expenses based on our verification findings (*see* Preliminary Results Calculation Memorandum from team to the File, dated May 30, 2000).

B. Test of Home Market Prices

We compared the adjusted weighted-average COP to the comparison-market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a grade-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, discounts, rebates and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and because the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Based on this test, we excluded from our analysis certain comparison-market sales of PVA products that were made at below-COP prices within the POR and the contemporaneous months of the POR (see Preliminary Results Calculation Memorandum from team to the File, dated May 30, 2000).

Price-to-Price Comparisons

We calculated normal value based on both packed, FOB or delivered prices Kuraray charged to its unaffiliated purchasers in Japan and packed, FOB or delivered prices Kuraray Trading charged to its unaffiliated purchasers in Japan. We made adjustments to the starting price for discounts and rebates, where appropriate. We also made deductions, where appropriate, for inland freight (*i.e.,* plant to warehouse and warehouse to customer), inland insurance and warehousing expenses, pursuant to section 773(a)(6)(B) of the Act.

For all comparisons, we made a circumstance-of-sale adjustment, where appropriate, for differences in credit expenses, pursuant to section 773 (a)(6)(C)(iii) of the Act and 19 C.F.R. 351.410(c).

For comparisons to CEP sales, we also deducted from normal value the lesser of comparison-market indirect selling expenses and indirect selling expenses deducted from CEP (the CEP offset), pursuant to section 773(a)(7)(B) of the Act and 19 C.F.R. 351.412(f).

For comparisons to both export price and CEP sales, we made adjustments to normal value for differences in packing expenses, in accordance with section 773(a)(6) of the Act. We also made adjustments to normal value, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 C.F.R. 351.411.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period May 1, 1998, through April 30, 1999:

Margin Manufacturer/exporter	(percent)
Kuraray Co., Ltd.	2.07

Pursuant to 19 C.F.R. 351.224(b), the Department will conduct disclosure within five days after the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter.

Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. The request should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Cash Deposit and Assessment Requirements

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. For Kuraray, for duty assessment purposes, we intend to calculate importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total entered value of subject merchandise of the same sales for each importer. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent).

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of PVA from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) the cash deposit rate for Kuraray will be rate established in the final results; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be 77.49 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14352 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Purdue University; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–009. Applicant: Purdue University, West Lafayette, IN 47907–1392. Instrument: Electron Microscope, Model CM300. Manufacturer: Philips, The Netherlands. Intended Use: See notice at 65 FR 25708. Order Date: February 23, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the

instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–14353 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 000515143–0143–01]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This Notice announces availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives and scientists (also referred to as ''interns'') from the New Independent States (NIS). The Department of Commerce, International Trade Administration (ITA) established the SABIT program in September 1990 to assist the former Soviet Union's transition to a market economy. Since that time, SABIT has been matching business executives and scientists from the NIS with U.S. firms which provide them with three to six months of hands-on training in a U.S. market economy.

Under the SABIT program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. The training must take place in the United States. ITA will interview and recommend eligible interns to participating companies. Interns may be from any of the following Independent States: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. However, restrictions may apply based on congressional sanctions. The U.S. firms will be expected to provide the interns with a hands-on, non-academic, executive training program designed to maximize their exposure to management or commercially-oriented scientific operations. At the end of the training program, interns must return to the NIS. If there is any evidence of a conflict of interest between an intern and the company, the intern is disqualified.

DATES: The closing date for applications is July 31, 2000. An original and two copies of the application (Standard Form 424 (Rev. 4–92) and supplemental material) are to be sent to the address designated in the Application Kit and postmarked no later than the closing date. Applications will be considered on a ''rolling'' basis as they are received, subject to the availability of funds. If available funds are depleted prior to the closing date, a notice to that effect will be published in the **Federal Register**. Processing of complete applications takes approximately three to five months. All awards are expected to be made by September 30, 2000.

ADDRESSES: Request for Applications: Competitive Application kits will be available from ITA starting on the day this notice is published. To obtain a copy of the Application Kit please contact SABIT by: (1) Email at *SABITApply@ita.doc.gov*, providing your name, company name and address; (2) Telephone (202) 482–0073; (3) Facsimile (202) 482–2443; (4) Send a written request with two self-addressed mailing labels to Application Request, The SABIT Program, HCHB Room 3319, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The telephone numbers are not toll free numbers. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requesters.

FOR FURTHER INFORMATION CONTACT: Liesel C. Duhon, Director, SABIT Program, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: SABIT exposes NIS business managers and scientists to a completely new way of thinking in which demand, consumer satisfaction, and profits drive production. Senior-level interns visiting the U.S. for internship programs with public or private sector companies will be exposed to an environment which will provide them with practical knowledge for transforming their countries' enterprises and economies to the free market. The program provides first-hand, eye-opening experience to managers and scientists which cannot be duplicated by American managers traveling to their territories.

Managers: SABIT assists economic restructuring in the NIS by providing top-level business managers with practical training in American methods of innovation and management in such areas as strategic planning, financing, production, distribution, marketing, accounting, wholesaling, and labor relations. This first-hand experience in the U.S. economy enables interns to become leaders in establishing and operating a market economy in the NIS, and creates a unique opportunity for U.S. firms to familiarize key executives from the NIS with their products and services. Sponsoring U.S. firms will benefit by establishing relationships with key managers in similar industries who are uniquely positioned to assist their U.S. sponsors do business in the Independent States.

Scientists: SABIT provides opportunities for gifted scientists to apply their skills to peaceful research and development in the civilian sector, in areas such as defense conversion, medical research, and the environment, and exposes them to the role of scientific research in a market economy where applicability of research relates to business success. Sponsoring firms in the U.S. scientific community also benefit from exchanging information and ideas, and different approaches to new technologies.

The Special American Business Internship Training program's Catalog of Federal Domestic Assistance (CFA) number is 11.114.

Funding Availability: Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended (the ''Act'') funding for the program will be provided by the United States Agency for International Development (A.I.D). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act and other applicable Grant rules. The estimated amount of financial assistance available for the program is $810,000. At least $400,000 of that amount is reserved for U.S. organizations which will host interns from the Russian Far East. Additional funding may become available at a future date.

Funding Instrument and Project Duration: Federal assistance will be awarded pursuant to a cooperative agreement between ITA and the recipient firm. All internships are three to six months; however, ITA reserves the right to allow an intern to stay for a shorter period of time (no less than one month) if the U.S. company agrees and the intern demonstrates a need for a shorter internship based on his or her management responsibilities. ITA will reimburse companies for the round trip international travel (coach class tickets) of each intern from the intern's home

city in the NIS to the U.S. internship site, upon submission to ITA of the paid travel invoice, payment receipt, or other evidence of payment and the form SF–270, ''Request for Advance or Reimbursement.'' Travel under the program is subject to the Fly America Act. Recipient firms provide directly to interns a stipend of $30 a day; ITA will reimburse recipient firms for this stipend, up to a maximum of six months, upon submission by the company of an end-of-internship report and Form SF–270. Recipient firms will provide housing for the interns and ITA will reimburse recipient firms for up to $500 per month for housing costs (not including utilities or telephone service charges), upon submission by the company of the end-of-internship report and Form SF–270. In general, each award will have a cap of $11,400 per intern for total cost of airline travel, stipend and housing costs. ITA reserves the right to allow an award to exceed this cap in cases of unusually high costs, specifically airfare from remote regions of the NIS such as Central Asia and the Caucasus. However, the total reimbursement cannot exceed the award amount. There are no specific matching requirements for the awards. Host firms, however, are expected to bear the costs beyond those covered by the award, including: visa fees, insurance, any food and incidentals costs beyond the $30 per day stipend, training manuals, any training-related travel within the U.S., and provision of the hands-on training for the interns.

U.S. firms wishing to utilize SABIT in order to be matched with an intern without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern. However, prior to acceptance as a SABIT intern, work plans and candidates must be approved by the SABIT Program. Furthermore, program training will be monitored by SABIT staff and evaluated upon completion of training.

Eligibility: Eligible applicants for the SABIT program will include all for profit or non-profit U.S. corporations, associations, organizations or other public or private entities located in the United States. Agencies or divisions of the federal government are not eligible. Although, state and local governments are eligible.

Project Funding Priorities: Applicant proposal must provide an explanation, including description and extent of involvement, in priority business sector(s). While Applicants involved in any industry sector may apply to the program, priority consideration is given to those operating in the following sectors: (a). Agribusiness (including food processing and distribution, and agricultural equipment), (b). Defense conversion, (c). Energy, (d). Environment (including environmental clean-up), (e). Financial services (including banking and accounting), (f). Housing, construction and infrastructure, (g). Medical equipment, supplies, pharmaceuticals, and health care management, (h). Product standards and quality control, (i). Telecommunications, (j). Transportation and (k) Biotechnology.

Evaluation Criteria: Consideration for financial assistance will be given to those SABIT proposals which:

(1). Demonstrate a commitment to the intent and goals of the program to provide practical, on-the-job, non-academic, non-classroom, training: in the case of manager interns, an appropriate management training experience, or, in the case of scientist interns, a practical, commercially-oriented scientific training experience. Include a brief objectives section indicating why the Applicant wishes to provide an internship to a manager(s) or scientist(s) from the NIS, and how the proposed internship would further the purpose of the SABIT program as described above. Also, the Applicant should note how the internship to be provided will respond to the priority needs of senior business managers and scientists in the NIS, as determined by ITA.

(2). Present a realistic work plan describing in detail the training program to be provided to the SABIT intern(s). Work plans must include the proposed internship training activities. The components of the training activities must be described in as much detail as possible, preferably on a week-by-week basis. The description of the training activities should include an account of what the intern's(s') duties and responsibilities will be during the training.

(3). The application should also have a section noting: (a). Whether Applicant is applying to host managers or scientists, or both (and the number of each); (b). The duration of the internship; (c). The location(s) of the internship; (d). The name, address, and telephone number of the designated internship coordinator; (e). Name(s) of division(s) in which the intern(s) will be placed; (f). The individual(s) in the U.S. company under whose supervision the intern will train; (g). The anticipated housing arrangements to be provided for the intern(s). Note that housing arrangements should be suitable for mid- and senior-level professionals, and that each intern must be provided with a private room; (h). A statement that the host firm is solidly committed to interns' return to their own countries upon completion of the internships.

(4). Provide a general description of the profile of the intern(s) the Applicant would like to host, including: educational background; occupational/professional background (including number of years and areas of experience); size and nature of organization at which the intern(s) is/are presently employed; preference for the region of the NIS where the intern(s) is/are employed; and whether Applicant is open to sponsoring interns from a variety of NIS countries.

Evaluation criteria 1–4 will be weighted equally.

ITA does not guarantee that it will match Applicant with the profile provided to SABIT.

Selection Procedures: Each application will receive an independent, objective review by one or more three or four-member independent review panels qualified to evaluate applications submitted under the program. Applications will be evaluated on a competitive, ''rolling'' basis as they are received in accordance with the selection evaluation set forth above. Awards will be made to those applications which successfully meet the selection criteria. If funds are not available for all those applications which successfully meet the criteria, awards will be made to the first applications received which successfully do so. ITA reserves the right to reject any application; to limit the number of interns per applicant; and to waive informalities and minor irregularities in applications received. The final selecting official reserves the right to make awards based on U.S. geographic and organization size diversity among applicants, as well as to consider priority business sectors (listed in Project Funding Priorities, above) when making awards. Recipients may be eligible, pursuant to approval of an amendment of an active award, to host additional interns under the program. ITA reserves the right to evaluate applicants based on past performance. The Director of the SABIT Program is the final selecting official for each award.

Additional Information: Applicants must submit: (1). Evidence of adequate financial resources of Applicant organization to cover the costs involved in providing an internship(s). As evidence of such resources, Applicant should submit financial statements audited by an outside organization or an

annual report including such statements. If these are not available, a letter should be provided from the Applicant's bank or outside accountant attesting to the financial capability of the firm to undertake the scope of work involved in training an intern under the SABIT program. (2). Evidence of a satisfactory record of performance in grants, contracts and/or cooperative agreements with the Federal Government, if applicable. (Applicants who are or have been deficient in current or recent performance in their grants, contracts, and/or cooperative agreements with the Federal Government shall be presumed to be unable to meet this requirement). (3). A statement that the Applicant will provide medical insurance coverage for interns during their internships. Recipients will be required to submit proof of the interns' medical insurance coverage to the Federal Program Officer before the interns' arrivals. The insurance coverage must include an accident and comprehensive medical insurance program as well as coverage for accidental death, emergency medical evacuation, and repatriation.

Other Requirements: All applicants are advised of the following:

1. No award of Federal funds shall be made to an Applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce (DOC) are made.

2. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

3. Recipients and subrecipients are subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

4. Participating companies will be required to comply with all relevant U.S. tax and export regulations. Export controls may relate not only to licensing of products for export, but also to technical data transfer. The U.S. Department of Commerce's Bureau of Export Administration (BXA) reviews applications in question to determine whether export licenses are required. SABIT will not award a grant until the export license issue has been satisfied.

5. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

6. If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

7. Past performance: Unsatisfactory performance by an applicant under prior Federal awards may result in an application not being considered for funding.

8. No obligation for future funding: If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

9. Primary Applicant Certifications: All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

(a) *Nonprocurement Debarment and Suspension:* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

(b) *Drug Free Workplace:* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

(c) *Anti-Lobbying:* Funds provided under the SABIT program may not be used for lobbying activities. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

(d) *Anti-Lobbying Disclosures:* Any applicant that has paid or will pay for lobbying in connection with this award using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

10. All primary applicants must also submit a completed Standard Form 424, ''Application for Federal Assistance'' and a Standard Form 424B, ''Assurances—Non-Construction Programs.'' Form CD–511 and Standard Forms 424 and 424B are included in the Application Kit supplied by the SABIT office.

11. *Lower Tier Certifications:* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

12. *Indirect Costs:* Indirect costs are not allowed under the SABIT program.

13. Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the greatest extent practicable.

14. The following statutes apply to this program: Section 907 of the FREEDOM Support Act, Public Law 102–511, 22 U.S.C. 5812 note (Restriction on Assistance to the Government of Azerbaijan); 7 U.S.C. § 5201 *et seq.* (Agricultural Competitiveness and Trade—the Bumpers Amendment); The Foreign Assistance Act of 1961, as amended, including Chapter 11 of Part I, section 498A (b) Public Law 102–511, 22 U.S.C. 2295a(b) (regarding ineligibility for assistance); 22 U.S.C. 2420(a), Section 660(a) of The Foreign Assistance Act of 1961, as amended (Police Training Prohibition); and provisions in the annual Foreign Operations, Export Financing, and Related Programs Appropriations Acts, concerning impact on jobs in the United States (see, e.g., 536 of Public Law 106–113).

15. *Audit Requirements:* The DOC Office of Inspector General has authority under the Inspector General Act of 1978, as amended, to conduct an audit of any DOC award at any time.

16. *Payments.* As required by the Debt Collections Improvement Act of 1996, all Federal payments to award recipients pursuant to this announcement will be made by electronic funds transfer.

17. The collection of information is approved by the Office of Management and Budget, OMB Control Number 0625–0225. Public reporting for this collection of information is estimated to be three hours per response, including the time for reviewing instructions, and completing and reviewing the collection of information. All responses to this collection of information are voluntary, and will be protected from disclosure to the extent allowed under the Freedom of Information Act. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Clearance Officer, International Trade Administration, Department of Commerce, Room 4001, 14th and Constitution Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Special American Business Internship Training, International Trade Administration, at (202) 482–0073. This is not a toll-free number.

Dated: June 1, 2000.

Liesel C. Duhon,

Director, SABIT Program.

[FR Doc. 00–14271 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053100B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Standing and Special Stone Crab Scientific and Statistical Committees (SSC).

DATES: The SSC meeting is scheduled to begin at 8:00 a.m. on June 21, 2000 and will conclude by 3:00 p.m.

ADDRESSES: The meeting will be held at the Pier House, 1 Duval Street, Key West, FL 33040; telephone: 305–296–4600.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Standing and Special Stone Crab SSC will convene to review an amendment to the Stone Crab Fishery Management Plan (FMP). The Stone Crab amendment proposes to extend the trap certificate program for the commercial stone crab fishery adopted by the state of Florida into the Federal waters off west Florida. The Florida Fish and Wildlife Conservation Commission (FFWCC), after working with the stone crab industry and the Council over the past 4 years, has adopted by rule a trap certificate program that will gradually reduce the number of traps over a 30-year period. The Florida legislature has approved the portion of this program pertaining to licenses and fees. Based on this review, the SSC may make recommendations to the Council for consideration at their meeting in Key Largo, July 10–14, 2000.

At the conclusion of the Stone Crab SSC meeting, the Standing SSC will also review an amendment for a Generic Amendment Addressing the Establishment of Tortugas Marine Reserves, which proposes to establish the Tortugas South marine reserve that will encompass the Riley's Hump mutton snapper spawning aggregation site established by the Council in 1994. The total area of the proposed Tortugas South marine reserve is 60 square nautical miles. The amendment also proposes to create the Tortugas North marine reserve cooperatively with the Florida Keys National Marine Sanctuary (FKNMS) program, the state of Florida, and the National Park system, which will encompass an area of 120 square nautical miles. The portion proposed to be established by the Council is 13 square nautical miles. The Council proposes that marine reserves be established for a period of at least 10 years, during which the ecological benefits of the reserve will be evaluated. The Council also proposes that fishing and anchoring be prohibited within the marine reserves.

Although other non-emergency issues not on the agendas may come before the SSCs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SSCs will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 7, 2000.

Dated: June 1, 2000.

Richard W. Surdi,

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

[FR Doc. 00–14364 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052600A]

Marine Mammals; File No. 684–1458

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Donald Siniff, University of Minnesota, Department of Ecology, Evolution and Behavior, 100 Ecology Building, 1987 Upper Buford Circle, St. Paul, MN 55108 has requested an amendment to scientific research Permit No. 684–1458.

DATES: Written or telefaxed comments must be received on or before July 7, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562/980–4001).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315

East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 684–1458, issued on August 17, 1998 (63 FR 43914) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 684–1458 authorizes the permit holder to capture, tag, sample, and lavage Weddell seals (*Leptonychotes weddellii*) of all age and sex classes on McMurdo Sound in the Antarctic. The permit holder requests authorization to place VHF transmitters on adult female Weddell seals, and apply a series of instrument packages that contain: a 3MPDT logger (3-dimensional, magnetic data recorder), DSL (digital still camera), DU (ultrasonic depth sounder), PD2GT (speed, acceleration, depth, and temperature recorder) and ECG (electrocardiogram monitor) to male and female Weddell seals of all age classes. For attachment of the instrument package, the permit holder requests authorization to anesthetize seals with the drug Sevoflurane. The permit holder also requests an increase in the number of adult female Weddell seals captured (400 to 500), the number of adult male Weddell seals fitted with VHF transmitters (30 to 100) and the number of Weddell seal pups fitted with satellite-linked radio transmitters and the PD2GT and ECG instruments (20 to 50).

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: May 31, 2000.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–14363 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Monday, June 12, 2000, 8:30–11:30 a.m.

PLACE: The Westin Seattle, Rooms Vashon 1 & 2, 1900 Fifth Avenue, Seattle, Washington 98101.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks
II. Swearing-In of New Board Members
III. Approval of March Board Meeting Minutes
IV. Status Report by the Chief Executive Officer
V. Committee Reports
  A. Executive Committee
  B. Management, Budget, and Governance Committee
  C. Planning and Evaluation Committee
  D. Communications Committee
  Report on Corporate Initiatives
  Report on AmeriCorps Alumni Activities
VI. Presentations by Officials and Projects from the State of Washington
VII. Discussion of Results of 2000 Grant Processes
  A. Learn and Serve America
  B. AmeriCorps
VIII. AmeriCorps*VISTA Plans
IX. Future Board Meeting Dates
X. Public Comment
XI. Adjournment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR FURTHER INFORMATION: Rhonda Taylor, Deputy Director of Special Projects and Initiatives, Office of Public Liaison, Corporation for National Service, 8th Floor, Room 8619, 1201 New York Avenue NW., Washington, D.C. 20525. Phone (202) 606–5000 ext. 282. Fax (202) 565–2794. TDD: (202) 565–2799.

Dated: June 2, 2000.

Thomasenia P. Duncan,

General Counsel, Corporation for National and Community Service.

[FR Doc. 00–14368 Filed 6–2–00; 4:19 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of Federally Owned Inventions

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Pub. L. 96–517, the Department of the Air Force announces the availability of certain Air Force owned inventions. The following list of patent applications and patents are available for Nonexclusive or Exclusive Licensing from the Air Force Research Laboratory (AFRL/DE or /VS) at Kirtland Air Force Base (AFB). Additional information concerning the inventions is available upon request.

All communications concerning this Notice should be sent to Mr. Kenneth Callahan, Patent Attorney, 377 ABW/JAN, 2251 Maxwell SE, Kirtland AFB, NM 87117. Mr. Callahan can be reached by telephone at (505) 846–1542, e-mail: Kenneth.Callahan@Kirtland.AF.MIL, or fax to (505) 846–0279.

AIR FORCE RESEARCH LABORATORY PATENTS AVAILABLE FOR LICENSING AT KIRTLAND AFB, NM

	Title of invention
Application:	
09/563,469	Hermetically Sealed, High Energy Trigatron Switch.
09/562,873	Multifunctional Capillary System for Hoop Heat Pipe.
09/558,527	Circuit for Deriving the Position of a Fast Pulsing Laser.
09/558,456	Pneumatic Airborne Ejection System for Spacecraft Stages From Wide Body and Jet Transport Aircraft.
09/550,582	Smart Docking Surface for Space Serviceable Nano and Micro Satellites.
09/504,551	Space-based CW Laser Detector Package.

AIR FORCE RESEARCH LABORATORY PATENTS AVAILABLE FOR LICENSING AT KIRTLAND AFB, NM—Continued

	Title of invention
09/493,508	Birefringence Compensation Using a Single Nd:YAG Rod.
09/465,021	Liquid Spray Phase Change Cooling of Laser Devices.
09/444,984	Solar Sail for Power Generation in Space.
09/388,571	Space Environment Protection Satellite Door.
09/387,992	Molecular Field Programmable Gate Array.
09/384,901	Passive Vibroacoustic Attenuator for Structural Acoustic Control.
09/372,725	Broadband Grating Spectrometer Based on Dualband Focal Plane Array.
09/372,724	Adaptive Herschel-Quincke Tubes.
09/326,058	Composite ChamberCore Sandwich-type Structure with Inherent Acoustic Attenuation.
09/277,596	Ultra Wideband RF-enhanced Chemotherapy for Cancer Treatment.
09/277,595	Whole-spacecraft Hybrid (Active/Passive) Isolation System for Launch Vehicles.
09/277,593	Time Domain Focused High-power Microwave System for Cancer Treatment.
09/266,181	High-density Optical Interconnect with an Increased Tolerance of Misalignment.
09/252,379	Coupled Helmholtz Resonators for Broadband Acoustic Attenuation.—Allowed.
09/231,149	Active Edge Controlled Optical Quality Membrane Mirror.—Allowed.
09/178,876	Advanced Instrument Controller.
09/169,495	Post Process Metallization Interconnects for Microelectromechanical Systems (MEMS).
09/169,494	Post Process Deposition Shielding for Microelectromechanical Systems.—Allowed.
09/092,608	Liquid Crystal Active Optics Correction for Large Space-Based Optical Systems.—Allowed.
Patent No.:	
6,061,034	Power Enhancer for Solid-state Switched Ultra Wideband Pulsers and array Transmitters.
6,047,541	HAN TEAN Mixing Gas Generator Propellant Tank Pressurizer for Launch Vehicles and Spacecraft.
6,040,935	Flexureless Multi-Stable Micromirrors for Optical Switching.
6,034,351	Cryogenic Pupil Stop for Dual-Band Infrared Focal Plane Array.
6,028,689	Multi-motion Micromirror.
6,020,724	Regulated Capacitor Charging Circuit Using a High Reactance Transformer.
6,005,305	Magnetic Voltage-Pulser.
5,944,913	High-Efficiency Multiple-Junction Solar Cells.
5,923,687	Bandwidth Enhancement and Broadband Noise Reduction in Injection-Locked Semiconductor Lasers.
5,900,986	Columnar Focal Lens.
5,835,545	Compact Intense Radiation System.
5,808,226	Grenade Shell Laser System.
5,774,490	Diode-Pumped Tm: YAG/HBr Four-Micron Laser System.
5,773,787	Plasma Gun Voltage Generator.
5,760,496	Inverse-Pinch Voltage Pulse Generator.
5,748,657	High Efficiency Constant Current Laser Drivers.
5,742,045	Apparatus Using Diode Laser Logic to Form a Configurable Optical Gate System.
5,734,303	Microwave Waveguide Mode Converter Having a Bevel Output End.
5,727,016	Spatially Coherent Diode Laser With Lenslike Media and Feedback From Straight-Toothed Gratings.
5,705,959	High Efficiency Low Distortion Amplification.
5,696,786	Solid-State Laser System.
5,694,602	Weighted System and Method for Spatial Allocation of a Parallel Load.
5,689,958	High Efficiency Thermal Electric Cooler Driver.
5,675,604	Portable Pumped Laser System.
5,658,488	Regeneration of BHP in a Plant Process.
5,656,873	Transmission Line Charging.
5,646,764	Optical Beam Scanner With Rotating Transmissive Optics.
5,629,802	Spatially Multiplexed Optical Signal Processor.
5,604,642	Laser Welding of Light-Weight Honeycomb Mirrors.
5,604,431	Integrated Grid Particle Impact Detector.
5,602,387	Method of Protecting an RF Receiver in a Hostile Electromagnetic Environment.
5,567,995	Multi-Winding Spiral Generator.
5,557,699	NLO Waveguide and Switch and Method.
5,553,629	Portable Medical Laser Pack System.
5,535,029	Spatial Light Modulator Having Amplitude Coupled With Binary Phase Mode.
5,504,578	Temporal Fringe Pattern Analysis System of a Laser Gain Media.
5,500,865	Phased Cascading of Multiple Nonlinear Optical Elements for Frequency Conversion.
5,458,043	Battery Charging Capacitors Electromagnetic Launcher.
5,457,685	Multi-Speaker Conferencing Over Narrowband Channels.
5,444,308	Nanosecond Transmission Line Charging Apparatus.
5,425,044	Compact, Burst Mode, Pulsed, High Energy, Blowdown Flow Photolytic Atomic Iodine Laser.
5,422,047	Carbonaceous Fuel Particles.
5,410,558	Variable Short Period Electron Beam Wiggler for Free Electron Lasers.
5,406,072	Method for Microbeam Ion Radiation Testing of Photonic Devices.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–14287 Filed 6–6–00; 8:45 am]

BILLING CODE 5001–05–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference on Thursday, June 15, 2000 and a public hearing on Friday, June 16, 2000. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the River Run Restaurant at the West Branch Angler, 150 Faulkner Road, Deposit, New York.

The conference among the Commissioners and staff will begin at 1:30 p.m. on Thursday and will include status reports on the following subjects: a proposed coordinated drought plan; a study of the flow needs of the Delaware River and major tributaries; development of a TMDL for PCBs in the Delaware Estuary; a proposed agreement with the U.S. Army Corps of Engineers for storage at F.E. Walter Reservoir; and a proposal for joint DRBC-Corps of Engineers projects. In addition, there will be a presentation on a proposed new watershed atlas web site and discussion of possible source water protection activities.

The business meeting at 10:30 a.m. on Friday will include a public hearing on the projects summarized below. In addition, the Commission will address the following: minutes of the May 2, 2000 business meeting; announcements; report on hydrologic conditions in the basin; reports of the Executive Director and General Counsel; a resolution providing for the election of Commission officers for the fiscal year 2000–2001; and public dialogue.

The subjects of the hearing will be as follows:

1. *Manwalamink Water Company D–89–50 CP RENEWAL.* A renewal of a ground water withdrawal project to continue to supply up to 15 million gallons (mg)/30 days of water to the applicant's public water distribution system from Wells Nos. 1, 2, 3, 5 and 6. The project is located in Smithfield Township, Monroe County, Pennsylvania.

2. *Town of Felton D–99–26 CP.* A ground water withdrawal project to supply up to 4.9 mg/30 days of water to the applicant's distribution system from new Well No. 4, and to increase the existing withdrawal limit from all wells to 5.7 mg/30 days. The project is located in the Town of Felton, Kent County, Delaware.

3. *Whitehall Township Authority D–2000–9 CP.* A ground water withdrawal project to supply up to 33.3 mg/30 days of water to the applicant's public water distribution system from the new Lehnert Road Well, and to increase the existing withdrawal limit from all the applicant's wells to 91.2 mg/30 days. The project is located in Whitehall Township, Lehigh County, Pennsylvania.

4. *Uwchlan Township D–2000–16 CP.* A project to expand the applicant's Eagleview sewage treatment plant (STP) from 0.15 million gallons per day (mgd) to 0.475 mgd. The STP will continue to serve portions of Uwchlan and Upper Uwchlan Townships with tertiary treatment prior to discharge to Shamona Creek, a tributary of East Branch Brandywine Creek. The STP is located less than one mile south of the intersection of U.S. Route 76 and PA Route 100 in Uwchlan Township, Chester County, Pennsylvania.

5. *Westtown Township D–2000–21 CP.* A project to expand the applicant's existing 0.29 mgd Chester Creek STP to 0.495 mgd. The STP is located just southwest of Westtown Road in Westtown Township, Chester County, Pennsylvania and will continue to provide secondary treatment to Westtown Township. Treated effluent will continue to discharge to East Branch Chester Creek.

6. *Sunny Dell Foods, Inc. D–2000–23.* A project to construct a new 0.05 mgd industrial wastewater treatment plant to provide tertiary level treatment for the applicant's mushroom cannery facility. The facility straddles the border between the Borough of Kennett Square and Kennett Township immediately south of Baltimore Pike in Kennett Township, Chester County, Pennsylvania. Treated effluent will be discharged to West Branch Red Clay Creek in Water Quality Zone C5. After screening and disinfection, 0.09 mgd of cooling water will be discharged to West Branch Red Clay Creek via a separate outfall.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Commission Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Individuals planning to attend the hearing who need an accommodation as provided for in the Americans With Disabilities Act should contact the Commission Secretary directly at (609) 883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the Commission may accommodate your needs.

Dated: May 30, 2000.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 00–14288 Filed 6–6–00; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment

addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 1, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Annual Performance Report for the Smaller Learning Communities (SLC) Grant Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 161; Burden Hours: 1,288.

Abstract: This Annual Performance Report will allow the Department of Education to collect data required by the Government Performance and Results Act (GPRA) and by House Appropriations language that established the Smaller Learning Communities grant program [H.R. 3424, 106th Congress (Appropriations 2000)]. The Department will use the information for GPRA report and the national evaluation of the SLC program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–14239 Filed 6–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 1, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Comprehensive School Reform Demonstration Field Focused Studies.

Frequency: Semi-Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 198. Burden Hours: 324.

Abstract: This study is being conducted as part of the national evaluation of the Comprehensive School Reform Demonstration Program. The study will examine the link among three components—school reform processes, instruction and other educational activities, and student achievement.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.1

[FR Doc. 00–14240 Filed 6–6–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.184H, 84.184K, 84.184M, 84.184N]

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities—National Programs

AGENCY: Department of Education.

ACTION: Notice reopening the application deadline date for Safe and Drug-Free Schools and Communities Act—National Programs grant competitions.

SUMMARY: On April 6, 2000, the Department published a combined notice inviting applications for new

awards for Safe and Drug-Free Schools and Communities National Programs direct grant competitions (65 FR 18188). The Secretary reopens the deadline date for the submission of applications for four of the Safe and Drug-Free Schools and Communities—National Programs grant competitions from May 12, 2000, (May 22, 2000, for CFDA #84.184M) for applicants that can show a shipping label, invoice, or receipt for overnight delivery contracted to arrive by May 12, 2000 (May 22, 2000, for CFDA #84.184M). This action is taken due to unexpected or unavoidable delays in receipt of applications sent via certain overnight delivery services. Competitions affected by this change of application deadline date are CFDA #84.184H, Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students; CFDA #84.184K, Middle School Drug Prevention and School Safety Program Coordinators Grant Competition; CFDA #84.184M, Effective Alternative Strategies: Grant Competition to Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Students who are Suspended or Expelled; and CFDA #84.184N, Alcohol and Other Drug Prevention Models on College Campuses Grant Competition.

DATES: For the competitions listed in this notice, the application deadline date is reopened to June 7, 2000, for applicants able to show a shipping label, invoice, or receipt for overnight delivery contracted to arrive by May 12, 2000 (May 22, 2000, for CFDA #84.184M). The deadline for intergovernmental review is extended to June 26, 2000 for these competitions.

FOR FURTHER INFORMATION CONTACT: Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Authority: 20 U.S.C. 7131.

Dated: June 2, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–14278 Filed 6–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Denver Regional Office; Solicitation for Financial Assistance Applications; Weatherization Training and Program Enhancement

AGENCY: U.S. Department of Energy.

ACTION: Solicitation for financial assistance applications, solicitation number DE–PS48–00R810686.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for a state sponsor for Weatherization Training and Program Enhancement activities to be conducted for the Weatherization Assistance Program (WAP) in the Denver Region. The financial assistance award issued under this Solicitation will be a cooperative agreement.

DATES: The solicitation will be issued on or about May 31, 2000.

ADDRESSES: Copies of the Solicitation, once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html. DOE does not intend to issue written copies of the solicitation.

SUPPLEMENTARY INFORMATION: DOE is soliciting Applications for a state sponsor for Weatherization Training and Program Enhancement activities to be conducted for the Weatherization Assistance Program (WAP) in the Denver Region. Eligibility is restricted to the twelve states within DOE's Denver Region. The selected applicant (hereinafter called recipient) will receive financial assistance to administer training and other activities that assist with the enhancement and advancement of the WAP under a cooperative agreement with the DOE. It is anticipated that one award will result from this solicitation. Under the cooperative agreement, the recipient will have primary responsibility for providing training and technical development activities that are intended to improve the depth, knowledge and the caliber of technical skills of grantees and subgrantees administering the DOE WAP in the Denver Region. It is expected that the recipient will coordinate and work in conjunction with Weatherization organizations within the region that specialize in the delivery of training and enhancement-type activities, such as the Weatherization Manager's Association (WMA), and other technical skills training organizations.

The recipient will conduct solicitations for WAP projects in the region, coordinate the selection process for subgrants, and oversee the management and monitoring of training and enhancement projects. The recipient will also ensure that information about the projects, through reports and minutes of informational meetings, are developed and distributed. It is estimated that $100,000 will be made available for the initial award in Fiscal Year 2000, and DOE anticipates that up to $750,000 may be made available over the five-year project period, depending upon availability of funding.

FOR FURTHER INFORMATION, CONTACT: Dennis D. Maez, Contract Specialist, at (303) 275–4825, or send an e-mail to dennis_maez@nrel.gov.

Issued in Golden, Colorado, on May 26, 2000.

Jerry L. Zimmer,

Procurement Director, GO.

[FR Doc. 00–14323 Filed 6–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

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), Los Alamos. 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**.

DATES: Wednesday, June 28, 2000; 6 p.m.–9 p.m.

ADDRESSES: Holiday Inn, 1005 Paseo de Pueblo Sur, Taos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: adubois@doeal.gov; or Internet http:www.nnmcab.org.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Opening Activities—6 p.m.–6:30 p.m.
Public Comment—6:30 p.m.–7 p.m.
Committee Reports:
Environmental Restoration.
Monitoring and Surveillance.
Waste Management.

Community Outreach.
Budget.

Other Board business will be conducted as necessary.

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 Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on June 1, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–14324 Filed 6–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM–SSAB), Kirtland Area Office (Sandia).

DATES: Wednesday, June 21, 2000: 6:00 p.m.–9:00 p.m. (MST).

ADDRESSES: North Valley Senior Citizens' Center, 3825 4th Street, NW., Albuquerque, NM 87107.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:00 p.m.—Check-In/Agenda Approval/Minutes.
6:15 p.m.—Meeting Manager Update.
6:30 p.m.—Public Comment (General Topics).
6:40 p.m.—Class III Permit modification (C3PM) Report.
7:25 p.m.—Break.
7:40 p.m.—Public Comment on C3PM Issue
7:50 p.m. Citizens' Advisory Board Consensus.
8:10 p.m.—Transition Plan.
8:30 p.m.—Environmental Management Science Program (EMSP).
8:40 p.m.—New/Other Business.
8:50 p.m.—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 Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on June 2, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–14325 Filed 6–6–00; 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, June 27, 2000; 1:00 p.m.–5:00 p.m.

ADDRESSES: Carson County Square House Museum, Hwy 207 & 5th Street, Panhandle, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION: *Purpose of the 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—Agenda Review/Approval of Minutes.
1:15—Co-Chair Comments.
1:30—Task Force/Subcommittee Reports.
2:00—Ex-Officio Reports.
2:30—Updates—Concurrence Reports—DOE.
3:00—Lunch.
3:15—Presentation (To Be Decided).
4:15—Public Comments.
4:30—Closing Comments.
5:00—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.

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 May 31, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–14326 Filed 6–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–237–001]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2000.

Take notice that on May 26, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of May 1, 2000:

Substitute Fifth Revised Sheet No. 280
Substitute Seventh Revised Sheet No. 281
Substitute Fourth Revised Sheet No. 283

Columbia states that on March 31, 2000, it filed tariff sheets in Docket No. RP00–237 to revise its tariff to comply with the Commission's changes in its Order No. 637 to the right-of-first-refusal (ROFR) afforded certain firm shippers in 18 CFR 284.221(d)(2)(ii). In Order No. 637, the Commission revised the ROFR to limit its applicability. Columbia revised General Terms and Conditions (GTC) Section 4, which contains the procedures for the awarding the existing firm capacity and the exercise of the ROFR of Columbia, to reflect these changes. On April 26, 2000, the Commission accepted the filed tariff sheets to be effective May 1, 2000, subject to Columbia making certain revisions within 30 days. The instant filing is being made to comply with the April 26 Order.

Columbia states that copies of its filing and have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14234 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–21–005]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2000.

Take notice that on May 26, 2000, Dominion Transmission, Inc. (Dominion), formerly CNG Transmission Corporation, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets with a proposed listed on Appendix A to the filing, with an effective date of July 1, 2000.

Dominion states that the purpose of this filing is to implement two new rate schedules, Rate Schedules Delivery Point Operator (DPO) and City Gate Swing Customer (CSC). Rate Schedule DPO is designed primarily to allow operators of citygate interconnections with Dominion to offer no-notice service to marketers serving retail markets behind the citygate. Rate Schedule CSC, a companion service to Rate Schedule DPO, is designed for marketers behind the citygate where, under certain terms and conditions, such marketers can receive no-notice service from Dominion.

The Commission in its March 31, 2000 Order accepted Dominion's proposed Rate Schedule DPO and CSC with the exception of the Dominion's proposed hourly flow restrictions and certain penalty proposals. In that Order, the Commission ordered Dominion to refile revised tariff sheets consistent with the Commission's March 31, 2000 order.

Dominion states that the revised tariff sheets fully comply with the Order's requirements to remove the proposed hourly flow restrictions from Rate Schedules FT, IT and MCS and the other changes required by the Commission in the Order. Dominion also states that it has incorporated minor corrections and clarified tariff language in order to satisfy customers that have filed for rehearing of the March 31, 2000, order or otherwise commented on Dominion's April 17, 2000, compliance filing, including tariff changes that would give Dominion additional responsibility to enforce contract overrun provisions with its CSC customers. To that end, Dominion has requested a limited waiver of Section 154.203(b) of the Commission's regulations, 18 CFR 154.203(b).

Dominion indicated that it plans to file its motion to move these tariff sheets into effect on or before June 30, 2000, provided that these tariff sheets are accepted for filing by the Commission and are allowed to become effective as proposed.

Dominion states that copies of its filing have been served upon Dominion's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14233 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–129–000; Docket No. CP00–132–000]

Horizon Pipeline Company, L.L.C. and Natural Gas Pipeline Company of America; Notice of Intent To Prepare an Environmental Assessment for the Proposed Horizon Project and Request for Comments on Environmental Issues

June 1, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Horizon Project involving construction and operation of facilities by Horizon Pipeline Company, L.L.C. (Horizon) and Natural Gas Pipeline Company of America (Natural) in Cook, DuPage, Kane, McHenry, and Will counties, Illinois.[1] These facilities would consist of approximately 71 miles of various diameter pipeline, a new compressor station, modification to an existing compressor station, meter stations, taps, and values. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice the applicants provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

Summary of the Proposed Project

[Docket No. CP00–129–000]

Horizon does not currently own any pipeline facilities and is not engaged in any natural gas transportation operations. Upon approval of the subject applications, Horizon would become a new interstate pipeline company subject to Commission jurisdiction under the Natural Gas Act. Horizon proposes to provide 380 thousand dekatherms per day (Mdth/d) of gas transportation service to customers in northern Illinois. The Horizon Project would consist of 71 miles of pipeline from near Joliet, Illinois to near McHenry, Illinois. Approximately 29 miles would be new construction with the remaining 42 miles consisting of leased capacity along an existing Natural pipeline. Specifically, Horizon proposes to acquire, construct, and operate:

- 29 miles of new 36-inch-diameter pipeline in DuPage, Cook, Kane, and McHenry Counties, Illinois;
- Miscellaneous meter stations, taps, and values along the new 36-inch-diameter pipeline;
- 380 MDth/d of leased capacity along 42 miles of existing Natural pipeline in Will and DuPage Counties, Illinois; and
- 8,900 horsepower new compressor station adjacent to Natural's Compressor Station 113 in Will County, Illinois.

[Docket No. CP00–132–000]

Natural proposes to abandon 42 miles of leased capacity on its existing system to Horizon. The leased capacity would run from Natural's Gulf Cost mainline interconnect with Alliance Pipeline L.P. to an interconnect with the proposed Horizon pipeline. The capacity lease would require Natural to construct new facilities and to rearrange existing facilities. Specifically, Natural proposes to:

- Abandon by lease 380 MDth/d of capacity to Horizon;
- Increase the total horsepower of its existing Compressor Station 113 by 3,690 horsepower;
- Modify the Streamwood Meter Station; and
- Construct taps at the interconnects with the new Horizon pipeline in DuPage and McHenry Counties, Illinois.

The locations of all proposed facilities are shown in appendix 1.

Land Requirements for Construction

Construction of the proposed facilities would require about 424 acres of land. Following construction, approximately 139 acres would be maintained as new pipeline right-of-way and about 7 acres would be maintained as new aboveground facility sites. The remaining 278 acres of land would be restored and allowed to prevent to the former use.

The EA Process

The National Environmental Policy Act (NEPA) requires that Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Land use;
- Cultural Resources;
- Air quality and noise; and
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected

[1] Horizon and Natural's application were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make or our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Horizon. This preliminary list of issues may be changed based on your comments and our analysis.

- The project would be cross 10 perennial streams, 24 acres of wetlands, and 22 acres of forest.
- Federally listed endangered or threatened species, such as the prairie bush clover and the eastern prairie fringed orchid, may occur in the proposed project area.
- The project would cross public lands and other designated areas, such as the Pratts Wayne Woods County Forest Preserve, the Stickney Run Conservation Area, and the Bates Fen Nature Preserve, in DuPage and McHenry Counties.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes, and measure to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1.
- Reference Docket Nos. CP00–129–000 & CP00–132–000.
- Mail your comments so that they will be received in Washington, DC on or before June 30, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only Intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–14229 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–149–000]

Midwest Electric Power, Inc.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

June 1, 2000.

Take notice that on May 26, 2000, Midwest Electric power, Inc. (MEP), 2100 Portland Road, P.O. Box 165, Joppa, IL 62953, filed with the Federal Energy Regulatory Commission on amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, 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). The Commission will limit its consideration of comments to those that concern the adequacy of accuracy of the application. All such motions and comments should be filed on or before June 21, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14226 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–020]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

June 1, 2000.

Take notice that on May 26, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing First Revised Sheet No. 26J to be a part of its FERC Gas Tariff, Sixth Revised

Volume No. 1, to be effective April 25, 2000.

On April 25, 2000, Natural filed Original sheet No. 26J at Docket No. RP99–176–018 to implement a negotiated rate formula transaction under Rate Schedule ITS with the Peoples Gas Light and Coke Company. Original Sheet No. 26J was accepted by letter order dated May 19, 2000, to become effective April 25, 2000.

Subsequently to Natural's initial filing on April 25, 2000, it was discovered that the executed negotiated rate agreement inadvertently omitted all storage and pooling points in Natural's Iowa Illinois Gulf Receipt Zone from among the qualified delivery points. The negotiated rate agreement was amended to remedy this omission. Therefore, Natural is now submitting First Revised Sheet No. 26J reflecting the revised footnote six (6) to supersede Original Sheet No. 26J previously submitted on April 25, 2000.

Natural requests waiver of the Commission's Regulations, including the 30-day notice requirement of Section 154.207, to the extent necessary to permit First Revised Sheet No. 26J to become effective April 25, 2000, which coincides with the effective date of the amendment to the underlying negotiated rate agreement.

Natural states that copies of the filing are being mailed to Natural's customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.215 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14231 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2176–000]

New Hampshire Electric Cooperative, Inc.; Notice of Filing

June 1, 2000.

Take notice that on May 2, 2000, New Hampshire Electric Cooperative, Inc. (NHEC), tendered for filing a request for withdrawal of its petition for acceptance of changes to NHEC's FERC Rate Schedule No. 2 filed with the Commission on April 11, 2000 in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 9, 2000. Protests will be considered by the Commission to determine the appropriate to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14236 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–244–001]

Sumas International Pipeline Inc; Notice of Compliance Filing

June 1, 2000.

Take notice that on May 26, 2000, Sumas International Pipeline Inc. (SIPI), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets to become effective May 1, 2000:

Substitute Second Revised Sheet Number 10
Substitute Second Revised Sheet Number 11
Substitute Original Sheet Number 11A
Substitute First Revised Sheet Number 13A
Substitute First Revised Sheet Number 13B
Substitute First Revised Sheet Number 13C
Substitute Original Sheet Number 13D

SIPI asserts that the purpose of this filing is to comply with Order No. 587 issued on July 17, 1996; the Notice Clarifying procedures for Filing Tariff Sheets issued on September 12, 1996, in Docket No. RM96–1–000; and the Commission's direction of 10 May, 2000 in Docket No. RP00–244–000 to correct errors in definitions on certain tariff sheets and to revise tariff language to incorporate Gas Industry Standards Board (GISB) Standards 1.3.38 and 1.3.46.

SIPI states that copies of this filing were mailed to all customers of SIPI and Interested Parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14235 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–408–012]

Trailblazer Pipeline Company; Notice of Filing of Refund Report

June 1, 2000.

Take notice that on May 26, 2000, Trailblazer Pipeline Company (Trailblazer) filed a refund report in Docket No. RP97–408–000. Trailblazer states that the filing and refunds were made to comply with the Commission's Orders of April 3, 1999 and March 30, 2000. Trailblazer states that these amounts were paid by Trailblazer on April 28, 2000.

The refund report summarizes transportation refund amounts for the period January 1, 1998 through March 31, 2000 pursuant to Article II of

Trailblazer's Stipulation and Agreement as approved in the Commission's April 3, 1999 Order.

Trailblazer states that the copies of its filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP97–408.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be on or before June 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14228 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–291–002]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

June 1, 2000.

Take notice that on May 26, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets for inclusion in its FERC Gas Tariff, Third Revised Volume No, 1, which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective April 14, 2000.

Transco states that the purpose of the instant filing is to revise Rate Schedules LNG and LNG–R to be consistent with the requirements for a Part 284 open-access service as discussed in the Commission's April 14, 2000 Order on Rehearing Rejecting Tariff Sheets in the referenced docket. (April 14 Order). In compliance with the April 14 Order, Transco is herein revising Rate Schedules LNG and LNG–R to provide some receipt and delivery point flexibility. Specifically, secondary point rights under these rate schedules will be provided, but will be limited to (1) the same zone in which the customer's primary receipt and delivery point are located and (2) physical points on Transco's system where measurement facilities exist, excluding pipeline interconnects.

Transco states that it is serving copies of the instant filing to its interveners as reflected on the official service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14232 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–037]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

June 1, 2000.

Take notice that on May 26, 2000, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing its report of activities regarding collection of Kansas ad valorem taxes.

Williams states that this filing is being made in compliance with Commission order issued September 10, 1997 in Docket Nos. RP97–397–000, *et al.* The September 10 order requires first sellers to make refunds for the period October 3, 1983 through June 28, 1988. The Commission also directed that pipelines file a report annually concerning their activities to collect and flow through refunds of the taxes at issue.

Williams states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in on or before June 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14230 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Meetings

June 1, 2000.

Take notice there will be meetings of the Ecological Resources subgroup of the Mokelumne Relicensing Collaborative on June 7–8, and 13–15, 2000. There will be meetings of the Recreation subgroup on June 8 and 14–15, 2000. The Ecological Resources and Recreation subgroups will meeting jointly on June 9, 2000. The Full Collaborative will meet on June 21–22, and 28–29, 2000. These meetings will be held from 9 a.m. to 4 p.m. at 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696.

For further information, please contact Diana Shannon at (202) 208–7774.

David P. Boergers,

Secretary.

[FR Doc. 00–14227 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

June 1, 2000.

Take notice that the format of the notice issued pursuant to section 3(a) of the Government in the Sunshine Act, Pub. L. 94–409, 5 U.S.C. 552b, is being revised to reflect the new organizational structure of the Commission's technical offices.

Consent agenda items from the Commission's Office of Markets, Tariffs, and Rates will be listed first as CAE- and CAG-items (for electric and gas, respectively) followed by consent agenda items from the Commission's Office of Projects listed as CAH- and CAC-items (for hydro and certificate, respectively). Regular agenda items will be listed in the following order: H-, C-, M-, E-, and G- (for hydro, certificate, miscellaneous, electric, and gas, and items, respectively).

The new format will be used for the first meeting in June. Accordingly, the Sunshine Act Notice will be issued under this format on June 7, 2000.

In addition, beginning on June 7, 2000, the Sunshine Act Notice will be available in the HTML format on the day of issuance to all interested persons on the Commission's Internet Web-Site at the following locations: Daily Notices, Commission Meeting Information, and Office of the Secretary.

David P. Boergers,

Secretary.

[FR Doc. 00–14225 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project—Notice of Proposed Extension of Firm and Nonfirm Transmission Service Rates—Rate Order No. WAPA–91

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension.

SUMMARY: This action is a proposal to extend the existing Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) firm point-to-point transmission service rate for the 500-kV transmission system and the nonfirm point-to-point transmission service rate for the 230/345/500-kV transmission system, Rate Order No. WAPA–71, through December 31, 2003. Both rates will expire September 30, 2000. This notice of proposed extension of rates is issued pursuant to 10 CFR part 903.23(a)(1). In accordance with 10 CFR part 903.23(a)(2), Western Area Power Administration (Western) will not have a consultation and comment period and will not hold public information and comment forums.

FOR FURTHER INFORMATION CONTACT: Mr. Maher Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2768, or by e-mail: nasir@wapa.gov.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary.

Pursuant with Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in power and transmission rate adjustments in 10 CFR part 903, Western's firm point-to-point transmission service rate for the AC Intertie 500-kV transmission system and nonfirm point-to-point transmission service rate for the AC Intertie 230/345/500-kV transmission system were submitted to FERC for confirmation and approval on January 31, 1996. On July 24, 1996, in Docket No. EF96–5191–000, at 76 FERC ¶ 62,061, FERC issued an order confirming, approving, and placing in effect on a final basis the firm point-to-point transmission service rate for the AC Intertie 500-kV transmission system and the nonfirm point-to-point transmission service rate for the AC Intertie 230/345/500-kV transmission system. The rates set forth in Rate Order No. WAPA–71 were approved for the 5-year period beginning February 1, 1996, and ending September 30, 2000.

The firm point-to-point transmission service rate for the AC Intertie 500-kV transmission system and the nonfirm point-to-point transmission service rate for the AC Intertie 230/345/500-kV transmission system will expire on September 30, 2000. This makes it necessary to extend the current rates pursuant to 10 CFR part 903. Upon its approval, Rate Order No. WAPA–71 will be extended under Rate Order No. WAPA–91. Under Rate Order No. WAPA–71, the three types of transmission service rates approved were (1) a firm point-to-point transmission service rate for the AC Intertie 230/345-kV transmission system; (2) a firm point-to-point transmission service rate for the AC Intertie 500-kV transmission system; and (3) a nonfirm point-to-point transmission service rate for the AC Intertie 230/345/500-kV transmission system.

Western's firm point-to-point transmission service rate for the AC Intertie 230/345-kV transmission system was superseded through Rate Order No. WAPA–76 and submitted to FERC for confirmation and approval on February 8, 1999. On June 22, 1999, in Docket No. EF99–5191–000, at 87 FERC ¶ 61,346, FERC issued an order confirming, approving, and placing in effect on a final basis the firm point-to-point transmission service rate of $12.00/kilowattyear for the AC Intertie 230/345-kV transmission system. The rate set forth in Rate Order No. WAPA–76 was approved for a 5-year period beginning January 1, 1999, and ending December 31, 2003.

Western is now proposing, through Rate Order No. WAPA–91, to extend the existing firm point-to-point transmission service rate of $17.23/kilowattyear for the AC Intertie 500-kV transmission system and the nonfirm point-to-point transmission service rate of 2.00 mills/kilowatthour for the AC Intertie 230/345/500-kV transmission system through December 31, 2003. This proposed extension will synchronize the expiration dates for all firm and nonfirm point-to-point transmission service rates for the AC Intertie 230/345/500-kV transmission system.

During the firm point-to-point transmission service rate development for the AC Intertie 230/345-kV transmission system (Rate Order No. WAPA–76), Western determined that it will take approximately 10 years for the AC Intertie 500-kV transmission system to be subscribed to a level sufficient to meet its own revenue repayment requirements. The ratesetting Power Repayment Study (PRS), established for the AC Intertie 230/345/500-kV transmission system (Rate Order No. WAPA–76), reflected the phasing-in of AC Intertie 500-kV transmission system revenues starting in FY 1999 through FY 2008. This ratesetting PRS remains valid. The projected revenue levels through sales of firm and nonfirm point-

to-point transmission service and miscellaneous items are sufficient to recover project expenses and capital requirements through FY 2049 for the AC Intertie 230/345/500-kV transmission system.

All documents made or kept by Western for developing the proposed extension of the firm point-to-point transmission service rate for the AC Intertie 500-kV transmission system and the nonfirm point-to-point transmission service rate for the AC Intertie 230/345/500-kV transmission system will be made available for inspection and copying at the Desert Southwest Customer Service Region, located at 615 South 43rd Avenue, Phoenix, Arizona.

Within ninety days after publication of this notice, Rate Order No. WAPA–91 will be submitted to the Deputy Secretary for approval through December 31, 2003.

Dated: May 30, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–14327 Filed 6–6–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00664; FRL–6591–9]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3-day meeting of the Federal Insectide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to atrazine cancer and reproductive developmental hazard and dose response assessment. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Larry Dorsey at the address listed under ''FOR FURTHER INFORMATION CONTACT'' at least 5 business days prior to the meeeting so that appropriate arrangements can be made.

DATES: The meeting will be held on June 27, 28, and 29 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your request must identify docket control number OPP–00664 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Larry Dorsey, Designated Federal Official (7101C), Office of Science Coordination and Policy, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: dorsey.larry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. 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 chemical substances 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.'' This 3–day meeting concerns several scientific issues undergoing consideration within the EPA Office of Pesticide Programs (OPP). The topics to be discussed include both the cancer and non-cancer hazard and dose-response assessment of atrazine.

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch (PIRIB) at the address and telephone listed below under Unit II.2. of ''SUPPLEMENTARY INFORMATION.''

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* A meeting agenda and copies of EPA background documents for the meeting are available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA/SAP Internet Home Page at http://www.epa.gov/scipoly/sap/. To access this document, on the Home Page, select ''**Federal Register** *Notice Announcing This Meeting.*'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00664. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to Atrazine: Hazard and Dose Response Assessment and Characterization, including any information claimed as Confidential Business Information (CBI). This administrative 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 administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00664 in the subject line on the first page of your request. Members of the public wishing to submit comments should contact the persons listed under ''FOR FURTHER INFORMATION CONTACT'' to confirm that the meeting date and agenda have not been modified or changed.

Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advanced written request to the persons listed under ''FOR FURTHER INFORMATION CONTACT,'' interested persons may be permitted by the Chair of the FIFRA Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the

organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc.) There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral or written statements at the meeting should contact the persons listed under ''FOR FURTHER INFORMATION CONTACT'' and submit 30 copies of their presentation and/or remarks to the Panel. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request 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.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: ''opp-docket@epa.gov.'' Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00664. You may also file a request online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: June 2, 2000.

Steven Galson,

Director, Office of Science Coordination and Policy.

[FR Doc. 00–14420 Filed 6–6–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL—6711–5]

Notice of Scientific and Technological Achievement Awards Subcommittee—Closed Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An ad hoc Subcommittee of the Science Advisory Board will meet at the U.S. Environmental Protection Agency (EPA), Washington, DC, on June 22–23, 2000. Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), EPA has determined that the meeting will be closed to the public. The purpose of the meeting is to recommend to the Assistant Administrator of the Office of Research and Development (ORD) the recipients of the Agency's 1999 Scientific and Technological Achievement Cash Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. In making these recommendations, including the actual cash amount of each award, the Agency requires full and frank advice from the Science Advisory Board. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel issues, where disclosure would constitute an unwarranted invasion of personal privacy, are protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Flaak, Team Leader, Committee Operations Staff, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460, telephone: (202) 564–4546 or e-mail at: flaak.robert@epa.gov.

Dated: June 1, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–14460 Filed 6–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–301000; FRL–6556–1]

Cut-Roses; Request for Exception to Worker Protection Standard's Prohibition of Early Entry Into Pesticide-Treated Areas to Harvest Roses by Hand Cutting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of exception request; request for comment.

SUMMARY: EPA has received a request for an exception from some of the restricted entry provisions of the Worker Protection Standard for rose harvesters. The exception would allow rose harvesters to harvest roses by hand before restricted entry intervals (REIs) have expired. Roses, Inc. has submitted a request to the Agency for a 5-year WPS cut-rose exception similar to the terms of a previous exception. This Notice acknowledges receipt of Roses, Inc.'s request and invites comment on the request.

DATES: Comments, identified by docket control number OPP–301000, must be received on or before August 7, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301000 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Robert I. Rose, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., Washington, DC 20460; telephone number: (703) 305–6708; fax number: (703) 308–2962; e-mail address: rose.roberti@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a rose producer or harvester or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Agriculture	11	Agriculture, forestry, fishing and hunting
Agriculture pest control services	115112	Control of rose pests and diseases
Crop harvesting	115113	Cut rose harvesting
Postharvest crop activities	115114	Reentry for management and maintenance
Agriculture production or harvesting crews	115115	Rose harvesters

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. The complete NAICS codes and descriptions are listed at: http://www.census.gov/epcd/www/naics.html. If you have 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 a docket for this action under docket control number OPP–301000. The docket consists of documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action. The public version of the official record does not include any information claimed as confidential business information (CBI). The public version of the official record including printed paper versions of 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 Highway, Arlington, VA, from 8 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 handling by EPA, it is imperative that you identify docket control number OPP–301000 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., 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 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 to the address 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–301000.

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 comments that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT'' section.

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. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper handling 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. Background

A. What Action is the Agency Taking?

The Agency is announcing the receipt of a request from Roses, Inc., of Haslett

Michigan, representing rose growers throughout the U.S. for an exception to the USEPA Worker Protection Standard to allow early entry of workers to harvest greenhouse grown fresh cut roses prior to the end of pesticide reentry intervals. The rationales supporting this request are provided. The Agency is providing a 60-day period for public comment before making a final decision.

B. WPS Background

Introduced in 1974, and revised in 1992, the Worker Protection Standard (WPS) 40 CFR part 170, is intended to protect agricultural workers and pesticide handlers from risks associated with agricultural pesticides. The WPS covers employees working in or on farms, forests, nurseries, and greenhouses who perform hand-labor operations in areas treated with pesticides. It also applies to workers who mix, load, apply or otherwise handle pesticides. The WPS contains requirements for pesticide safety training, notification of pesticide applications, use of personal protective equipment (PPE), restricted entry intervals (REIs) following pesticide application, decontamination supplies, and emergency medical assistance.

40 CFR 170.112 prohibits agricultural workers from entering a pesticide-treated area during an REI. Under specified conditions, the WPS contains exceptions (40 CFR 170.112(b–e)) to the general prohibition against worker entry into treated areas during the REI.

EPA may establish exceptions under 40 CFR 170.112(e) to the WPS provisions restricting early entry to perform routine hand-labor tasks. The WPS defines hand-labor as any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with treated surfaces such as plants or soil that may contain pesticide residues. The process and information that must be included in a request for exception is described in 40 CFR 170.112(e)(1). When a request is received, EPA issues a public notice stating that an exception is being considered and describes the nature of the exception. At least 30 days is allowed for public comment. EPA grants or denies the exception request based on a risk-benefit analysis as required by 40 CFR 170.112(e)(3).

C. WPS Cut-Rose Exception History

In June 1994, EPA granted a 2-year exception to the WPS for cut rose harvest in response to a request from the floral industry. This exemption allowed early entry to harvest greenhouse-grown cut roses under certain specified conditions. It expired on June 10, 1996. In the spring of 1996, Roses, Inc., a rose-grower association, approached the Agency with the need to continue the exception. Roses, Inc. stated the domestic cut-rose industry would not survive economically without the exception. After consulting with the rose industry, EPA published a notice in the **Federal Register** of October 30, 1996 (61 FR 56099) (FR–5571–8). This notice acknowledged receipt of Roses, Inc.'s request, described their proposal and provided a 30-day public comment period. On December 18, 1996, the Agency sent a letter to the cut-rose community announcing the WPS Cut-Rose Exception. In the **Federal Register** of October 3, 1997 (62 FR 51993) (FRL–5599–2), the Agency announced that it had granted a limited administrative exemption to the 1992 WPS restrictions on early entry into pesticide-treated areas allowing workers to hand harvest roses during REIs. It was effective from December 18, 1996 until October 4, 1999.

III. Regulatory Assessment

A. Roses, Inc.'s Exception Request

Summary of request: Roses, Inc. asserts that without an early-entry exception allowing cut roses to be harvested at least two times per day, cut-rose growers will lose a significant portion of the cash value of their crop. The competitive market in the United States requires that roses be cut at a narrowly specific stage of bud development, after which, they decrease in value. The required twice daily harvest is not possible when pesticides with an REI greater than 4 hours have been applied because the WPS early-entry restriction eliminates the possibility of a second harvest on the day of pesticide treatment. For longer reentry intervals, additional harvests on subsequent days may also not be possible. Roses, Inc. estimates the losses to be as high as $35,000 per acre per year from not being able to cut roses at the most appropriate stage of bud development due to pesticide REI requirements. The fresh cut-rose industry competes with roses imported from countries where labor costs are often less per day than a U.S. grower's pay per hour. Roses, Inc. states growers have not moved to alternative methods of crop pest and disease protection because reliable, safe, proven pest management controls are not yet in the market. Those that are available are typically more costly than conventional chemical pesticide programs and not as effective.

Considering the specific harvest and pest and disease control requirements of the crop, the need for a cosmetically perfect rose and competitive market pressure from imports, Roses, Inc. asserts that an early-entry exception to the WPS is essential to the cut-roses industry. Without it, the loss of roses would be more than rose flower producers could economically withstand.

Exemption usage: Roses, Inc. surveyed those cut-rose growers that had not registered to use the most recent exemption to determine their reasons. Twenty survey response forms were returned. Each response had one or more reasons for not registering to use the exemption. Eleven indicated they were making a tight bud cut and harvest before each spray application and did not enter before the expiration of the REI. Eight said they did not need the exception because they have a local market that will accept roses that are more open than would be accepted in traditional markets. Five reported they would rather suffer the loss of roses too far open to market or accept a lower price for open roses than use the exception. Eighteen also indicated they spray 12-hour REI (or less) pesticides at night and harvest in the morning when the REI has expired.

Exemption terms proposed by Roses, Inc: Roses, Inc. is proposing a further exception to the WPS to allow trained workers to enter a pesticide-treated greenhouse to harvest roses under certain conditions before the end of the REI. Roses, Inc. proposes the following conditions.

All growers who wish to use the exception would be required to register for the exemption with EPA. Roses, Inc. proposes that the appropriate form be filed with Roses, Inc. Roses Inc. would consolidate the forms and transmit them to EPA. Exemption would be granted only to growers that are members of Roses, Inc.

The exemption would last 5 years. Roses, Inc. proposes that the first 2 years of the exception have the same conditions as the current exception followed by a planned phaseout in years 3, 4, and 5. The third year of the exception would limit rose harvest before the end of the pesticide REI to only those harvest periods just prior to major floral holidays such as Mother's Day, Valentine's Day, Easter, Christmas, and New Year's and other recognized floral holidays. The frequency of use would be limited at other times of the year to no more than once every 2 weeks. Individual growers would be required to submit a statement to Roses, Inc. explaining their need for the

exemption to justify its use during the 4th year of the exemption. Roses, Inc. would consolidate these statements and submit them to the Agency. An individual statement of need would continue to be required during the 5th year of the exemption. The exemption would terminate at the end of its 5th year.

Roses, Inc. bases its exception request on the following proposed conditions. There is continued development of IPM programs that include effective and economic predator and parasite biological control agents for the rose greenhouse industry during the proposed 5 years of the exemption. There is also continued development and registration of effective short REI pesticides for this industry during this time. An annual review of the exception and the industry's progress toward phasing out the exception would be conducted by Roses, Inc. and the Agency. There is continued EPA support of the Rose Exception Advisory Workgroup. The Food Quality Protection Act will not negatively impact the cut-rose industry because of mitigation measures or suspensions based on aggregate and cumulative risk assessments. Increasing foreign imports will not be priced so low that individual growers cannot afford transition to new insect and disease control agents and products that facilitate optimal harvesting procedures. The National Institute for Occupational Safety and Health study on risk to early-entry workers in the rose greenhouse does not produce significant adverse effects data on early entry after pesticide use or other adverse pesticide effects in floral greenhouses.

B. Agency Assessment, Concerns, and Opinion

Under CFR 40 170.112, (e) *Exception requiring Agency approval*—(1) *Requesting an exception*, the following information must be submitted to the Agency for an exception to be considered:

(i) The name, address and telephone number of the submitter.

(ii) The time period for which the exception is requested.

(iii) A description of the crop(s) and specific crop production tasks for which the exception is requested.

(iv) A description of the geographic area for which the exception is requested.

(v) An explanation as to why, for each requested crop-task combination, alternative practices would not be technically or financially viable. This information should include estimates or data on a per acre revenue and cost of production for the crop and area for which the exception is requested. These estimates or data should include: the situation prior to implementation of this final rule, the situation after implementation of this final rule if the exception is not granted, the situation after implementation of this final rule if the exception is granted, and specific information on individual factors which cause differences in revenues and costs among the three situations.

(vi) A description or documentation of the safety and feasibility of such an exception, including, but not limited to, the feasibility of performing the necessary hand labor activity while wearing the personal protective equipment required for early entry for the pesticide(s) expected to be applied, the means of mitigating heat-related illness concerns, the period of time required daily per worker to perform the hand labor activity, any suggested methods of reducing the worker's exposure, and any other mitigating factors such as the availability of running water for routine and emergency decontamination and mechanical devices that would reduce the workers' contact with the treated surfaces.

The information should include the costs associated with early-entry, such as decontamination facilities, special information and training for the workers, heat stress avoidance procedures, and provision, inspection, cleaning, and maintenance of PPE. EPA will not grant exceptions where the costs of early entry equal or exceed the expected loss in value of crop yield or quality.

Since receipt of Roses, Inc.'s request for an exception, the Agency has been discussing the content with Roses, Inc. and within the Agency to better understand and supplement the request with other information. Even though the request remains incomplete, the Agency has chosen to publish this notice of receipt and would like public comment prior to making a decision on the request.

The petition by Roses, Inc. does not adequately address the information requirements regarding specific information on individual factors which cause differences in revenues and costs. The petition also did not provide the information required regarding the means of mitigating heat-related illness concerns, the period of time required daily per worker to perform the hand labor activity, and the costs associated with early-entry as stated above.

The Agency would also like to consider a narrower exception request, such as one confined to specific pesticide products, time, pest or infestations where risks and benefits can be better defined. This would allow for an exception with potentially less risk for workers because of less frequent exposure.

C. Comments Solicited

The Agency is interested in a full range of comments and information on this exception request. The Agency particularly welcomes comments supported by information that would help establish the economic need for the exception in light of the significant number of rose growers that continue production without it, the appropriate group to administer or manage the exception since Roses Inc. has proposed to administer several aspects such as grower registration, justification of need, limitation of eligibility to use an exception to Roses, Inc. membership, and pesticide exposure risks to workers from allowing early entry for harvesting. Data and information that will assist worker and harvester risk assessment and adverse incident reports are of particular need. Through public comment, the Agency is seeking information to further improve the risk-benefit analysis. Individuals are encouraged to provide comments on all or any portions of the information sought by the Agency.

List of Subjects in 40 CFR Part 170

Environmental protection, Administrative practice and procedure, Occupational safety and health, Pesticides and pests, Roses.

Dated: May 23, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–14322 Filed 6–6–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 new information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning implementation of Project Impact Baseline and Progress Reports in Project Impact communities. These reports will provide data, both narrative and quantitative, for assessing

a community's progress towards disaster resistance.

SUPPLEMENTARY INFORMATION: Congress tasked FEMA with the responsibility to design and implement a meaningful pre-disaster initiative that would reduce rapidly escalating disaster costs, and provided funding towards that goal. This initiative is entitled Project Impact: Building a Disaster Resistant Community. Congress, through the mechanism of the Government Performance Results Act, requires that we show that the money is being used effectively by establishing a systematic process of evaluation. The Baseline Report and subsequent Annual Progress Report provide a means of data collection for this objective and have been developed to capture the progress of a community towards disaster resistance in a non-disaster situation. The questions in both reports request information relevant to the hazards and vulnerabilities faced by the community. There are also questions that request information about damage prevention activity and public education and awareness activity. The requested information will not only gauge the momentum towards disaster resistance but will indicate success of the collaborative processes as well. The data collected will also be used as a basis for initiative development.

The community may also use the data for their own evaluation. The results of the evaluation, particularly when they reflect hard work and accomplishment, can be publicized as a way of affirming the community's commitment to the initiative in the previous year. Included in the reports are questions about the community's insurance ratings (the Building Code Effectiveness Grading Scale (BCEGS) and the Community Rating System (CRS)). These indicators provide financial incentives, in the form of lower premium rates, to communities who are increasing their disaster resistance.

Collection of Information

Title. Project Impact Baseline and Annual Progress Reports.

Type of Information Collection. New.

Abstract. The Baseline report, due only the 1st year and 60 days after the Signing Ceremony, is critical to provide a picture of the community's ability to withstand disasters at the beginning of its designation as a Project Impact community. It requests information necessary to evaluate the disaster resistant status of a community and should help Project Impact Communities establish their initial focus. The Annual Progress Report, which is due annually to FEMA for five years starting on the 1st anniversary of the Signing Ceremony, allows FEMA to assess the community's progress with respect to both national goals and program initiatives. It also provides an opportunity for a community to evaluate its own success with respect to local goals. Both of these data collection mechanisms provide means to measure the proper use of grant funding as well as data for Government Performance Results Act (GPRA) reporting.

Affected Public: Completing the form will be the primary responsibility of the Local Government or their designee but will contain information about households, businesses, not for profit institutions, State, Local, and tribal Government.

FEMA Forms	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
Baseline Report	65	One-time	2 Hours	130 Hours
Progress Reports	113	Annually	2 Hours	226 Hours
Total	178			356 Hours

Estimated Cost. $15,000.00 (Fifteen Thousand dollars).

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Record Management Branch, Program Service Division, Operations Support Directorates, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524, Or e-mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Priscilla Scruggs, Evaluation and Assessment Specialist, Mitigation Directorate—Project Impact, at (202) 646–4155 for additional information. Contact Muriel B. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Mike Bozzelli,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–14298 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1326–DR]

Maine; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine (FEMA–1326–DR), dated April 28, 2000, and related determinations.

EFFECTIVE DATE: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 26, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537,

Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14299 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1328–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1328–DR), dated May 12, 2000, and related determinations.

EFFECTIVE DATE: May 23, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri is hereby amended to include Public Assistance to the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 2000:

Franklin, Jefferson, and Gasconade Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14300 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1329–DR]

New Mexico; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1329–DR), dated May 13, 2000, and related determinations.

EFFECTIVE DATE: May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Mexico is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 13, 2000. Act (42 U.S.C. 5121 *et seq.*), as follows:

Otero County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14301 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3154–EM]

New Mexico; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New Mexico, (FEMA–3154–EM), dated May 10, 2000, and related determinations.

EFFECTIVE DATE: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of New Mexico is hereby amended to include reimbursement for the eligible costs associated with the pre-staging of Federal, State, Compact, and Emergency Management Assistance Compact fire suppression assets for a 30-day period beginning with the incident period of May 5, 2000. This assistance period may be extended. All pre-staging will be provided contingent upon joint recommendations and staging plans of the New Mexico Department of Forestry and the U.S. Forest Service. Reimbursement for costs associated with suppressing wildland fires will continue to be authorized under Section 420 of the Stafford Act. This assistance is for the following areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of May 10, 2000:

Bernalillo, Catron, Chaves, Cibola, Colfax, Curry, DeBaca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, McKinley, Mora, Otero, Quay, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union, and Valencia Counties.

Los Alamos, Rio Arriba, Sandoval, and Santa Fe Counties (previously designated for emergency protective measures (Category B).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14303 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3154–EM]

New Mexico; Amendment No. 4 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New Mexico, (FEMA–3154–EM), dated May 10, 2000, and related determinations.

EFFECTIVE DATE: May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of New Mexico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of May 10, 2000:

Lincoln and San Miguel Counties for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14304 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1330–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1330–DR), dated May 19, 2000, and related determinations.

EFFECTIVE DATE: May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 19, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from a severe winter storm, flooding, landslides, and mudslides on April 18–20, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steven Emory of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

Custer, Fall River, Jackson, Pennington, and Shannon Counties for Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–14302 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

U.S. Fire Administrator's National Fire Safety Campaign Grant Program

AGENCY: Federal Emergency Management Agency (FEMA), U.S. Fire Administration (USFA).

ACTION: Notice of funds and grant availability.

SUMMARY: We (USFA) give notice of $250,000 of appropriated grant funds to assist eligible organizations with their current fire prevention/reduction educational initiatives for high risk groups. This is a one-time, non-appealable grant. All selections are final.

DATES: We will issue the Request for Application (RFA) packages on or about June 7, 2000. Complete application packages must be postmarked and received by FEMA on or before July 24, 2000.

ADDRESSES: Eligible applicants can download the RFA from the FEMA/USFA website (*www.usfa.fema.gov*), or they may contact the Information Point of Contact listed below who will mail an RFA to them.

INFORMATION POINT OF CONTACT: Denise A. Brown, Program Analyst, Office of the U.S. Fire Administrator, Federal Emergency Management Agency, 500 C Street, SW., room 806, Washington, DC 20472; (telephone) (202) 646–3731; facsimile (202) 646–4301; (email) *denise.brown@fema.gov.*

REQUEST FOR APPLICATION POINT OF CONTACT: Cindy Adams, Contract Specialist, Federal Emergency Management Agency, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727; (telephone) (301) 447–1221; (facsimile) (301) 447–1092; or (email) *cindy.adams@fema.gov.*

SUPPLEMENTARY INFORMATION: Throughout this notice the term ''we'' refers to the USFA.

Under the Federal Fire Prevention and Control Act, 15 U.S.C. § 2218, we are issuing an RFA to implement a competitive $250,000 grant program that is limited to eligible grant applicants. (Please see Eligibility criteria below). We intend to award ten (10) grants of $25,000.00 each under this grant program. All grant awards will have a project period of one year, and will require a six (6) month report and a final report detailing the progress of the grant program, and how the grantees are spending the funds.

Description of Grant Program: Public fire safety education is an integral part

of the USFA's mission. In order to meet that goal, the U.S. Fire Administrator will provide funding to grass roots groups, fire departments, and to other established organizations to assist them in their current fire prevention/reduction educational initiatives for high risk groups. Citizens who are at greatest risk of being injured or killed by fire include the elderly, children, African-Americans, Latinos, Native Americans, and rural and urban residents.

Grantees are to use grants awarded under this program to deliver educational services, materials, and information to strengthen fire and life safety awareness for high-risk audiences, and to enhance the continued partnerships between fire service organizations and other non-profit organizations within the community.

Eligibility: Applicants applying for grants must meet the following requirements:

(a) The applicant must be a community-based, grass roots organization or other established non-profit organization demonstrating that it works in partnership with a local fire department. The applicant can also be a fire department (but not Federal/military fire departments). The organization must currently work toward increasing the public's knowledge and awareness of the importance of fire safety and prevention in an innovative manner, implementing a unique delivery style. It is the hope of the Administrator that the grant recipients' programs can be replicated for use by other organizations that teach and reinforce fire safety education and initiatives, and can be ''best practices'' examples within USFA curriculum. We will limit the grants to U.S. organizations, and we intend that grantees use the funds only in this country and its protectorates. Examples of non-fire and fire organizations follow:

(1) Non-fire organizations. For example:

- Community-based organizations;
- Non-profit organizations;
- Civic organizations (i.e., civic clubs, youth or senior citizen organizations, fraternities/sororities, etc.);
- Schools (i.e., public or private schools—kindergarten through high school, colleges/universities).

(2) Fire Organizations. For example:

- Fire Departments (*i.e.*, municipal, volunteer, private),
- Fire Professional Organizations (at the local level),
- Fire Historical or Educational Organizations.

(b) The applicant's public fire safety and prevention program must have been in place for at least one (1) year.

(c) The applicant must be located in the United States.

Restrictions: Awards made under this grant program are one-time, non-appealable grants. All selections are final.

- Grants awarded under this program will support existing programs only; grantees may not use the funds to create or establish a new program.
- OMB Circular A–21, Cost Principles for Educational Institutions; A–87, Cost Principles for State and Local Governments; or A–122, Cost Principles for Non-Profit Organizations will govern the allowability of costs associated with supporting the program identified in a grant awardee's project description.
- Grantees are not to use this grant to purchase or acquire: fire prevention equipment or apparatus; office furniture and equipment such as computers and telephones; contractors, subcontractors or instructors for the program.
- Nor may grantees use this grant to lease, rent, alter, or construct real property.

Supplemental Application Information: Eligible applicants will explain, in detail, how they will spend the funds under this grant. All applicants must submit the following supplemental information as part of their application package (Please note: We will not return application packages):

(a) A one (1) page (maximum) summary that describes how the applicant meets the eligibility requirements. Please address each of the three (3) eligibility criteria separately.

(b) A five (5) page (maximum) project narrative that explains, in detail, how the applicant intends to use the grant funding.

(1) This narrative must include, but need not be limited to:

- specific program goals;
- target audience(s) the program reaches or will reach;
- innovative methodology the program uses to reach the target audience(s);
- the program's current operating budget/funding level/source of funding;
- number of citizens that the program serves,
- partnerships with local fire departments and other organizations in carrying out the program, and
- how the applicant promotes the program. (Please include samples of any existing promotional materials—i.e., print, audio, video, and media coverage—for review).

(2) A description of program results is also critical to the narrative, addressing:

- achievement of program goals (provide statistics);
- reduction of fire loss of life or property (provide statistics);
- publicity received (copies of media coverage); and
- other measures of success (provide evidence of measured results).

(3) Finally, the narrative must include an analysis of the growth potential for the program, describing how the applicant will use grant funds to reach a larger target audience(s).

Evaluation: We intend to evaluate all applications received by the established application due date and award ten (10) $25,000.00 grants based upon the following criteria:

(1) Demonstrated relevance/need for the program;

(2) Applicant's past use of resources for the program, and proposed future use of resources;

(3) Measured results of program, and future goals;

(4) Demonstrated growth and replicability of the program.

Dated: June 1, 2000.

Carrye B. Brown,

U.S. Fire Administrator.

[FR Doc. 00–14305 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–08–P

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 940. 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.: 11305–007.

Title: United Alliance Agreement.

Parties:

Cho Yang Shipping Company, Ltd.
DSR-Senator Lines GmbH
Hanjin Shipping Co., Ltd.
United Arab Shipping Company

Synopsis: The proposed amendment would permit a party belonging to another agreement in the trade to obtain space from carriers operating under that agreement for its own use or sale to a member of this Agreement. It also lists other agreements, currently in effect, from which such space would be obtained and makes other conforming, administrative changes to the Agreement.

Agreement No.: 011441–004.
Title: NYK/NOS Joint Service Agreement.
Parties:
Wallenius Wilhelmsen Lines AS
Nippon Yusen Kaisha
Synopsis: The amendment deletes the Mediterranean, Black, Red and Arabian Seas from the geographic scope of the agreement, reduces the number of vessels operated, and restates/updates the agreement.

Agreement No.: 011675–001.
Title: DSEN/EMC-Slot Charter Agreement.
Parties:
DSR-Senator Lines GmbH
Evergreen Marine Corp. (Taiwan) Ltd.
Synopsis: The proposed modification reduces Evergreen's westbound slot allocation and establishes a 45-day notice period to terminate the agreement on or after September 30, 2000.

Dated: June 2, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–14346 Filed 6–6–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. § 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

American Classic Voyages Company, 1380 Port of New Orleans Place, New Orleans, LA 70130–1890
Vessels: *Coastal Queen No. 1* and *Coastal Queen No. 2*

Costa Crociere S.p.A. and Costa Cruise Lines N.V.,World Trade Center, 80 S.W. 8th Street, Miami, FL 33130–3097
Vessel: *Costa Atlantica*

Cunard Line Limited (d/b/a Seabourn Cruise Line), 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126
Vessels: *Seabourn Goddess I, Seabourn Goddess II* and *Seabourn Sun*

Premier Operations, Ltd. (d/b/a Premier Cruises and Premier Cruise Lines), 400 Challenger Road, Cape Canaveral, FL 32920
Vessels: *The Big Red Boat II, The Big Red Boat III, Oceanic, Rembrandt* and *Seabreeze I*

Princess Cruises, Inc., Princess Cruise Lines, Ltd., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessels: *Crown Princess, Dawn Princess, Golden Princess, Grand Princess, Ocean Princess, Regal Princess, Sea Princess* and *Sun Princess*

Radisson Seven Seas Cruises, Inc., 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334
Vessel: *Seven Seas Mariner*

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International), 1050 Caribbean Way, Miami, FL 33132–2096
Vessels: *Adventure of the Seas, Brilliance of the Seas, Radiance of the Seas, Vantage III* and *Vantage IV*

Silversea Cruises, Ltd., 110 East Broward Blvd., Fort Lauderdale, FL 33301
Vessel: *Silver Shadow*

Dated: June 2, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–14345 Filed 6–6–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury To Passengers or Other Persons On Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to meet Liability Incurred for Death or Injury to Passengers or other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Celebrity Cruises Inc. and Millennium Inc., 1050 Caribbean Way, Miami, FL 33132
Vessel: *Millennium*

Cunard Line Limited, 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126
Vessels: *Seabourn Goddess I* and *Seabourn Goddess II*

The Delta Queen Steamboat Co. and Great AQ Steamboat, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130–1890
Vessel: *American Queen*

The Delta Queen Steamboat Co. and Great Pacific NW Cruise Line, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130–1890
Vessel: *Columbia Queen*

The Delta Queen Steamboat Co. and Great River Cruise Line, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130–1890
Vessel: *Delta Queen*

The Delta Queen Steamboat Co. and Great Ocean Cruise Line, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130–1890
Vessel: *Mississippi Queen*

Imperial Majesty Cruise Line L.L.C., Celebration World Cruises, Inc. and OB Limited, 5100 N. State Road, Suite 137, Fort Lauderdale, FL 33319
Vessel: *Oceanbreeze*

Lindblad Expeditions, Inc., E.T.I.C.A. and Metrohotel C.A., 720 Fifth Avenue, New York, NY 10019
Vessel: *Polaris*

Lindblad Expeditions, Inc., SPEX Sea Bird Ltd. and Majestic Alaska Boat Company, 720 Fifth Avenue, New York, NY 10019
Vessel: *Sea Bird*

Lindblad Expeditions, Inc. and SPEX Sea Lion Ltd., 720 Fifth Avenue, New York, NY 10019
Vessel: *Sea Lion*

Premier Operations, Ltd. and International Shipping Partners, Inc., 400 Challenger Road, Cape Canaveral, FL 32920
Vessel: *The Big Red Boat III*

Princess Cruises, Inc., Princess Cruise Lines, Ltd., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessels: *Crown Princess* and *Regal Princess*

Princess Cruises, Inc., Princess Cruise Lines, Ltd., Fairline Shipping Corporation, Ltd., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessel: *Dawn Princess*

Princess Cruises, Inc., Princess Cruise Lines, Ltd., Fairline Shipping International Corporation, Ltd., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessel: *Grand Princess*

Princess Cruises, Inc., Princess Cruise Lines, Ltd., OP Shipping

Corporation, Ltd., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessel: *Ocean Princess*
Princess Cruises, Inc., Princess Cruise Lines, Ltd., CP Shipping Corporation, Ltd, and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessel: *Sea Princess*
Princess Cruises, Inc., Princess Cruise Lines, Ltd., COROT Shipping Corporation (Sociedade Unipessoal) Lda., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessel: *Sun Princess*

Dated: June 2, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–14348 Filed 6–6–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

YT Youngtrans, Inc. d/b/a Youngtrans, 177–25 Rockaway Blvd., Jamaica, NY 11434, Officers: Young S. Sue, Vice President (Qualifying Individual); Veaumyung Yoon, President
Global Ocean (Chicago) Inc., d/b/a Global Logix, Inc., 659 Supreme Drive, Bensenville, IL 60106, Officers: Hyun Soon Yoon, President (Qualifying Individual); Hyo Sub (Steven) Yoon, Director
Worldlink Logix Service, Inc., 440 Route 17 North, Suite 3B, Hasbrouck Heights, NJ 07604, Officer: Yunyop Kim, Director

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Cosmic Express Corp., 14545 Valley View Avenue, #F, Santa Fe Springs, CA 90670, Officer: Jennifer Huang, President (Qualifying Individual)
Planes Moving & Storage, Inc., 9823 Cincinnati-Dayton Road, West Chester, OH 45069, Officers: Jimmy Huff, Vice President; John Planes, C.E.O.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Carolina Shipping Company, 1064 Gardner Rd., Suite 312, Charleston, SC 29407, Officers: Dennis Forsberg, President; John Springer, Chairman
AmCar Forwarding, Inc., 7700 NW 81 Place, #1, Miami, FL 33166, Officers: Henk Geenen, President (Qualifying Individual); Robert Van Vliet, Vice President

Dated: June 2, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–14344 Filed 6–6–00; 8:45 am]

BILLING CODE 6730–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 22, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. George Vibbert, Jr., Tullahoma, Tennessee; Elwanda Vibbert, Tullahoma, Tennessee; Faye Sawyer Stynchula, Isle of Palms, South Carolina; and Sam Sawyer, Tullahoma, Tennessee; to retain voting shares of American City Bancorp, Inc., Tullahoma, Tennessee, and thereby indirectly retain voting shares of American City Bank, Tullahoma, Tennessee.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Cobb Voting Trust, St. Croix Falls, Wisconsin; and Walter George Fries (as an individual and as a Trustee of the Trust), Wabasha, Minnesota; to acquire additional voting voting shares of Financial Services of St. Croix Falls, St. Croix Falls, Wisconsin, and thereby indirectly acquire voting shares of Eagle Valley Bank, N.A., St. Croix Falls, Wisconsin.

Board of Governors of the Federal Reserve System, June 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14307 Filed 6–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank

holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Cheaha Financial Group, Inc., Oxford, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Cheaha Bank, Oxford, Alabama (in organization).

Board of Governors of the Federal Reserve System, June 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14219 Filed 6–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. *Arvest Bank Group, Inc.*, Bentonville, Arkansas; to retain Arvest Bank, Joplin, Missouri, after its conversion from a savings bank to a commercial bank.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *American River Holdings*, Sacramento, California; to acquire 100 percent of the voting shares of North Coast Bank, N.A., Santa Rosa, California.

Board of Governors of the Federal Reserve System, June 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14306 Filed 6–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Regions Financial Corporation, Birmingham, Alabama; to acquire Heritage Mortgage Company, Hutto, Texas, and thereby engage in making, acquiring, brokering, or servicing loans or other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y. This activity will be conducted throughout the State of Texas.

Board of Governors of the Federal Reserve System, June 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14220 Filed 6–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, June 12, 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: June 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14373 Filed 6–2–00; 4:40 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

[Account Number: 4151–04]

Technical Review Panel on the Medicare Trustees Reports; Notice of June 28–29 Meeting

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of June 28–29 meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the first meeting of the Technical Review Panel on the Medicare Trustees Reports (the Panel). This meeting is open to the public.

Pursuant to Public Law 92–463 (the Federal Advisory Committee Act), the Panel was established on August 12, 1999, by the Secretary of HHS to review the methods and assumptions underlying the annual reports of the Board of Trustees of the Hospital Insurance and Supplementary Medical Insurance Trust Funds.

DATES: The first meeting will be held on June 28, 2000 (11:00 a.m. to 5:00 p.m.) and June 29, 2000 (9:00 a.m. to 1:00 p.m.).

ADDRESSES: The meeting will be held at the Health Care Financing Administration (HCFA) Headquarters, Training Center Room C–101, 7500 Security Boulevard, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Ariel Winter, Executive Director, Technical Review Panel on the Medicare Trustees Reports, Department of Health and Human Services, Room 442E, 200 Independence Avenue, SW., Washington, DC, 20201, (202) 690–6860, medpanel@osaspe.dhhs.gov. Additional information is also available on the Panel's web site: http://aspe.hhs.gov/health/medpanel.htm.

SUPPLEMENTARY INFORMATION: The Board of Trustees of the Medicare Trust Funds (the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) Trust Funds) report annually on the funds' financial condition. The reports describe the trust funds' current and projected financial condition, within the next 10 years (the short term) and over the subsequent 65 years (the long term). The Medicare Board of Trustees has directed the Secretary of Health and Human Services (who is one of the Trustees) to establish a panel of technical experts to review the assumptions and methods underlying the HI and SMI annual reports.

The panel's review will include the following four topics:

1. Medicare assumptions (e.g., utilization rates, medical price increases).
2. Projection methodology (how assumptions are used to make cost projections).
3. Long-range growth assumptions for HI and SMI.
4. Use of stochastic forecasting techniques.

The Panel will issue its findings in reports to the Secretary and the other Trustees.

The Panel will consist of seven members who are experts in the fields of economics and actuarial science. The following individuals will be sworn in as members at the first meeting: Len Nichols, Ph.D.; David Cutler, Ph.D.; Michael Chernew, Ph.D.; Dale Yamamoto, F.S.A., M.A.A.A., F.C.C.A., E.A., B.S.; James Robinson, F.S.A., M.A.A.A., Ph.D.; Alice Rosenblatt, F.S.A., M.A.A.A., M.A.; and Sam Gutterman, F.S.A., F.C.A.S., M.A.A.A., M.A. (the chair-designate). The members' terms will end August 12, 2001.

The first meeting of the Panel is scheduled for June 28, 2000 (11:00 a.m. to 5:00 p.m.), and June 29, 2000 (9:00 a.m. to 1:00 p.m.). The meeting will be held at the Health Care Financing Administration (HCFA) Headquarters, Training Center, Room C–101, 7500 Security Boulevard, Baltimore, Maryland. The meeting is open to the public, but attendance is limited to the space available. There will also be an executive session on June 28 from 9:00 a.m. to 11:00 a.m. for the swearing-in of Panel members. This session will be closed to the public.

At this meeting, the members will discuss the Panel's scope of work. HCFA's Office of the Actuary will make presentations to the Panel on how the estimates in the Medicare Trustees' Reports are developed. Specific presentation topics may include: the HI and SMI benefits and income models, measures of actuarial soundness, and health care utilization assumptions.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues mentioned in this notice should contact the Executive Director by 12 noon on June 12, 2000. The number of oral presentations may be limited to the time available. A written copy of the presenters' oral remarks should be submitted to the Executive Director no later than 12 noon, June 19, 2000, for distribution to the Panel members.

Any interested member of the public may submit written comments to the Executive Director and Panel members for review. Comments should be received by the Executive Director by 12 noon, June 19, 2000, for distribution to the Panel members.

Individuals requiring sign language interpretation for the hearing impaired and/or other special accommodation, should contact Ariel Winter at (202) 690–6860 by June 16, 2000.

Dated: May 30, 2000.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–14238 Filed 6–6–00; 8:45 am]

BILLING CODE 4110–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00062]

Postdoctoral Fellowship Training Program in Infectious Diseases; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Postdoctoral Fellowship Training Programs in Infectious Diseases. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Immunization and Infectious Disease.

The purpose of this cooperative agreement is to assist recipients in the development and implementation of a two- to three-year Postdoctoral Fellowship Training Program in Infectious Diseases (PFTP) which provides a combination of clinical training and basic laboratory or epidemiologic training in infectious diseases. The goal is to improve the ability of the U.S. public health system to respond to the problem of infectious diseases by increasing the number of academic infectious disease physicians with demonstrated skills in the public health aspects of infectious diseases and to provide them with the essential, pertinent clinical and research skills.

PFTPs should be implemented as new distinct fellowship positions/tracks in recipient's existing infectious disease

postdoctoral training program. PFTPs should be aimed at physicians with training in infectious diseases who wish to pursue a career in academic infectious diseases of public health importance. The objective is to offer a combination of research and clinical training which will lead to eligibility for certification in infectious diseases by the American Board of Internal Medicine, Subspecialty Board of Infectious Diseases (the cognizant member board of the American Board of Medical Specialties). Specific areas of clinical concentration may include: Clinical rotations in infectious diseases, infectious diseases in transplant recipients, clinical microbiology, outpatient infectious diseases, pediatric infectious diseases, or infectious disease pharmacology. The recipient must be able to provide support for physicians of unusual ability and promise or proven achievement by giving them an opportunity to conduct clinical, laboratory, and epidemiologic research on significant public health problems caused by infectious diseases. Specific areas of research concentration may include: Viral and rickettsial infections, nosocomial infections, antimicrobial resistance, vector-borne infectious diseases, respiratory and food-borne bacterial diseases, parasitic diseases, sexually transmitted diseases, and acquired immunodeficiency syndrome.

In 1994, CDC initiated the Postdoctoral Fellowship Training Program in Infectious Diseases (PFTP) and made awards to two U.S. medical schools. The PFTP was renewed competitively in 1997 and continued programs at the original two schools and added a third. Under all three awards, the PFTP was integrated into the school's existing postdoctoral program as a separate PFTP track and several physicians have been enrolled.

B. Eligible Applicants

Assistance will be provided only to university affiliated schools of medicine with infectious disease programs accredited by the Accreditation Council for Graduate Medical Education (ACGME).

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $180,000 is available in FY 2000 to fund approximately three awards. It is expected that the average award will be $60,000, ranging from $25,000 to $100,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Grantee cost-sharing is required under this program. CDC will provide up to 50 percent of the total cost for items directly related to the support of fellows such as stipends (consistent with PHS policies) and professional travel. CDC funds will not be provided for supplies and equipment or for direct salaries/fringe, travel, space, *etc.,* for recipient's faculty or administrative personnel. In a training grant, recipient's indirect charges are limited to 8 percent of direct costs. CDC funds are not intended to supplant recipient's existing infectious disease fellowships, rather they are intended to support new fellowship opportunities that are consistent with the stated Purpose of this cooperative agreement program.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. As a distinct and separate track of recipient's existing infectious disease postdoctoral fellowship program, develop and conduct a two- to three-year PFTP that combines clinical and basic laboratory or epidemiologic research in prevention and control of infectious diseases of public health importance.

b. Design and conduct the PFTP such that, upon completion of the fellowship, fellows will become eligible for certification in infectious diseases by the American Board of Internal Medicine.

c. Provide preceptors for training.

d. Develop a fellowship candidate application, review, ranking, and selection process. Based on this process, select applicants to be awarded two- to three-year PFTP fellowships.

e. Provide administrative support to fellows during their tenure in the PFTP including the payment of stipends, professional travel, *etc.* (see Availability of Funds for cost sharing requirements).

f. Assist fellows in publishing and/or otherwise disseminating results of their research.

g. Monitor and evaluate the progress of fellows and progress toward achieving program goals. To measure the overall success of the PFTP, establish a mechanism to follow-up and report on fellows (*e.g.,* where they work, in what field, *etc.*) periodically for up to five years after they complete the PFTP.

h. If fellow's research involves the use of human subjects, assure appropriate IRB review by all cooperating institutions participating in the project.

2. CDC Activities

a. The laboratory or epidemiologic research training may occur at CDC facilities. Provide preceptors and facilities for research training that occurs at CDC facilities.

b. If CDC researchers participate in fellow's research that involves the use of human subjects, assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in this section and the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 single-spaced pages, printed on one side, with one inch margins (including headers and footers), and unreduced font.

Typing and Mailing

All pages must be clearly numbered and a complete index to the application and its appendices must be included. All pages of the application and appendices must be easily run through an automatic document feed copier, thus do not bind, staple, or paperclip any pages of any copy of the application and do not include any bound documents (*e.g.,* pamphlets or other publications) in the appendices. Do not include cardboard, plastic, or other page separators between sections.

Specific Instructions

The application narrative must not exceed 10 pages (excluding abstract, budget, and appendixes). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that

should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below:

1. Abstract

Provide a brief (less than two pages) summary of the proposed PFTP.

2. Background and Need

Demonstrate an understanding of the background and need for the PFTP. Discuss how your proposed PFTP track differs from existing tracks/opportunities in your fellowship program and how your proposed PFTP track meets the Purpose of this cooperative agreement program.

3. Capacity and Personnel

a. Describe applicant's goals, objectives, and efforts to promote the field of academic infectious diseases. Describe relevant degree programs and sponsored regular national meetings, seminars, and/or workshops devoted to pertinent issues in academic infectious diseases with relevance to public health.

b. Demonstrate applicant's experience in academic infectious diseases education and training in general, including experience in maintaining programs that lead to eligibility for certification in infectious diseases by the American Board of Internal Medicine. Describe applicant's existing postdoctoral fellowship training programs for physicians in infectious diseases.

c. Describe applicant's resources, facilities, and professional personnel that will be involved in conducting the project. Include (in an appendix) curriculum vitae for all professional personnel involved with the project. Describe plans for administration of the project and identify administrative resources/personnel that will be assigned to the project. Provide (in an appendix) letters of support from all key participating non-applicant organizations, individuals, *etc.,* which clearly indicate their commitment to participate as described in the operational plan.

d. If proposing that fellows conduct their laboratory or epidemiologic training at CDC facilities, include a letter of support (in an appendix) from the appropriate CDC scientist (co-signed by their Division/Program Principal Management Officer) that clearly indicates their commitment to participate as described in your application Operational Plan including agreement to 1) serve as preceptor for the research training and 2) provide space, facilities, supplies, *etc.,* for fellows.

4. Operational Plan

Present a detailed and time-phased plan for establishing and conducting the PFTP. Describe procedures to accomplish all of the required recipient activities. Describe how the clinical and research activities will be coordinated within the PFTP. Present a plan for monitoring and evaluating the progress of fellows and the progress toward achieving program goals. Describe how the plan will ensure that all fellows become eligible for certification in infectious diseases by the American Board of Internal Medicine by the end of fellowship tenure. Describe procedures and plans for assuring any fellow's research that involves the use of human subjects will receive appropriate IRB review by all cooperating institutions participating in the project.

5. Budget

Provide a line-item budget and accompanying detailed, line-by-line justification that demonstrates the request is consistent with the purpose and objectives of this program. Clearly indicate by line-item both (a) the full cost and (b) the amount requested from CDC (see Availability of Funds section for further information regarding cost-sharing).

F. Submission and Deadline

Letter of Intent (LOI)

In order to assist CDC in planning the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to submit an LOI to inform CDC of their intention to do so as soon as possible but not later than 30 days prior to the application due date. The LOI should include (1) Name and address of institution, (2) name, address, and telephone number of contact person, and if proposing that research component be conducted at CDC facilities, (3) name and telephone number of CDC scientist agreeing to participate. Notification can be provided by facsimile, postal mail, or Email to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/ . . . Forms, or in the application kit. On or before Friday, June 30, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (15 Points)

Extent to which applicant demonstrates an understanding of the background and need for the PFTP. Extent to which they clearly demonstrate that their proposed PFTP fellowship positions add to and do not supplant existing positions in their fellowship program. Extent to which they demonstrate and how the proposed PFTP track meets the Purpose of this cooperative agreement program.

2. Capacity (50 Points)

a. Institutional (25 points): The extent to which the applicant demonstrates that they have been and are devoted to promoting the field of academic infectious diseases. The extent to which the applicant has promoted the field of academic infectious diseases by conducting regular national meetings and workshops devoted to current topics. The extent to which the applicant documents experience in education and training in academic infectious diseases, including documentation of relevant degree programs offered and evidence of experience in successfully preparing students for certification in infectious diseases by the American Board of Internal Medicine. The extent to which the applicant demonstrates significant institutional experience in managing postdoctoral fellowship training programs for physicians in the area of infectious diseases. The extent to which applicant documents they have a successful existing postdoctoral

fellowship program in infectious diseases.

b. Staff and administrative (25 points): The extent to which applicant describes adequate resources and facilities (clinical, academic, and administrative) for conducting the PFTP. The extent to which applicant documents that their professional personnel involved in the PFTP are qualified and have past experience and achievements related to that proposed as evidenced by curriculum vitae, publications, *etc.* If proposing that fellow's research be conducted at CDC facilities, the extent to which applicant includes a Letter of Support as described in Application Content section 3.b., above (*i.e.,* that is signed by the appropriate CDC officials and that clearly indicates their commitment to participate as proposed in the application).

3. Operational Plan (30 Points)

The extent to which the proposed operational plan is clear, detailed, time-phased, and meets the purpose and goals of this cooperative agreement program. The extent to which the proposed operational plan addresses all required Recipient Activities. If specific fellow(s) research projects are proposed that involve the use of human subjects, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Evaluation Plan (5 Points)

The quality of the proposed plan to monitor, evaluate and track individual fellows; and overall plan to evaluate activities and objectives.

5. Budget (Not Scored)

The extent to which the proposed budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

6. If research involving the use of human subjects is proposed, does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? Yes____ No____

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Annual progress reports (included with each noncompeting continuation application);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 [42 U.S.C. 241] and 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2749, Email address: ayw3@cdc.gov.

For program technical assistance, contact: Greg J. Jones, M.P.A., Office of the Director, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop C–12, 1600 Clifton Road, N.E., Atlanta, GA 30333, Phone: (404) 639–4180, Facsimile: (404) 639–3106, Email: GJJones@cdc.gov.

Dated: June 1, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14267 Filed 6–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00C–1321]

Wesley Jessen Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Wesley Jessen Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of mica in contact lenses.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 0C0271) has been filed by Wesley Jessen Corp., 333 East Howard Ave., Des Plaines, IL 60018. The petition proposes to amend the color additive regulations in 21 CFR part 73 subpart D—Medical Devices to provide for the safe use of mica in contact lenses.

The agency has determined under 21 CFR 25.32(l) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

Dated: May 15, 2000.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–14272 Filed 6–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms (OMB No. 0915–0034) Extension

This clearance request is for extension of approval for four HEAL forms: the Lenders Application for Contract of Federal Loan Insurance (used by lenders to make application to the HEAL insurance program); the Lender's Manifest (used by the lender to report recent HEAL loan activity); the Loan Transfer Statement (used by the lender to report the transfer of a HEAL loan); and the Borrower Status Request (completed by the borrower and the borrower's employer and used by the lender to determine eligibility for deferment). The reports assist the Department in protecting its investment in this loan insurance program.

The estimate of burden for the forms are as follows:

Collection activity	Number of respondents	Responses per respondent	Total responses	Average time per response (in minutes)	Total burden hours
HRSA Form 504	22	1	22	8	3
HRSA Form 508:					
Borrowers	12,430	1	12,430	10	2,071
Employers	7,550	1.646	12,430	5	1,035
Borrower Loan Status Update Electronic Submission	22	8,498	186,970	3	9,348
Loan Purchase/consolidation Electronic Submission	22	850	18,700	4	1,246
Total	20,046		227,552		13,703

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 1, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–14273 Filed 6–6–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Family Health Survey (Validation of a Family History of Cancer Questionnaire for Risk Factor Surveillance)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title The Family Health Survey (Validation of a Family History of Cancer Questionnaire for Risk Factor Surveillance). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* In this methologic pilot study, the NCI will develop a family history of cancer questionnaire for use in cancer risk factor surveillance, and will evaluate how accurately individuals in the general population can report major cancers occurring in their immediate and extended family. This study is needed because there are currently no validated questionnaires with which to collect comprehensive data for assessing the burden of family history of cancer in the U.S. population, and no general population estimates of reporting error for the major cancers that affect families. The results on reporting accuracy will be used to determine whether the quality of data is sufficient to justify conducting a comprehensive national prevalence study of family history of cancer. The questionnaire will be administered in a telephone survey of adults, age 25 to 64 years who will be randomly selected from households in Connecticut. Respondents will be asked to report about family structure and cancer diagnoses occurring in their first and second degree relatives. Positive and negative reports of five major cancer sites (i.e. breast, prostate, colorectal, lung, and ovarian cancers) will be validated for approximately four relatives per respondent through data linkage to state and federal health registries or by review of death certificates and medical records. Living relatives and next-of-kin of deceased relatives may be interviewed as part of the validation process. Information about the accuracy of reports and factors associated with reporting error will help to evaluate the feasibility of conducting surveys on family history of cancer. *Frequency of Response:* One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Adults, age 25 to 64, who reside in the state of Connecticut and their selected adult relatives over age 25 or the

relative's next-of-kin. The annual reporting burden is presented in the table below. The annualized cost to respondents is estimated at: $23,700. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimate number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adults age 25 to 64	1800	1	0.835	1503
Adults relatives or their next-of kin	5190	1	0.167	867
Total				2370

Request for Comments:

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, sand clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information:

To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Louise Wideroff, Project Officer, Applied Research Program, National Cancer Institute, 6130 Executive Blvd. EPN 4010, Bethesda, MD 20892, or call non-toll-free number (301) 435–6823 or E-mail your request, including your address to: *wideroff@nih.gov.*

Comments Due Date:

Comments regarding this information collection are best assured of having their full effect if received on or before August 7, 2000.

Dated: May 30, 2000.

Reesa Nichols,

OMB Project Liaison Officer.

[FR Doc. 00–14340 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Marlene Shinn, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 285; fax: 301/402–0220; e-mail: ms482m@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Direct C–14 Oxidation of Opioids

Andrew Coop, Kenner C. Rice (NIDDK)
DHHS Reference No. E–032–99/1 filed 04 May 2000

Opioid agonist drugs including the 14-hydroxy derivatives are utilized in the treatment of pain. The 14-hydroxy substituted opioid antagonists have also been found to be useful in the treatment of opiate abuse, opiate overdose and alcohol addiction. In addition, there are certain derivatives which have been found to be useful in the prevention of tolerance to morphine and as immunosuppressants. The 14-hydroxy agonist and antagonist drugs are produced by a multistep process from the starting material, thebaine, which is a minor constituent of opium and is generally in short supply. The demand for these products has resulted in a steadily increasing cost for thebaine and thebaine derivatives.

The present technology consists of a new and practical, nonchromatographic method of preparing 14-hydroxycodeinone by the direct oxidation of codeinone with cobalt (III) acetate (easily prepared in situ). The technology gives a 51% unoptimized yield of 14-hydroxycodeinone easily isolated by extractive workup and direct crystallization. This process is ultimately based on morphine (which is by far the major constituent and cheapest of the opium alkaloids) through the sequence: morphine to codeine to codeinone to 14-hydroxycodeinone. This technology is not limited by the availability of thebaine and thus offers more efficient production of the 14-hydroxy derivatives from opium.

Use of Oligonucleotides To Target Nucleic Acid Sequences Encoding Apolipoprotein B To Decrease Serum Apolipoprotein B and Cholesterol Levels

Thomas L Eggerman (FDA), Amy Patterson, Paul F. Torrence (NIDDK), Julie K Rhie

DHHS Reference No. E–236–98/0 filed 12 Oct 1999

Coronary heart disease is caused by the atherosclerotic narrowing of the coronary arteries affecting nearly 14 million persons in the United States. Approximately 480,000 deaths in 1995 were caused by the disease and it is the leading cause of death in the United States today. Two of the established causes of atheroscleorosis include elevated cholesterol levels and elevations of the major protein responsible for carrying cholesterol—apolipoprotein B (apoB). Optimal therapy, however is still not available for the most severely affected patients, in particular those with familial hypercholesterolemia and those with elevated apoB levels.

The NIH announces a new gene therapy approach which will lower the risk for atheroscleoric heart disease by decreasing plasma cholesterol and apoB levels. Our researchers have shown that antisense DNA oligonucleotides targeted for apoB decreased apoB mRNA in a human liver cell line by up to 80%. This in turn has led to a new gene therapy which utilizes a vector designed to produce antisense mRNA targeted for apoB. The result is a decrease in liver apoB production, which is the major source of circulating apoB. These oligonucleotides and oligonucleotide analogs are a novel and useful way of reducing low density lipoprotein (LDL) in patients, as well as for research and diagnostic purposes.

T20/D178 and T21/D107 Are Activators of Human Phagocyte Formyl Peptide Receptors

Ji Ming Wang (NCI), Joost J Oppenheim (NCI), Shao-Bo Su, Wang-Hua Gong, Philip M. Murphy (NIAID), Ji-Liang Gao (NIAID)

DHHS Reference No. E–164–99/0 filed 05 May 1999

The use of immunotherapy to treat inflammatory diseases is prescribed to thousands each and every year. In use currently are steroidal and non-steroidal anti-inflammatory drugs, which have serious side effects including: adrenal suppression, gastrointestinal disorders, increased susceptibility to infections, fluid retention and bone loss.

The NIH announces a new technology which can be used in drug discovery dealing with the modulation of the immune response. This technology identifies two polypeptides, T20/DP178 and T21/DP107, which are peptide domains of the HIV–1 envelope protein and are potent chemoattractants and activators of human peripheral blood phagocytes (monocytes and neutrophils) but not T lymphocytes. These polypeptides have been determined to interact with the Formyl Peptide Receptors (FPR), which in turn up-regulates the immune response by inducing cell migration and calcium mobilization. The activation of FPR class receptors by their agonists also results in desensitization of cell responses to other chemotactic factors. By identifying analogs to T20/DP178 and T21/DP107 and then evaluating their ability to bind to the FPR, one will be able to determine if the analog is a good candidate for either inhibiting or activating the immune response.

Dated: May 30, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–14343 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center Executive Committee.

Date: July 21, 2000.

Time: 8:30 am to 1:30 pm.

Agenda: Topics Related to Clinical Center Budget.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Dated: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14332 Filed 6–6–00; 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 section 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, Diet, Lifestyle and Cancer in U.S. Special Populations.

Date: June 29, 2000.

Time: 12 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, 6130 Executive Boulevard, Conference Room E, Rockville MD 20852, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8070, Rockville, MD 20892–7405, 301/496–7987.

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: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14333 Filed 6–6–00; 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 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 Cancer Institute Special Emphasis Panel, Continuation of Follow-Up of DES-Exposed Cohorts.

Date: June 21–22, 2000.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kirt Vener, Branch Chief, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8072, Bethesda, MD 20892, 301/496–7174.

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: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14334 Filed 6–6–00; 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: Environmental Health Sciences Review Committee.

Date: July 20–21, 2000.

Time: 8:30 am 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, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD 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; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: May 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14328 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 29, 2000.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 1450 Glenarm Place, Denver, CO 80202.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 29, 2000.

Time: 12 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 1450 Glenarm Place, Denver, CO 80202.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 30, 2000.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 1450 Glenarm Place, Denver, CO 80202.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14330 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: July 17, 2000.

Time: 8:30 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John R. Lymangrover, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14335 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Drug Abuse Special Emphasis Panel, Phase II SBIR: ''Develop CD–ROM Based Instrument Wizard''.

Date: June 28, 2000.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14336 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 materials, 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 Allergy and Infectious Diseases Special Emphasis Panel.

Date: June 21–23, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gerald L. McLaughlin, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, gm145a@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14337 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of 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 a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: June 8–9, 2000.

Open: June 8, 2000, 8:30 am to 5:30 pm.

Agenda: Director's Presentation & Scientific Presentations.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Open: June 9, 2000, 9 am to 10 am.

Agenda: Concept review.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: June 9, 2000, 10 am to 5 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Dushanka V. Kleinman, Deputy Director National Institute of Dental & Craniofacial Res., National Institutes of Health, 9000 Rockville Pike, 31/2C39, Bethesda, MD 20892.

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. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14338 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 28–29, 2000.

Time: June 28–9 a.m. to 5 p.m.; June 29–8:30 a.m. to 5 p.m.

Agenda: The agenda will include a discussion on novel human gene transfer protocol(s), DHHS Initiatives for Human Subjects Protections, continued deliberation on issues involving serious adverse events, review of the findings and recommendations from the Advisory Committee to the Director Working Group on Gene Transfer Studies, discussion of data management activities related to human gene transfer clinical trials, other matters to be considered by the Committee. Additional information is also available at the Officer of Biotechnology Activities' web site: http://www.nih.gov/od/oba/ on the Internet.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Amy P. Patterson, Director and Acting Executive Secretary, Officer of Biotechnology Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, MD 20892–7010, 301–496–9838.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: May 31, 2000

LaVerne Stringfield,

Director, Officer of Federal Advisory Committee Policy.

[FR Doc. 00–14342 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

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. IFCN–7 (01)

Date: June 15–16, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.

Date: June 15–16, 2000.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Sofitel, 1914 Connecticut Ave., NW., Washington, DC 20009.

Contact Person: Nancy Lamontagne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

Name of Committee: Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 1.

Date: June 15–16, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Philip Perkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, perkinsp@csr.nih.gov.

Name of Committee: Biochemical Sciences Integrated Review Group, Medical Biochemistry Study Section.

Date: June 15–16, 2000.

Time: 8:30 am to 5 pm

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Alexander S. Liacouras, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Biochemical Sciences Integrated Review Group, Biochemistry Study Section.

Date: June 15–16, 2000.

Time: 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Chhanda L. Ganguly, 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: Cell Development and Function Integrated Review Group, Cell Development and Function 5.

Date: June 15–16, 2000.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Sherry L. Dupere, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, duperes@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 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, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The George Hotel, 15 E Street, NE, Washington, DC 20001.

Contact Person: Gillian Einstein, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, 301–435–4433, einsteig@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov

Name of Committee: Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.

Date: June 15–16, 2000.

Time: 8:30 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Calbert A. Laing, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Weller, 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: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Visual Sciences A Study Section.

Date: June 15–16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Michael H. Chaitin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245, richard.marcus@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Michael J. Kozak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 9 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Michael A. Lang, 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: June 15–16, 2000.

Time: 9:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St, NW., Washington, DC 20037.

Contact Person: Carl D. Banner, 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: June 15, 2000.

Time: 3 p.m. to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Central, 1501 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Nancy Hicks, 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: Center for Scientific Review Special Emphasis Panel.

Date: June 16, 2000.

Time: 9 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Sandy Warren, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room, 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 16, 2000.

Time: 12 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Anita Miller Sostek, 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: June 17–18, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Copper Mountain Resort, P.O. Box 3001, Copper Mountain, CO 80443.

Contact Person: Jay Joshi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 2000.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Dharam S. Dhindsa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126,

MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18–19, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.

Contact Person: Ann A. Jerkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 2000.

Time: 4 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.

Contact Person: N. Krish Krishnan, 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: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 2000.

Time: 6 pm to 8 pm.

Agenda: To review and evaluate grant applications.

Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.

Contact Person: Abubakar A. Shaikh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

(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: May 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14329 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel.

Date: June 5, 2000.

Time: 5 p.m. to 6 p.m.

Agenda: To Review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bruce Maurer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

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. 93.306, 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: May 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14331 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

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: Cell Development and Function Integrated Review Group, Cell Development and Function 1.

Date: June 8–9, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Michael H. Sayre, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, Bethesda, MD 20892, (301) 435–1219.

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: June 9, 2000.

Time: 8 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Ramesh K. Nayak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

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: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 4.

Date: June 19–20, 2000.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Mushtaq A. Khan, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, (301) 435–1778, khanm@csr.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: Endocrinology and Reproductive Sciences Integrated Review Group, Human Embryology and Development Subcommittee 1.

Date: June 19–20, 2000.

Time: 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites & Chevy Pavilion, 4300 Military Road, NW., Wisconsin at Western Avenue, Washington, DC 20015.

Contact Person: Michael Knecht, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 45 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery and Bioengineering Study Section.

Date: June 19–20, 2000.

Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Teresa Nesbitt, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172, nesbitt@csr.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 Special Emphasis Panel.
Date: June 19–20, 2000.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gloria B. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group, Metabolism Study Section.
Date: June 19–20, 2000.
Time: 8 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.
Contact Person: Krish Krishnan, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.
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: June 19–20, 2000.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852
Contact Person: Stephen M. Nigida, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.
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: Cardiovascular Sciences Integrated Review Group, Experimental Cardiovascular Sciences Study Section.
Date: June 19–20, 2000.
Time: 8 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Monarch Hotel, 2400 M Street, NW, Washington, DC 20037.
Contact Person: Anshumali Chaudhari, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4128, MSC 7801, Bethesda, MD 20892, (301) 435–1210.
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, IFCN–6 (01).
Date: June 19–20, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Joseph Kimm, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.
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: Nutritional and Metabolic Sciences Integrated Review Group, Nutrition Study Section.
Date: June 19–20, 2000.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.
Contact Person: Sooja K. Kim, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.
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: Endocrinology and Reproductive Sciences Integrated Review Group, Endocrinology Study Section.
Date: June 19–20, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.
Contact Person: Syed M. Amir, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, amirs@csr.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: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 1.
Date: June 19–20, 2000.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn, Conference Room, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Timothy J. Henry, 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: June 20–21, 2000.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Custer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Nursing Research Study Section.
Date: June 20–22, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn-Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Gertrude McFarland, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 20–21, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Syed Husain, 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: June 20–21, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Herman Teitelbaum, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254.

Name of Committee: Center for Scentific Review Special Emphasis Panel.
Date: June 20–21, 2000.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.

Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Lung Biology and Pathology Study Section.

Date: June 21–22, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: George M. Barnas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–0696, george_barnas@nih.gov

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 1.

Date: June 21–22, 2000.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Montgomery Village Ave, Gathersburg, MD 20879.

Contact Person: Martin L. Slater, 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: Biophysical and Chemical Sciencies Integrated Review Group, Medicinal Chemistry Study Section.

Date: June 21–22, 2000.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ronald J. Dubois, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, duboisr@csr.nih.gov

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Experimental Virology Study Section.

Date: June 21–22, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: Rona L. Hirschberg, 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: Cell Development and Function Integrated Review Group, Cell Development and Function 4.

Date: June 22–23, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Marcia Steinberg, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023.

Name of Committee: Biochemical Sciences Integrated Review Group, Physiological Chemistry Study Section.

Date: June 22–23, 2000.

Time: 8 a.m. to 3:30 p.m.

Agenda: to review and evaluate grant applications.

Place: Embassy Square, 2000 N Street, NW, Washington, DC 20036.

Contact Person: Richard Panniers, 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: Center for Scientific Review Special Emphasis Panel.

Date: June 22–23, 2000.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN–8 (01).

Date: June 22–23, 2000.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Samuel Rawlings, 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 Integrated Review, Group, Immunological Sciences Study Section.

Date: June 22–23, 2000.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Ave, NW., Washington, DC 20037.

Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225.

Name of Committee: Immunological Sciences Integrated Review Group, Allergy and Immunology Study Section.

Date: June 22–23, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Eugene M. Zimmerman, 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: June 22–23, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael Nunn, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 2.

Date: June 22–23, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Rona L. Hirschberg, 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: Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemistry Study Section.

Date: June 22–23, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: Arnold Revzin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 22–23, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: John L, Bowers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 22–23, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Mariana Dimitrov, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, Bethesda, MD 20892, (301) 435–1281.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 22, 2000.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: St James Preferred Residence, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Russell T. Dowell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@csr.nih.gov

(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: June 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14339 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-exclusive License: ''Ultra Thin Walled Wire Reinforced Endotracheal Tubing''

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a co-exclusive license to practice the inventions embodied in U.S. Patent Application S/N 08/645,887 entitled, ''Ultra Thin Walled Wire Reinforced Endotracheal Tubing'' filed on May 15, 1996 and now U.S. Patent 5,722,395 which issued on March 3, 1998 to Mallinckrodt, Inc. of St. Louis, MO. The patent rights in these inventions have been assigned to the United States of America.

The prospective co-exclusive license territory will be for the United States.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before August 7, 2000 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Girish C. Barua, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: 301/496–7056, ext. 263; Facsimile: 301/402–0220; E-mail: gb18t@nih.gov.

SUPPLEMENTARY INFORMATION: U.S. Patent 5,722,395 claims an ultra thin walled wire reinforced endotracheal tubing which includes a thin walled tubing comprising a polymeric material having a spring material incorporated therewith. Utilization of the spring wire material in combination with polymeric material results in a reduced wall thickness which results in a significant decrease in resistance to air flow through the endotracheal tubing and therefore should permit a patient to breathe in more relaxed fashion so as not to become exhausted. The endotracheal tubing of the present invention is made by depositing a dissolvable polymeric material onto a rotating mandrel in successive layers. A spring material is also applied around the mandrel to produce the ultra thin walled wire reinforced endotracheal tubing.

The prospective co-exclusive license: will be royalty-bearing; will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7; and it will be structured in such a way not to preclude the U.S. Public Health Service from licensing the patent rights of U.S. Patents 5,305,740, 5,429,127, 5,537,729, 5,711,296 and 5,785,998 and allowing appropriate licensees the right to practice these patent rights worldwide.

The prospective co-exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 30, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–14341 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT010–1220–DA]

Motorized Vehicle Use Within the Following Areas of Critical Environmental Concern: Bridger Fossil Area; East Pryor Mountain; Meeteetse Spires; Petroglyph Canyon and Weatherman Draw, within Carbon and Musselshell Counties, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The decision to approve the designation of seven ACEC's within Carbon and Yellowstone Counties, Montana with associated restrictions on motorized vehicle use is final. Motorized use in the Bridger Fossil Area, East Pryor Mountain, Meeteese Spires, Petroglyph Canyon and Stark Site ACEC's is restricted to designated roads. Motorized vehicle use in the Weatherman Draw ACEC is limited to authorized use only. The final decision was signed on March 10, 1999 and the restrictions became effective on April 10, 1999. These areas are posted with signs listing the specific restrictions for each area.

FOR FURTHER INFORMATION CONTACT: Sandra Brooks, Field Manager, BLM, Billings Field Office, PO BOX 36800, 5001 Southgate Drive, Billings, Montana, 59107 or 406–896–5013.

SUPPLEMENTARY INFORMATION: Authority for this action is outlined in sections 302, 303 and 310 of the Federal Land Policy and Mangement Act of October 21, 1976, (43 U.S.C. 1716) and Title 43 Code of Federal Regulations Subject 8364 (43 CFR 8364.1). Any person who fails to comply with this closure is subject to arrest and a fine up to $1000 or imprisonment not to exceed 12 months, or both. These restrictions apply to all persons except persons authorized by the Bureau of Land Management.

Dated: June 1, 2000.

Sandra S. Brooks,

Field Manager.

[FR Doc. 00–14268 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–$$–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GPO–0083; (OR–9041A]

Public Land Order No. 7452; Partial Revocation of the Executive Order Dated April 17, 1926; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order insofar as it affects 4,231.09 acres of public lands withdrawn for the Bureau of Land Management's Public Water Reserve No. 107. The lands do not qualify for a public water reserve and the revocation is needed to permit several land disposals. This action will open the lands to surface entry and non-metalliferous mining, unless included in other segregations of record. All of the lands have been and will remain open to metalliferous mining and mineral leasing, unless included in other segregations of record.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Allison O'Brien, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affect the following described lands:

Willamette Meridian

(a) Federal Lands and Minerals

T. 22 S., R. 27 E.,
Sec. 23;
Sec. 26, NE¼, NW¼NW¼, S½NW¼, and S½.
T. 26 S., R. 27 E.,
Sec. 13, NW¼NE¼, N½N½NW¼, and SE¼NW¼.
T. 21 S., R. 29 E.,
Sec. 15, W½SW¼SE¼ and E½SE¼SE¼.
T. 29 S., R. 30 E.,
Sec. 29, SE¼SW¼ and SW¼SE¼;
Sec. 32, S½NW¼NE¼.
T. 21 S., R. 31 E.,
Sec. 32, SW¼SW¼.
T. 22 S., R. 31 E.,
Sec. 5, lot 4.
T. 21 S., R 33 E.,
Sec. 3, SW¼SE¼.
T. 33 S., R. 33 E.,
Sec. 3, S½SE¼NE¼;
Sec. 4, lots 3 and 4, S½NW¼, and N½S½;
Sec. 35, W½E½SW¼, S½NW¼SW¼, SW¼SW¼, and E½SE¼.
T. 34 S., R. 33 E.,
Sec. 2, lots 1 to 4, inclusive, and S½N½;
Sec. 4, N½NE¼SW¼, SW¼NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 35, SE¼SW¼.
T. 20 S., R. 33½ E.,
Sec. 7, NE¼NE¼;
Sec. 21, S½;
Sec. 25, SW¼NW¼ and NW¼SW¼.
T. 39 S., R. 34 E.,
Sec. 8, N½NW¼SE¼ and NE¼SE¼;
Sec. 9, NW¼SW¼.
T. 19 S., R. 35 E.,
Sec. 33, NW¼NE¼, NW¼SE¼, and SE¼SE¼;
Sec. 34, SW¼SW¼.
T. 40 S., R. 38 E.,
Sec. 9, NW¼NW¼.

(b) Private Surface/Federal Minerals

T. 27 S., R. 24 E.,
Sec. 11, S½NE¼, and S½;
Sec. 12, SW¼NE¼, S½NW¼, SW¼, and NW¼SE¼.
T. 19 S., R. 33½ E.,
Sec. 22, E½NW¼ and SW¼NW¼.

The areas described in (a) and (b) aggregate 4,231.09 acres in Harney County.

2. At 8:30 a.m. on July 7, 2000, the lands described in paragraph 1(a) will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on July 7, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 8:30 a.m. on July 7, 2000, the lands described in paragraph 1(a) and 1(b) will be opened to location and entry under the United States mining laws for non-metalliferous minerals, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws for non-metalliferous minerals prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–14289 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 011167]

Public Land Order No. 7451; Partial Revocation of Bureau of Reclamation Order Dated December 17, 1954; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Bureau of Reclamation order insofar as it affects 5,274 acres of lands withdrawn for the Central Utah Project. The lands are no longer needed for the purpose for which they were withdrawn. This action returns 2,484 acres to Bureau of Land Management administration and opens them to surface entry but not to mining, and returns 2,790 acres to National Forest administration and opens them to mining and to such forms of disposition as may by law be made of National Forest System lands. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Rhonda Flynn, BLM Utah State Office (UT–942), 324 South State Street, Salt Lake City, Utah 84111–2303, 801–539–4132.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Bureau of Reclamation Order dated December 17, 1954, which withdrew lands for the Central Utah Project, is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

(a) Public Lands

T. 2 S., R. 6 E.,
Sec. 30, lot 4 and SE¼SW¼.
T. 3 S., R. 21 E.,
Sec. 23, NE¼SW¼;
Sec. 27, lots 1 and 2, E½NE¼, NW¼NE¼, and NW¼;
Sec. 33, lots 1 and 2, NE¼, and N½SE¼;
Sec. 34, lot 4 and NW¼NW¼.
T. 4 S., R. 21 E.,
Sec. 3, N½N½SE¼NW¼;
Sec. 4, lots 2 and 3.
T. 5 S., R. 1 W.,
Sec. 24, lots 2 and 4.

T. 5 S., R. 4 E.,
Sec. 3, NE¼SE¼.
T. 7 S., R. 2 E.,
Sec. 15, lot 1;
Sec. 25, lots 2 and 3, and SE¼SW¼;
Sec. 26, lots 1 to 4, inclusive;
Sec. 27, lot 1.
T. 9 S., R. 2 E.,
Sec. 31, lot 7.
T. 9 S., R. 3 E.,
Sec. 15, E½.
T. 9 S., R. 4 E.,
Sec. 9, lot 2.
T. 10 S., R. 1 W.,
Sec. 35, S½S½;
Sec. 36, lots 13 and 14.
T. 11 S., R. 1 W.,
Sec. 1, lots 3 and 4, S½NW¼, SW¼, and SW¼SE¼;
Sec. 12, N½NE¼, SW¼NE¼, N½NW¼, and SE¼NW¼.
The areas described aggregate approximately 2,484 acres in Uintah, Juab, Summit, Utah, and Wasatch Counties.

(b) Uinta National Forest

T. 6 S., R. 5 E.,
Sec. 7, lots 1 to 4, inclusive, and E½E½; secs. 8 and 17;
Sec.18, lots 1 to 4, inclusive, and E½E½.
T. 8 S., R. 4 E.,
Sec. 35, SE¼NW¼.
T. 9 S., R. 2 E.,
Sec. 28, W½NW¼;
Sec. 31, lot 8.
T. 9 S., R. 4 E.,
Sec. 9, lot 1, NW¼NE¼, NW¼, N½NE¼SW¼, SW¼NE¼SW¼, and NW¼SW¼.
T. 10 S., R. 1 E.,
Sec. 12, SE¼SE¼;
Sec. 13, SW¼NE¼, SE¼NW¼, E½SW¼, NE¼SE¼, and W½SE¼.
T. 10 S., R. 2 E.,
Sec. 5, lot 4;
Sec. 6, lots 8, 11, 12, and 13, and SE¼NW¼.
T. 12 S., R. 1 E.,
Sec. 16, SE¼SW¼;
Sec. 21, NE¼NW¼.

The areas described aggregate approximately 2,790 acres in Juab, Summit, and Wasatch Counties.

2. At 10 a.m. on July 7, 2000, the lands described in paragraph 1(a) will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 7, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands described in paragraph 1(a) will not be opened to mining until appropriate land use planning is completed.

4. At 10 a.m. on July 7, 2000, the lands described in paragraph 1(b) shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 22, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–14290 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–1430-ET; CACA 42078]

Notice of Intention to Relinquish; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy has submitted to the Bureau of Land Management a notice of intention to relinquish the withdrawn status of 42.3 acres of public land in San Bernardino County, California, that was withdrawn for military purposes by the California Desert Protection Act of 1994.

DATES: Effective June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Duane Marti, (CA–931.4), California State Office, Bureau of Land Management, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886; 916–978–4675.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of the Navy has submitted, to the Bureau of Land Management, a notice of intention to relinquish the withdrawn status of 42.3 acres of public land in San Bernardino County, California, that was withdrawn for military purposes by the California Desert Protection Act of 1994. The land is no longer needed for that purpose, but is needed by the Bureau of Land Management for the expansion of the Ridgecrest Regional Wild Horse and Burro corrals.

Pursuant to section 808(b) of the California Desert Protection Act of 1994, the Navy has stated that the land was not contaminated and that no decontamination measures were required.

The Navy's notice will be processed in accordance with section 204 of the Federal Land Policy and Management Act of 1976, section 808 of the California Desert Protection Act of 1994, and the regulations set forth in 43 CFR 2370.

Dated: June 1, 2000.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 00–14269 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention to Request Clearance of Information Collection—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, National Underground Railroad Network to Freedom Program.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Public Law, 104–13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on a proposed information collection. Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected on respondents, including use of automated collection techniques or other forms of information technology.

Public Law 105–203 authorizes the National Railroad Network to Freedom Program (NURNFP) to develop and administer the Network to Freedom, a nationwide collection of governmental and nongovernmental properties, facilities, and programs associated with the historic Underground Railroad movement. The NURNFP is developing an application process through which associated elements can be included in the Network to Freedom. The information collected will:

(a) Verify associations to the Underground Railroad,

(b) Measure minimum levels of standards for inclusion in the Network, and

(c) Identify general needs for technical assistance.

DATES: Public Comments on the proposed ICR will be accepted on or before August 7, 2000.

ADDRESSES: Send comments to Diane Miller, National Coordinator, National Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska, 68102.

All responses to this notice will be summarized and included in the requests for Office and Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of the proposed ICR can be obtained from Diane Miller, National Coordinator, National Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska, 68102.

FOR FURTHER INFORMATION CONTACT: Diane Miller, 402–221–3749 or Aaron Mahr, 956–541–2785, ext. 3.

SUPPLEMENTARY INFORMATION: *Title:* Nomination Form to Underground Railroad Network to Freedom.

Bureau Form Number: To be requested.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Underground Railroad Network to Freedom Program is identifying guidelines and criteria for associated elements to enter the Network to Freedom. The Nomination Form documents properties, programs, and facilities, and demonstrates that they meet the criteria established for inclusion. The documentation will be incorporated into a database that will be available to the general public for information purposes.

Automated data collection: Respondents must verify associations and characteristics through descriptive texts that are the result of historical research. Evaluations are based on subjective analysis of the information provided. At the present time there is no automated way to gather this information.

Description of respondents: The affected public are state, tribal, and local governments, federal agencies, businesses, non-profit organizations, and individuals, throughout the United States. Nominations to the Network to Freedom are voluntary.

Estimated average number of respondents: 100.

Estimated average number of responses: 100.

Estimated average burden hours per response: 10 hours.

Estimated frequency of response: Once per respondent.

Estimated annual reporting burden: 1000 hours.

Dated: May 30, 2000.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 00–14350 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held June 12, 2000 at 9:00 am, at the town hall in Whitehall, Alabama.

The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Selma to Montgomery National Historic Trail. This law was put in place to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

A. Update on status of Cultural Resource Inventory

B. Update of High priority projects

C. Further define high priority projects as input to ALDOT application for FY 2001 Scenic Byways funds. The application is due June 2000.

D. Update on Welcome Center at the Tent city Site.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first serve basis. Any member of the public may file a written statement concerning the matters to be discussed with Lee Edwards, Trail Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Lee Edwards, Trail Superintendent, Selma to Montgomery National Historic Trail, P.O. Box 5690, Montgomery, Al 36103, telephone 334–353–3744 or 334–727–6390.

Lee Edwards,

Trail Superintendent.

[FR Doc. 00–14349 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction Act (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 described the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 7, 2000.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington D.C. 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Attention Ms. Nancy Purdy, Contract and Repayment Specialist, Lower Colorado Dams Facilities Office, P.O. Box 60400, Boulder City, NV 89006.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information,

contact Ms. Nancy Purdy at (702) 293–8533.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical use; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title: Diversons, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin.

OMB No.: 1006–0015.

Abstract: Reclamation delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. Under Supreme Court order, the United States is required, at least annually, to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use. This information is needed to ensure that a State or a water user within a State does not exceed its authorized use of Colorado River water. Water users are obligated to provide information on diversions and return flows to Reclamation by provisions in their water delivery contracts. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means. Without the information collected, Reclamation could not comply with the order of the United States Supreme Court to prepare and maintain detailed and accurate records of diversions, return flow, and consumptive use.

Description of respondents: The Lower Basin States (Arizona, California, and Nevada), local and tribal entities, water districts, and individuals that use Colorado River water.

Frequency: Annually, or otherwise as determined by the Secretary of the Interior.

Estimated completion time: An average of 6 hours per respondent.

Annual responses: 54 respondents.

Annual burden hours: 290.

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. Reclamation will display a valid OMB control number on the forms. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2000 (65 FR 7562). Reclamation did not receive any comments on this collection of information during the comment period.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days, therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Murlin Coffey,

Manager, Property and Office Services,

[FR Doc. 00–14270 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted to OMB for Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of surveys to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with analysis of the effectiveness of section 337 remedial exclusion orders, instituted under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

Summary of Proposal

(1) *Number of forms submitted:* Two.

(2) *Title of form:* USITC Survey Regarding Outstanding § 337 Exclusion Orders.

(3) *Type of request:* New.

(4) *Frequency of use:* survey, single data gathering, scheduled for 2000.

(5) *Description of responding firms:* Complainants that obtained exclusion orders from the Commission following an investigation under Section 337 that remains in effect at the time of the survey.

(6) *Estimated number of responding firms:* 37.

(7) *Estimated total number of hours to complete the forms:* 37.

(8) Information obtained from the firm that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

DATES: To be assured of consideration, written comments must be received on or before July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents are posted on the Commission's World Wide Web site at http://www.usitc.gov or may be obtained from Lynn I. Levine, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone, 202–205–2560. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102, Washington, DC 20503, ATTENTION: Desk Officer for the International Trade Commission. All comments should be specific, indicating which part of the survey is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: June 2, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14320 Filed 6–6–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–677 (Review)]

Coumarin From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on coumarin from China would be likely to lead to continuation or recurrence of material injury to an industry in the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.2(f)).

United States within a reasonably foreseeable time.

Background

The Commission instituted this review on December 30, 1999 (64 FR 73576, December 30, 1999) and determined on April 6, 2000 that it would conduct an expedited review (65 FR 24504, April 26, 2000). The Commission transmitted its determination in this review to the Secretary of Commerce on May 30, 2000. The views of the Commission are contained in USITC Publication 3305 (May 2000), entitled Coumarin From China: Investigation No. 731–TA–677 (Review).

Issued: May 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14316 Filed 6–6–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–309–A–B (Review) and 731–TA–528 (Review)]

In the Matter of Magnesium From Canada; Notice of Commission Determination Not To Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Commission determination not to close any part of the hearing to the public.

SUMMARY: The Commission has determined to deny the request of respondents Gouvernement du Quebec (''Quebec'') and Norsk Hydro Canada, Inc. (''NHCI''), to conduct a portion of its hearing in the above-captioned reviews scheduled for May 31, 2000, *in camera. See* Commission rules 201.13 and 201.36(b)(4) (19 CFR 201.13 and 201.36(b)(4)).

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3115, e-mail acasson@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission's policy and practice is to conduct its hearings in public except in limited circumstances. *See* 19 CFR 201.36. The Commission's Rules provide for it to close hearings in where a party identifies subjects to be discussed during a closed session and justifies the need for such a session. 19 CFR 207.24(d). Respondents did not indicate the subjects on which they intended to present testimony during the closed session, and merely stated that during a closed session information covered by the administrative protective order could be addressed as necessary. Absent any identification of the subjects to be discussed and an adequate justification of the need for a closed session, the Commission finds no reason to depart from its ordinary practice of holding fully open hearings. The Commission has determined that the public interest would be best served by a hearing that is entirely open to the public. *See* 19 CFR 201.36(c)(1).

Authority: This notice is provided pursuant to Commission Rule 201.35(b) (19 CFR 201.35(b)).

Issued: May 30, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14317 Filed 6–6–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–429 (Review)]

Mechanical Transfer Presses From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751© of the Tariff Act of 1930 (the Act),[3] that revocation of the antidumping duty order on mechanical transfer presses (MTPs) [4] from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on June 1, 1999,[5] and determined on September 3, 1999, that it would conduct a full review.[6] Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 15, 1999.[7] The hearing was held in Washington, DC, on April 4, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on May 26, 2000. The views of the Commission are contained in USITC Publication 3304 (May 2000), entitled Mechanical Transfer Presses from Japan: Investigation No. 731–TA–429 (Review).

Issued: June 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14319 Filed 6–6–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Thelma J. Askey dissenting.

[3] 19 U.S.C. 1675(c).

[4] For purposes of this review, the term ''mechanical transfer press'' (MTP) refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

Commerce published in the **Federal Register** several Notices of Scope Rulings with respect to MTPs from Japan and determined that: (1) spare and replacement parts are outside the scope of the order (57 FR 19602, May 7, 1992); (2) a destack sheet feeder designed to be used with a mechanical transfer press is an accessory and, therefore, is not within the scope of the order (57 FR 32973, July 24, 1992); (3) the FMX cold-forging press is within the scope of the order (59 FR 8910, February 24, 1994); and (5) certain mechanical transfer press parts exported from Japan are outside the scope of the order (62 FR 9176, February 28, 1997).

Commerce's scope identifies the Harmonized Tariff Schedule of the United States (HTS) statistical reporting numbers for MTPs as 8462.99.0035, mechanical transfer presses, and 8466.94.5040, parts of mechanical transfer presses. However, these numbers were replaced by statistical reporting numbers 8462.99.8035, 8466.94.6040, and 8466.94.8040 on January 1, 1994. Subsequently, on July 1, 1997, statistical reporting numbers 8466.94.6040 and 8466.94.8040 were replaced by statistical reporting numbers 8466.94.6540 and 8466.94.8540. For a further explanation of these changes, see the U.S. Tariff Treatment section presented later in this report. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

[5] 64 FR 29347, June 1, 1999.

[6] 64 FR 50107, September 15, 1999.

[7] 64 FR 61938, November 15, 1999.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–841 (Final)]

Certain Non-Frozen Concentrated Apple Juice From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of certain non-frozen concentrated apple juice,[3] provided for in subheadings 2009.70.00 and 2106.90.52 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective June 7, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Coloma Frozen Foods, Inc.; Coloma, MI; Green Valley Apples of California, Los Angeles, CA; Knouse Foods Cooperative, Inc., Peach Glen, PA; Mason County Fruit Packers Cooperative, Ludington, MI; and Tree Top, Inc., Selah, WA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain non-frozen concentrated apple juice from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 20, 2000 (65 FR 3247). The hearing was held in Washington, DC, on April 10, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 30, 2000. The views of the Commission are contained in USITC Publication 3303 (May 2000), entitled Certain Non-Frozen Concentrated Apple Juice from China: Investigation No. 731–TA–841 (Final).

Issued: June 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14318 Filed 6–6–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Lynn M. Bragg not participating.

[3] ''Certain non-frozen concentrated apple juice'' consists of all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of the investigation are frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)—1280]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the Coordinating Council on Juvenile Justice and Delinquency Prevention meeting.

DATES: A meeting of the advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will take place in the District of Columbia, beginning at 1 p.m. on Monday, June 26, 2000, and ending at 3 p.m., ET.

ADDRESSES: The meeting will take place at the U.S. Department of Justice, Office of Justice Programs, Main Conference Room, 3rd Floor, 810 Seventh Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Bob Altman, Program Manager, Juvenile Justice Resource Center at (301) 519–5721. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Coordinating Council, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*). This meeting will be open to the public. Members of the public who wish to attend the meeting should notify the Juvenile Justice Resource Center at the number listed above by 5 p.m., ET, on Friday, June 16, 2000. For security purposes, picture identification will be required.

Dated: June 2, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–14360 Filed 6–6–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Chief Financial Officer: Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Chief Financial Officer is soliciting comments concerning the proposed extension of Department of Labor regulations implementing the Salary Offset provision of the Debt Collection Act of 1982.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 7, 2000.

ADDRESSES: Comments are to be submitted in writing to Mark Wolkow, Department of Labor, Office of the Chief Financial Officer, Room S–4502 Frances Perkins Building, 200 Constitution Ave. NW, Washington, DC 20210; via fax to 202–219–4975; or via email to wolkow-mark@dol.gov.

FOR FURTHER INFORMATION CONTACT: Mark Wolkow, Division of Policy and Internal Control at 202–219–8184 x127, or via email at wolkow-mark@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Debt Collection Act of 1982 and the Office of Personnel Management salary offset regulations, as

implemented in the Department by 29 CFR part 20, require Federal agencies to afford debtors the opportunity to exercise certain rights before the agency makes a salary offset to collect a debt. In the exercise of these rights, the debtor may be asked to provide a written explanation of the basis for disputing the amount or existence of a debt alleged owed the agency. A debtor may also be required to provide asset, income, liability, or other information necessary for the agency to determine the debtor's ability to repay the debt, including any interest, penalties and administrative costs assessed.

Information provided by the debtor will be evaluated by an independent hearing official in order to reconsider the responsible agency official's decision with regard to the existence or amount of the debt. Information concerning the debtor's assets, income, liabilities, etc., will be used by the independent hearing official to determine whether the agency's action with regard to salary would create undue financial hardship for the debtor, or to determine whether the agency should accept the debtor's proposed repayment schedule.

If a debtor disputes or asks for reconsideration of the agency's determination concerning the debt, the debtor will be required to provide the information or documentation necessary to state his/her case. While much or all of this information might be available in agency records, it would only be appropriate to offer the debtor the opportunity to supply any information deemed relevant to his/her case.

Information concerning the debtor's assets, income, liabilities, etc., would typically not be available to the agency unless submitted by the debtor.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Failure of the agency to request the information described would either violate the debtor's rights under the Debt Collection Act of 1982 or limit the agency's ability to collect outstanding debts.

If a debtor wishes to appeal an agency action based on undue financial hardship, he/she may be asked to submit information on his/her assets, income, liabilities, or other information considered necessary by the hearing official for evaluating the appeal. Use of the information will be explained to the debtor when it is requested; consent to use the information for the specified purpose will be implied from the debtor's submission of the information.

Type of Review: Extension of a currently approved collection.

Agency: Office of the Chief Financial Officer.

Title: Salary Offset.

OMB Number: 1225–0038.

Agency Form Number: N/A.

Affected Public: Federal employees.

Cite/Reference/Form/etc: It is estimated that 25% of the individuals indebted to the Department will contest the proposed collection action and will request a review and/or appeal an action based on undue financial hardship. In some cases the debtor will make one request, but not the other. However, in most cases, it is expected that the debtor will request both actions—first, review of the determination of indebtedness, and second, relief because of undue financial hardship.

Annual burden was estimated based on a review of debtor responses to similar requests for information. Debtors typically respond in 1–2 page letters, supplemented by copies of documents. Letters are most often typewritten. Annual burden is based on a 1¼ hour time allotment to prepare and type a letter. Debtors will not be asked to respond on a form.

Estimated Total Burden Hours: 375.

Total Annualized Costs: Capital/startup costs: $0; operating/maintaining systems or purchasing services: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 23, 2000.

Kenneth Bresnahan,

Chief Financial Officer.

[FR Doc. 00–14291 Filed 6–6–00; 8:45 am]

BILLING CODE 4510–23–P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Deletion of Privacy Act System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Notice of intent to delete and existing system of records.

SUMMARY: The Merit Systems Protection Board (MSPB) publishes this document pursuant to the requirements of the Privacy Act of 1974 at 5 U.S.C. 552a to inform the public that it will no longer maintain records in the system formerly known as MSPB/Internal-4 by the name or personal identifier of the record subject. Names and personal identifiers will be deleted for all existing and future documents maintained in the OAC Decision Data Base.

EFFECTIVE DATE: June 7, 2000.

ADDRESS: Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, (202) 653–7200.

SUPPLEMENTARY INFORMATION: By **Federal Register** Notice of July 2, 1996 (61 FR 34448) the Board announced a new system of records, Office of Appeals Counsel Decision Data Base, MSPB/Internal-4. The categories of records to be maintained in the system included advisory memoranda prepared by the Office of Appeals Counsel for the Board of individual members of the Board and instructions from members of the Board regarding the preparation of decisions for Board issuance. These records were to contain individual appellant's names, and could also contain social security numbers, home addresses, veterans status, race, sex, national origin and disability status data.

The Board hereby announces its intention to delete all names and personal identifiers from the records now maintained in this data base, and from any future records placed in the data base. Henceforth, the records in this data base will be retrieved by legal or factual issues. No personal information associated with any individual will be maintained.

Dated: June 1, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–14310 Filed 6–6–00; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 24, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it, too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–00–7, 2 items, 2 temporary items). Records relating to the monitoring of information systems and telecommunications. Included are requests, approvals, notifications, certifications of notification procedures, and information pertaining to the use of monitoring products. Also included are electronic copies of documents created using electronic mail and word processing.

2. Department of the Army, Agency-wide (N1–AU–98–8, 2 items, 2 temporary items). Documents relating to individual travel charge cards of Army military personnel and civilian employees. Included are travel authorizations, vouchers, charge card applications, charge card receipts, terms and conditions for the use of charge cards, and transaction reports. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of the Army, Agency-wide (N1–AU–00–9, 2 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing that pertain to security assistance activities provided under the International Security Assistance Act and the Arms Export Control Act. This schedule also proposes minor changes in the disposition instructions for recordkeeping copies of these files, which were previously approved for permanent retention.

4. Department of the Army, Agency-wide (N1–AU–00–10, 3 items, 3 temporary items). Respiratory protection program files relating to general program administration, training, and the results of fit and leak testing of respiratory protection devices. Included are electronic copies of records created using electronic mail and word processing.

5. Department of the Army, Agency-wide (N1–AU–00–11, 2 items, 2 temporary items). Records relating to inventories and examinations of test booklets, scoring keys, and all other accountable test materials. Included are electronic copies of records created using electronic mail and word processing.

6. Department of Defense, Office of the Secretary (N1–330–00–2, 5 items, 5 temporary items). Records relating to the adjudication of security clearances, including electronic copies of

documents created using electronic mail and word processing.

7. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–3, 2 items, 2 temporary items). Assessment calculation files relating to semi-annual assessments of government-sponsored enterprises for funds appropriated to the agency from Congress. Included are electronic copies of documents created using electronic mail and word processing. Notice of this schedule was previously published in the **Federal Register** of March 22, 2000. It is being re-published due to minor changes occasioned by an agency reorganization.

8. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–4, 11 items, 9 temporary items). Records accumulated by the Office of Policy Analysis and Research relating to the compensation received by government-supported enterprise executives and to requests for information concerning agency Notices of Proposed Rulemaking. Also included are selected subject files and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of selected subject files and quarterly reports to the Department of Housing and Urban Development are proposed for permanent retention. Notice of this schedule was previously published in the **Federal Register** of March 22, 2000. It is being re-published due to minor changes occasioned by an agency reorganization.

9. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–8, 7 items, 6 temporary items). Project tracking reports, records relating to trips, and selected chronological files accumulated by the Office of the Director. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of selected chronological files from the Director's Office are proposed for permanent retention, including files of the Deputy Director and several staff assistants.

10. Department of the Interior, Bureau of Land Management (N1–49–00–1, 2 items, 2 temporary items). Records in all media, including databases, that pertain to list servers, discussion groups, and news groups maintained on internal agency electronic communication and information sharing applications.

11. Department of the Interior, Bureau of Land Management (N1–49–00–2, 3 items, 3 temporary items). Records relating to solicited and unsolicited public commendations, complaints, and comments. Included are such records as letters of complaint and commendation and reports, plans, and other files relating to customer service focus groups and surveys. Also included are electronic copies of records created using electronic mail and word processing.

12. Department of the Interior, U.S. Geological Survey (N1–57–97–3, 2 items, 1 temporary item). Manuscripts and other background papers relating to agency publications. This schedule reduces the retention period for these records, which were previously approved for disposal. It also modifies the transfer instructions for publications, which were previously scheduled for permanent retention.

13. Department of Justice, Federal Bureau of Prisons (N1–129–00–21, 11 items, 9 temporary items). Records of the Office of Assistant Director and General Counsel, including such records as chronological files, Director's working files, executive staff meeting reports, files on foreign travel and speeches, meetings files, miscellaneous and quarterly reports, and tracked correspondence. Also included are electronic copies of documents created using electronic mail and word processing. An inmate issues file and subject files are proposed for permanent retention.

14. Department of Justice, Federal Bureau of Prisons (N1–129–00–22, 4 items, 4 temporary items). Records of the Litigation Branch, including representation requests, reference files, and tracked correspondence. Also included are electronic copies of documents created using electronic mail and word processing.

15. Department of Justice, Federal Bureau of Prisons (N1–129–00–23, 5 items, 5 temporary items). Records of the Legislative and Correctional Issues Branch, including compassionate release files, legislative files, subject files, and correspondence files. Also included are electronic copies of documents created using electronic mail and word processing.

16. Department of Justice, Federal Bureau of Prisons (N1–129–00–24, 2 items, 2 temporary items). Records of the Legal Administrative Branch, including program statement background files and electronic copies of documents created using electronic mail and word processing.

17. Department of Justice, Federal Bureau of Prisons (N1–129–00–25, 6 items, 6 temporary items). Records of the Administrative Complaints and Ethics Branch, including ethics opinions, outside employment and outside travel requests, controlled correspondence, and ethics reference materials. Also included are electronic copies of documents created using electronic mail and word processing.

18. Department of Justice, Federal Bureau of Prisons (N1–129–00–26, 3 items, 3 temporary items). Records of the Commercial Law Branch, including jurisdiction files and subject files. Also included are electronic copies of documents created using electronic mail and word processing.

19. Department of Justice, Federal Bureau of Prisons (N1–129–00–27, 5 items, 5 temporary items). Records of the Labor Law Branch, including controlled correspondence and Merit Systems Protection Board, Federal Labor Relations Authority, and Office of Special Counsel case files. Also included are electronic copies of documents created using electronic mail and word processing.

20. Department of Labor, Employment and Training Administration (N1–369–99–1, 16 items, 16 temporary items). Records relating to programs to provide assistance for workers whose jobs have been or will be impacted by increased imports. Included are such records as petitions, company information, correspondence, public inspection files, funding requests, and program regulations. Also included are electronic copies of documents created using electronic mail and word processing.

21. Department of Labor, Mine Safety and Health Administration (N1–433–98–1, 3 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to reports and other records pertaining to the investigation of fatal mine accidents. Extra copies of final reports are also included. In addition, this schedule revises the series description and retirement instructions for recordkeeping copies of investigation files, which were previously approved for permanent retention.

22. Department of Veterans Affairs, Veterans Health Administration (N1–15–99–2, 28 items, 28 temporary items). Anatomic pathology, blood transfusion, and clinical pathology services records. Included are such files as laboratory test reports, test procedures records, pathology test reports, proficiency tests, logs, instrument maintenance records, quality control records, and other documents relating to patient care and laboratory procedures and certification. Also included are electronic copies of records created using electronic mail and word processing. Reports that relate to individual patient care are filed in the patient's medical folder, which was previously approved for disposal 75 years after last episode of care.

23. Consumer Product Safety Commission, Agency-wide (N1–424–00–1, 3 items, 2 temporary items). Records relating to the production of posters, including production materials, negatives, routine artwork, layouts, and preparatory graphic material. Also included are posters pertaining to events and subjects not related to the agency's mission. Posters relating to the agency's mission and operations are proposed for permanent retention.

24. Federal Retirement Thrift Investment Board, Agency-wide (N1–474–00–2, 3 items, 3 temporary items). Copies of Office of Administration internal directives accumulated by agency program offices. Electronic copies created using word processing are also included.

25. Federal Home Loan Bank Board (N1–195–00–1, 3 items, 2 temporary items). Older records, accumulated between 1932 and 1971, consisting of bills and receipts for legal fees, miscellaneous case files, and savings and loan associations' applications for membership in the Federal Home Loan Bank system and other actions, such as relocation and the establishment of branch offices. Records include financial statements, audits, transcripts of hearings, maps, photographs, and publicity materials. The agency's Central Subject File, 1934–1969, is proposed for permanent retention.

26. Tennessee Valley Authority, Chief Administrative Officer (N1–142–00–3, 4 items, 2 temporary items). Paper copies of records of the Chief Administrative Officer for which optical images have been created. Also included are electronic copies of documents created using word processing and electronic mail. Information that has been converted to optical image format is proposed for permanent retention and will be transferred to the National Archives in a medium and format that meets the requirements for archival records in effect at the time of transfer. Paper records that pre-date November 1, 1999, and will not be scanned, are also proposed for permanent retention.

27. Tennessee Valley Authority, Information Services (N1–142–00–4, 2 items, 2 temporary items). Correspondence, reports, and presentations pertaining to the management of the Y2K program. Also included are electronic copies created using electronic mail and word processing.

Dated: May 26, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–14275 Filed 6–6–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of June 5, 12, 19, 26, and July 3, and 10, 2000.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 5

There are no meetings scheduled for the Week of June 5.

Week of June 12—Tentative

Tuesday, June 13

9:25 a.m.
Affirmation Session (Public Meeting) a: Final Rule—Clarification of Regulations to Explicitly Limit Which Types of Applications Must Include Antitrust Information

9:30 a.m.
Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Paul Lohaus, 301–415–3340)

1:00 p.m.
Meeting with Korean Peninsula Energy Development Organization (KEDO) and State Department (Public Meeting) (Contact: Donna Chaney, 301–415–2644)

Week of June 19—Tentative

Tuesday, June 20, 2000

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.
Briefing on Final Rule—Part 70—Regulating Fuel Cycle Facilities (Public Meeting) (Contact: Theodore Sherr, 301–415–7218)

1:30 p.m.
Briefing on Risk-Informed Part 50, Option 3 (Public Meeting) (Contact: Mary Drouin, 301–415–6675)

Wednesday, June 21, 2000

10:30 a.m.
All Employees Meeting (Public Meeting) (''The Green'' Plaza Area)

1:30 p.m.
All Employees Meeting (Public Meeting) (''The Green'' Plaza Area)

Week of June 26—Tentative

There are no meetings scheduled for the Week of June 26.

Week of July 3—Tentative

There are no meetings scheduled for the Week of July 3.

Week of July 10—Tentative

Tuesday, July 11

9:25 a.m.
Affirmation Session (Public Meeting) (If necessary.)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording) (301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (401–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 2, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–14467 Filed 6–5–00; 1:20 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

State of Oklahoma: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Oklahoma

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of Oklahoma.

SUMMARY: This notice is announcing that the Nuclear Regulatory Commission (NRC) has received a request from Governor Frank Keating of Oklahoma that the NRC consider entering into an Agreement with the State as authorized

by section 274 of the Atomic Energy Act of 1954, as amended (Act). Section 274 of the Act contains provisions for the Commission to enter into agreements with the Governor of any State providing for the discontinuance of the regulatory authority of the Commission. Under the proposed Agreement, submitted December 28, 1999, the Commission would discontinue and Oklahoma would take over portions of the Commission's regulatory authority over radioactive material covered under the Act within the State of Oklahoma. In accordance with 10 CFR 150.10, persons, who possess or use certain radioactive materials in Oklahoma, would be released (exempted) from portions of the Commission's regulatory authority under the proposed Agreement. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150. NRC is publishing the proposed Agreement for public comment, as required by the Act. NRC is also publishing the summary of an assessment conducted by the NRC staff of the proposed Oklahoma byproduct material regulatory program. Comments are invited on (a) the proposed Agreement, especially its effect on public health and safety, and (b) the NRC staff assessment.

DATES: The comment period expires July 7, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, copies of the request for an Agreement by the Governor of Oklahoma including all information and documentation submitted in support of the request, and copies of the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

FOR FURTHER INFORMATION CONTACT: Patricia M. Larkins, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2309 or e-mail *pml@nrc.gov*.

SUPPLEMENTARY INFORMATION: Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 31 States. The Agreement States currently regulate approximately 16,000 agreement material licenses, while NRC regulates approximately 5800 licenses. Under the proposed Agreement, approximately 220 NRC licenses will transfer to Oklahoma. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274. Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials. In a letter dated December 28, 1999, Governor Keating certified that the State of Oklahoma has a program for the control of radiation hazards that is adequate to protect public health and safety within Oklahoma for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is included as Appendix A to this notice.

The radioactive material and activities (which together are usually referred to as the ''categories of material'') which the State of Oklahoma requests authority over are: (1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act; (2) the possession and use of special nuclear material in quantities not sufficient to form a critical mass; (3) the regulation of the land disposal of byproduct source or special nuclear material received from other persons; and (4) source material used to take advantage of its density and high mass properties where the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Oklahoma and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the suspension or termination of the Agreement;
—Specify the effective date of the proposed Agreement. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Oklahoma.

(c) Oklahoma currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The regulatory program is authorized by law in the Oklahoma Environmental Quality Act at Okla. Stat. tit. 27A § 1–3–101(B)(11) and the Oklahoma Radiation Management Act at 27A § 2–9–103(A). Section 2–9–103(C) of the Act provides the authority for the Governor to enter into an Agreement with the Commission.

Oklahoma law contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. Oklahoma law provides that any person who possesses an existing NRC license shall be deemed to possess a like license issued under the Oklahoma Radiation Management Act. After the effective date of the Agreement, licenses issued by NRC would continue in effect until the license expiration specified in the existing NRC license. DEQ will notify affected licensees of the transfer of regulatory authority within fifteen (15) days after the effective date of the signed agreement.

(d) The NRC staff assessment finds that the Oklahoma program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

[1] The radioactive materials, sometimes referred to as agreement materials, are: (a) byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11a. of the Act, restricted to quantities not sufficient to form a critical mass.

II. Summary of the NRC Staff Assessment of the Oklahoma Program for the Control of Agreement Materials

NRC staff has examined the Oklahoma request for an Agreement with respect to the ability of the radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement'' (referred to herein as the ''NRC criteria'') (46 FR 7540; January 23, 1981, as amended).

(a) *Organization and Personnel.* The agreement byproduct material program will be located within the existing Radiation Management Section (RAM) of the Waste Management Division, an organizational unit of the Oklahoma Department of Environmental Quality (DEQ). The RAM Section currently has responsibility for directing and managing a formal registration program begun in 1993, that includes inspections and fees for radioactive material that occur naturally or are produced by particle accelerators, and industrial x-ray machines. The DEQ also has responsibility for regulation of machine produced radiation, and non-ionizing radiation. The regulatory authority over the use of sources of radiation by diagnostic medical x-ray remains with the Oklahoma Department of Health. Based on discussions with the RAM program manager, the DEQ plans to implement a licensing program for radioactive materials that occur naturally in the future after the State assumes regulatory authority under the Agreement. The program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the DEQ staff members are specified in the Oklahoma State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. Each current staff member has at least a bachelors' degree or equivalents in physical/life sciences or engineering, with one exception. One staff member trainee has a degree in Education. Several staff members hold advanced degrees. Most staff members were hired from other environmental programs in the DEQ with considerable experience in a variety of environmental program areas. The program staff has considerable experience in related regulatory program implementation including air pollution, hazardous waste, solid waste, sewage treatment, and water use issues. The program manager and two senior technical staff have 10 years of regulatory experience with DEQ and 6, 6, and 3 years respectively in the RAM program as well as several years of prior experience working with radioactive material, radiation protection, or hazardous waste.

A third senior staff member has three years of industry experience and three years with the DEQ RAM program. One junior staff member has three years experience as a laboratory technician using radionuclides for labeling and two years with the DEQ RAM program. Three other staff members, currently in training, have between 3 and 9 years experience, primarily in the environmental regulatory area. One has completed one year related experience with DEQ RAM, one has 3.5 years of related nuclear power plant experience as a health physicist decontamination technician, and one has six years related experience as a well logging engineer.

Based on information provided in the staffing analysis, the manager, three senior technical staff, and one junior staff member will conduct the licensing and inspection activities. These staff members have attended nearly all of the available relevant NRC training courses, including the 5-week Applied Health Physics course, inspection and licensing courses, and the majority of use-specific courses. In addition, staff members have accompanied NRC inspectors and worked with NRC licensing staff to obtain additional on-the-job experience.

The DEQ has adopted a written program for the training and qualification of staff members, which covers both new staff members and the continuing qualification of existing staff. NRC staff notes that the Oklahoma agreement materials program will be evaluated under the Commission's Integrated Materials Performance Evaluation Program (IMPEP). One IMPEP criterion addresses staff training and qualifications, and includes a specific criterion which addresses training and qualification plans. NRC staff reviewed the plan, and concludes that it satisfies the IMPEP criterion element.

The DEQ provided copies of memoranda authorizing full qualification to three senior staff, and limited interim qualification to one junior staff member, in accordance with Oklahoma's Formal Qualification Plan. All four staff are designated to provide technical support to the program at the time the Agreement is signed.

Based upon review of the information provided in the staffing analysis, NRC staff concludes that overall the program has an adequate number of technically qualified staff members and that the technical staff identified by the State to participate in the Agreement materials program are fully trained, and qualified in accordance with the DEQ plans, have sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of agreement materials to satisfy the criterion.

(b) *Legislation and Regulations.* The Oklahoma DEQ is designated by law in the Oklahoma Radiation Management Act at Okla. Stat. Tit. 27A § 2–9–103 as the radiation control agency. The law provides the DEQ the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The Environmental Quality Board is authorized to promulgate regulations.

The law requires the Environmental Quality Board to adopt rules that are compatible with the equivalent NRC regulations and that are equally stringent to, or to the extent practicable more stringent than, the equivalent NRC regulations. The DEQ has adopted, by reference, the NRC regulations in Title 10 of the Code of Federal Regulations. The adoption by reference is contained in Title 252 Chapter 410 of the Oklahoma Administrative Code (OAC). Oklahoma rule 252:410–10–2 specifies that references to the NRC will be construed as references to the Director of the DEQ.

The NRC staff review verified that the Oklahoma rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The adoption of the NRC regulations by reference assures that the standards will be uniform.

(c) *Storage and Disposal.* Oklahoma has also adopted, by reference, the NRC requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both the disposal of waste generated by the licensee and the disposal of waste generated by and received from other persons.

(d) *Transportation of Radioactive Material.* Oklahoma has adopted the NRC regulations in 10 CFR Part 71 by reference. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in

transporting radioactive materials. Oklahoma will not attempt to enforce portions of the regulation related to activities, such as approving packaging designs, which are reserved to NRC.

(e) *Record Keeping and Incident Reporting.* Oklahoma has adopted, by reference, the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) *Evaluation of License Applications.* Oklahoma has adopted, by reference, the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Oklahoma has also developed a licensing procedure manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Oklahoma radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The program has adopted procedures for conducting inspections, reporting inspection findings, and reporting inspection results to the licensees from similar NRC documents. The program has also adopted, by rule in the OAC, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Oklahoma DEQ is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Oklahoma law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Oklahoma law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Oklahoma under the Oklahoma Radiation Management Act. Such license will expire on the date of expiration specified in the existing NRC license. Oklahoma will retain the NRC license numbers of existing licenses until they expire under DEQ jurisdiction. As of the effective date of the Agreement, any pending or new license applications and renewals will be transferred to DEQ. DEQ will notify affected licensees of the transfer of regulatory authority within fifteen (15) days after the effective date of the signed agreement.

Oklahoma's Administrative Procedures Act also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The OAC provides exemptions from the State's requirements for licensing of sources of radiation for NRC and the U.S. Department of Energy contractors or subcontractors.

The proposed Agreement commits Oklahoma to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Oklahoma's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Oklahoma to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission will enter into an Agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff concludes that the State of Oklahoma meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 1st day of June, 2000.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

An Agreement Between the United States Nuclear Regulatory Commission and the State of Oklahoma for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Oklahoma is authorized under Section 2–9–103(c) of the Radiation Management Act (27A O.S. Supp. 1998 § 2–9–101 et seq.) to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Oklahoma certified on December 28, 1999 that the State of Oklahoma (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety with respect to materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on (date to be determined) that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now Therefore, It is hereby agreed between the Commission and the Governor of the State of Oklahoma, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(1) of the Act;

B. Source material used to take advantage of the density and high-mass property for the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material;

C. Special nuclear materials in quantities not sufficient to form a critical mass;

D. The regulation of the land disposal of byproduct source or special nuclear waste material received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste material as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission.

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. Byproduct material as defined in Section 11e.(2) of the Act;

G. Source material except for source material used to take advantage of the density and high-mass property for the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material;

Article III

With the exception of those activities identified in Article II, paragraph A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs E through G, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of byproduct material covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j(2) of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this

Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on [TBA], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Dated at Rockville, Maryland, this __th day of _____, 2000.

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION.
Chairman

Dated at Oklahoma City, Oklahoma this __th day of _____, 2000.

FOR THE STATE OF OKLAHOMA
Governor

[FR Doc. 00–14286 Filed 6–6–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form ADV–E; SEC File No. 270–318; OMB Control No. 3235–0361.

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'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information on the following form:

Form ADV–E is the cover sheet for accountant examination certificates filed pursuant to rule 206(4)–2 under the Investment Advisers Act by investment advisers retaining custody of client securities or funds. The annual burden is approximately three minutes per respondent.

The estimate of burden hours set forth above is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Any 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 control number.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Desk Office for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 25, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14244 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 12b–1; SEC File No. 270–188; OMB Control No. 3235–0212.

Notice is hereby given that under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501[, the Securities and Exchange Commission (the ''SEC'') has submitted to the Office of Management and Budget (''OMB''), a request for extension of OMB approval for rule 12b–1 [17 CFR 270.12b–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Act'').

Rule 12b–1 permits a registered open-end investment company (''mutual fund'') to distribute its own shares and pay expenses of distribution provided, among other things, that the mutual fund adopts a written plan (''rule 12b–1 plan'') and has in writing any agreements relating to the implementation of the rule 12b–1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b–1 plan be approved by the mutual fund's directors and shareholders; (ii) the board review quarterly reports of amounts spend under the rule 12b–1 plan; and (iii) the board consider continuation of the rule 12b–1 plan at least annually. Rule 12b–1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b–1 plan, related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b–1 plan.

The board and shareholder approval requirements of rule 12b–1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b–1 plan. The requirement of quarterly reporting to the board is designed to ensure that the 12b–1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule.

Based on information filed with the Commission by funds, Commission staff estimates that there are 4,500 mutual funds with the 12b–1 plans. As discussed above, 12b–1 requires the board of each fund with a 12b–1 plan to (i) review quarterly reports of amounts spent under the plan and (ii) annually consider the plan's continuation (which generally is combined with the foruth quarterly review). This results in a total number of annual responses per fund of four and an estimated total number of industry responses of 18,000 (4,500 funds × 4 annual responses per fund = 18,000 resonses).

Based on conversations with fund industry representatives, Commission staff estimates that for each of the 4,500 mutual funds that currently have a 12b–1 plan, the average annual burden of complying with the rule if 50 hours to maintain the plan. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's annual consideration of the plan's continuation. Commission staff therefore estimates that the total burden of the rule's paperwork requirements is 225,000 hours (4,500 funds x 50 hours per fund = 225,000 hours).

The estimate of burden hours is made solely for the purpose of the Paperwork Reduction Act. The estimate is not derived form a comprehensive or even a representative survey or study of Commission rules.

If a currently operating fund seeks to (i) adopt a new rule 12b–1 plan or (ii) materially increase the amount it spends for distribution under its rule 12b–1 plan, rule 12b–1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy. Commission staff estimates that four funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b–1 plan. Commission staff further estimates that the cost of each fund's proxy is $15,000. Thus the total

annualized cost burden of rule 12b–1 to the fund industry is $60,000 (4 funds requiring a proxy × $15,000 per proxy).

The collections of information required by rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. 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 control number.

Please direct general comments regarding the information above to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 30, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14245 Filed 6–06–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24486; 812–12122]

The Toronto Dominion Bank et al.; Temporary and Notice of Application

May 31, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for permanent order under section 9(c) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to a securities-related injunction entered into in 1989, until the Commission takes final action on the application for a permanent order or, if earlier, July 31, 2000. Applicants also have requested a permanent order.

Applicants: The Toronto Dominion Bank ''TD Bank'', TD Investment Managewment Inc. (''TDIM''), TD Securities (USA) Inc., TD Waterhouse Asset Management, Inc. (''WAM''), TD Waterhouse Investor Services, Inc., and CT Investment Counsel (U.S.), Inc.

Filing Date: The application was filed on May 31, 2000.

Hearing or Notification of 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 June 26, 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. An order granting the application will be issued unless the Commission orders a hearing or extends the temporary exemption.

ADDRESSES:

Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609

TD Bank, P.O. Box 1, Toronto Dominion Centre, Toronto, Ontario, Canada M5K 1A2

TDIM, 10th Floor, TD Tower, 55 King Street West, Toronto, Ontario, Canada M5K 1A2:

TD Securities (USA) Inc., 31 West 52nd Street, New York, NY 10019;

WAM and TD Waterhouse Investor Services, Inc., 100 Wall Street, New York, NY 10005; and

CT Investment Counsel (U.S.), Inc., 110 Yong Street, 10th Floor, Toronto, Ontario, Canada M5C 1T4.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytbalt, Assistant Director, at (202) 942–0610, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street NW, Washington, DC 20549–0102; tel: (202) 942–8090.

Applicant's Representations

1. TD Bank is the fifth largest chartered bank in Canada. Directly and through its subsidiaries, TD Bank provides a range of financial services to individuals, corporate and commercial enterprises, financial institutions and governments.

2. WAM, a Delaware corporation, is an indirect wholly-owned subsidiary of TD Bank and is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). WAM was acquired by TD Bank in 1996 when TD Bank purchased its parent company, Waterhouse Investor Services, Inc. (''Waterhouse''). WAM serves as investment adviser to three open-end management investment companies registered under the Act, consisting of nine portfolios (''WAM Funds''), with aggregate assets of approximately $12 billion. TDIM, a Canadian corporation and a wholly-owned subsidiary of TD Bank, was formed in 1999 and is registered under the Advisers Act. TDIM currently does not provide any services to registered investment companies (''funds'').

3. On September 12, 1989, the U.S. District Court for the Southern District of New York (''District Court''), entered a Final Judgment of Permanent Injunction and Other Equitable Relief in a matter brought by the Commission (''1989 Injunction'').[1] The Commission alleged that, in connection with certain so-called ''free riding'' transactions by certain securities clearance customers, TD Bank violated the margin lending requirements of Regulation U promulgated by the Board of Governors of the Federal Reserve Board, under section 7(d) of the Securities Exchange Act of 1934. In consenting to the 1989 Injunction, TD Bank undertook, among other things, to implement and maintain certain policies, procedures and training programs designed to detect and prevent future violations of the margin regulations. Under the terms of the 1989 Injunction, TD Bank also hired an independent outside consultant to conduct an audit of TD Bank's compliance policies and procedures and to report its findings to the Commission.

4. Applicants state that, in 1996, in connection with the acquisition by TD Bank of Waterhouse, at the request of TD Bank, the Commission supported a motion by TD Bank to the District Court for the issuance of an order modifying the 1989 Induction to enable Waterhouse to continue to provide securities clearance services. The modification to the 1989 Injunction was issued in 1996.[2]

5. Applicants also state that, at the time of TD Bank's acquisition of Waterhouse in 1996, WAM already was registered under the Advisers Act. Applicants further state that, following TD Bank's acquisition of Waterhouse, on November 27, 1996, WAM filed an amended Form ADV that disclosed the 1989 Injunction. Applicants also state that TDIM disclosed the 1989 Injunction

[1] *SEC* v. *Jury Matt Hansen, et al.,* Final Judgment of Permanent Injunction and Equitable Relief as to The Toronto-Dominion Bank and the Toronto-Dominion Bank Trust Company, 89 Civ. 5242 (RO) (S.D.N.Y. Sept. 12, 1989).

[2] *SEC* v. *Jury Matt Hansen, et al.,* Stipulation & Order, 89 Civic. 5242 (RO) (S.D.N.Y. filed July 29, 1996).

on its initial Form ADV filed in December 1999.

6. Applicants state that they did not seek an order under section 9(c) around the time of the 1989 Injunction because TD Bank did not begin to engage in any fund-related activities until 1996 following the acquisition of Waterhouse. Applicants also state that they did not become aware of the section 9(a) violation until late December 1999.

7. Since the 1989 Injunction, several of TD Bank's subsidiaries—but not TD Bank, WAM or TDIM—have been involved in several administrative proceedings with state securities law administrators and self-regulatory organizations. Applicants state that none of these administrative proceedings, all of which are listed in the application, involved investment advisory or fund-related activities.

Applicants' Legal Analysis

1. Section 9(a) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as a principal underwriter or investment adviser for a registered investment company. Applicants state that, as a result of the 1989 Injunction, TD Bank and its affiliates may be prohibited by section 9(a) from serving as an investment adviser to funds.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of applicant has been such as not to make it against the public interest or the protection of investors to grant the application.

3. Applicants seek temporary and permanent orders under section 9(c) with respect to the 1989 Injunction to permit TD Bank and its affiliates to serve an investment advisers to funds, including the WAM Funds, and in the future to provide other services to funds that might be prohibited by section 9(a). As noted above, applicants state that they did not seek an order under section 9(c) around the time of the 1989 Injunction because TD Bank did not begin to engage in any fund-related activities until 1996. Applicants also state that they did not become aware of the section 9(a) violation until late December 1999.

4. TD Bank has undertaken to develop procedures designed to prevent violations of section 9(a) by it and its affiliated persons. TD Bank's general counsel also has attested that he has reviewed TD Bank's compliance policies and procedures relating to compliance with section 9(a); that he reasonably believes that the policies and procedures have been fully implemented; and that the policies and procedures are designed reasonably to prevent violations of section 9(a) by TD bank and its affiliated persons.

5. Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe. Applicants assert that WAM's inability to act as an investment adviser to the WAM Funds would result in the WAM Funds and their shareholders facing potentially severe hardships. Applicants state that, at a special meeting of the boards of directors of the WAM Funds on February 10, 2000, the directors were apprised, among other things, of the circumstances surrounding the 1989 Injunction and the directors' fiduciary responsibilities in these circumstances. The boards found that the alleged misconduct underlying the 1989 Injunction does not adversely affect WAM's continuing ability to provide investment advisory services to the Funds or diminish the value of the services already provided. The boards unanimously voted to continue the Funds' current investment advisory contracts with WAM.

6. Applicants assert that if WAM were prohibited from providing services to the WAM Funds, the effect on WAM's business and employees would be severe. Applicants state that WAM has committed substantial resources over the past five years to establishing expertise in advising registered investment companies.

7. Applicants also assert that their conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants note that over 10 years have passed since the 1989 Injunction. Applicants also note that the 1989 Injunction did not in any way involve fund-related activities. Applicants state that all of the employees, including senior management, involved in the matters underlying the 1989 Injunction are no longer employed at TB Bank or any of its affiliates. Applicants further state that since the 1989 Injunction, neither TD Bank nor any affiliated person of TD Bank has engaged in conduct that would result in disqualification under section 9(a) of the Act.

Applicants' Condition

Applicants agree that the requested order is subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Division has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicants, finds, in accordance with 17 CFR 200.30–5(a)(7), that it appears that: (i) The prohibitions of section 9(a), as applied to applicants, may be unduly or disproportionately severe; (ii) applicants' conduct has been such as not make it against the public interest or the protection of investors to grant the temporary exemption; and (iii) granting the temporary exemption would protect the interests of the investment companies served by applicants by allowing time for the orderly consideration of the application for permanent relief.

Accordingly, *It is hereby ordered,* under section 9(c), that applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the 1989 Injunction, subject to the condition in the application, until the Commission takes final action on the application for a permanent order or, if earlier, July 31, 2000.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14246 Filed 6–6–00 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24487; 812–12024]

Strategist Growth Fund, Inc., et al.; Notice of Application

June 1, 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 APPLICATION: Applicants request an order to permit certain series of a registered open-end management investment company to acquire all of the assets and stated liabilities of certain series of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Strategist Growth Fund, Inc. on behalf of its underlying series: Strategist Growth Fund, Strategist Growth Trends Fund and Strategist Special Growth Fund; Strategist Growth and Income Fund, Inc. on behalf of its underlying series: Strategist Balanced Fund, Strategist Equity Fund, Strategist Equity Income Fund and Strategist Total Return Fund; Strategist Income Fund, Inc. on behalf of its underlying series: Strategist Government Income Fund, Strategist High Yield Fund and Strategist Quality Income Fund; Strategist Tax-Fee Income Fund, Inc. on behalf of its underlying series, Strategist Tax-Free High Yield Fund; Strategist World Fund, Inc. on behalf of its underlying series; Strategist Emerging Markets Fund, Strategist World Growth Fund, Strategist World Income Fund, and Strategist World Technologies Fund (Each series individually an ''Acquired Fund'' and collectively, the ''Acquired Funds''); AXP Extra Income Fund, Inc.; AXP Federal Income Fund, Inc.; AXP Global Series, Inc. on behalf of its underlying series: AXP Emerging Markets Fund, AXP Global Bond Fund, AXP Global Growth Fund, and AXP Innovations Fund; AXP Growth Series, Inc. on behalf of its underlying series; AXP Growth Fund and AXP Research Opportunities Fund; AXP High Yield Tax-Exempt Fund, Inc.; AXP Investment Series, Inc. on behalf of its underlying series; AXP Diversified Equity Income Fund and AXP Mutual; AXP Managed Series, Inc. on behalf of its underlying series, AXP Managed Allocation Fund; AXP New Dimensions Fund, Inc.; AXP Stock Fund, Inc.; AXP Selective Fund, Inc. (each series individually an ''Acquiring Fund'' and collectively, the ''Acquiring Funds'') (the Acquired Funds and the Acquiring Funds collectively, the ''Funds''); and American Express Financial Corporation (''AEFC'').

Filing Dates: The application was filed on March 14, 2000 and amended on May 5, 2000. 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 requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commissions's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing request should be received by the Commission by 5:30 p.m. on June 26, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES:

Secretary, Commission, 450 5th Street NW, Washington, DC 20549–0609

Acquired Funds and AEFC, c/o Eileen J. Newhouse, American Express Financial Corporation, IDS Tower 10, T27/52, Minneapolis, MN 55440–0010

Acquiring Funds, c/o Leslie L. Ogg, American Express Funds, 901 Marquette Avenue South, Suite 2810, Minneapolis, MN 55402–3268.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574; or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Funds are registered under the Act as open-end management investment companies. Each of the Funds is a feeder fund in a master/feeder structure. Each Acquired Fund and its corresponding Acquiring Fund invest in the same master fund (the ''Master Funds''). Each Master Fund is registered under the Act as an open-end management investment company.

2. AEFC, a Delaware corporation, is registered under the Investment Advisers Act of 1940 and serves as the investment for each Master Fund and as the administrator for each Fund. AEFC is a wholly-owned subsidiary of the American Express Company. Currently, AEFC or American Express Company owns, for its own account, more than 25% of the outstanding shares of each Acquired Fund and one of the Acquiring Funds.

3. On March 8, and 9, 2000 and March 10, 2000, the boards of directors of the Acquiring Funds and the Acquired Funds (the ''Boards''), respectively, including all of the directors who are not interested persons of the Funds, as defined in section 2(a)(19) of the Act (''Independent Directors'') approved an Agreement and Plan or Reorganization (the ''Agreement''). Under the Agreement, each Acquiring Fund will acquire all of the assets and assume the stated liabilities of its corresponding Acquired Fund in exchange for class A shares of the Acquiring Fund (the ''Reorganiation''). Pursuant to the Agreement, each shareholder of an Acquired Fund will receive class A Shares of the corresponding Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund shares held by that shareholder, determined as of the close of regular trading on the New York Stock Exchange on the day of the closing, which is expected to be on or about July 14, 2000 (''Closing Date''). The valuation will be made in accordance with the procedure set forth in the then-current prospectus and statement of additional information for the Funds. Or or as soon as practicable after the Closing Date, the class A shares of the Acquiring Fund received by the Acquired Fund will be distributed *pro rata* to the shareholders of the Acquired Fund and the Acquired Fund will be liquidated.

4. Each of the Acquired Funds has investment objectives, policies, and restrictions that are identical to those of its corresponding Acquiring Fund and to those of its Master Fund. The Acquired Funds have only one class of shares and are sold without a sales charge.[1] Class A shares of the Acquiring Funds are sold with a 5% front-end sales charge and a .25% 12b–1 fee. No sales charge will be assessed in connection with the Reorganization.

[1] Each of the Acquired Funds ceased offering shares to new investors and terminated its .25% 12b–1 plan on October 4, 1999.

AEFC will pay the expenses of the Reorganization.

5. The Boards, including a majority of the Independent Directors, determined that participation in the Reorganization is in the best interests of each Fund, and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered a number of factors, including: (a) The terms and conditions of the Reorganization; (b) the tax-free nature of the Reorganization; (c) the identical investment objectives, policies, and restrictions of the Acquired Funds and the Acquiring Funds; (d) that the shareholders of the Acquired Funds will be able to make future purchases of shares of the Acquiring Funds on a no-load basis; (e) that the expense ratio for each Acquiring Fund will be lower than the expense ratio of each Acquired Fund; and (f) the costs of the Reorganization will be borne by AEFC.

6. The Reorganization is subject to a number of conditions precedent, including that: (a) The shareholders of the Acquired Funds will have approved the Agreement; (b) the Funds will have received an opinion of tax counsel that the proposed Reorganization will be tax-free for the Funds and their shareholders; (c) applicants will have received from the Commission any exemption necessary to carry out the Reorganization; and (d) a registration statement on Form N–14 will have been filed with the Commission and declared effective for each of the Acquired Funds. The Agreement and the Reorganization may be terminated and abandoned by resolutions of the Boards at any time prior to the Closing Date. The Agreement may be terminated in the event that a material condition is not fulfilled, a material covenant is not fulfilled, or there is a material breach of the Agreement. Applicants agree not to make any material changes to the Agreement without prior Commission approval.

7. A prospectus/proxy statement was filed with the Commission on March 13, 2000 and was mailed to the Acquired Funds shareholders the week of April 17, 2000. The shareholders of the Acquired Funds considered and approved the Agreement on May 9, 2000.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person 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 company. Section 2(a)(3) of the Act 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 other person; (b) any person 5% or more of whose securities are directly or indirectly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, considations, purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants state that they may not rely on rule 17a–8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. Applicants state that AEFC or American Express Company owns more than 25% of the outstanding shares of each of the Acquired Funds and one of the Acquiring Funds and each of these Funds is an affiliated person of AEFC. AEFC is an affiliated person of the Funds because of its role as investment adviser to the Master Funds. Thus, each of the Acquired funds might be deemed to be an affiliated person of an affiliated person of an Acquiring Fund, other than by virtue of a common investment adviser.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that 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 that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exemption them from section 17(a) of the Act to the extent necessary to permit applicants to complete the proposed Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the proposed Reorganization are fair and reasonable and do not involve overreaching and that the Funds have identical investment objectives and policies. Applicants also state that the Boards, including a majority of the Independent Directors, have found that participation in the Reorganization is in the best interests of each Fund, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, applicants state the Reorganization will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14279 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24485; File 812–11666]

Nationwide Life Insurance Company, et al.

May 31, 2000.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of Application for an Order of Approval pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''1940 Act'').

Summary of the Applicant: Applicants seek an Order approving the proposed substitution of the American Century VP Balanced Portfolio (''VP Balanced''), a series fund of American Century Variable Portfolios, Inc. (''ACVP, Inc.''), for another fund of ACVP, Inc., the American Century VP Advantage Portfolio (''VP Advantage''), currently held in the separate accounts.

Applicants: Nationwide Life Insurance Company (''NWL'') and Nationwide Life and Annuity Insurance Company (''NWLAIC'') (collectively the ''Companies''); Nationwide Multi-Flex Variable Account, Nationwide VA Separate Account-A, Nationwide Variable Account-5, Nationwide VL Separate Account-A, Nationwide VLI Separate Account-3 (collectively the ''Separate Accounts''); and Nationwide Advisory Services, Inc. (NAS) (all collectively the ''Applicants'').

Filing Date: The application was filed on June 18, 1999, and was amended on March 30, 2000.

Hearing or Notification of Hearing: An Order granting the Application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 26, 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 requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES:

Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609.
Applicants, Elizabeth A. Davin, Nationwide Life Insurance Company, One Nationwide Plaza, 1–35–10, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT:

Lorna MacLeod, Senior Attorney, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. NWL, a stock life insurance company organized under Ohio law, is a wholly owned subsidiary of Nationwide Financial Services, Inc. (''NFS''). NFS is ultimately controlled by Nationwide Mutual Insurance Company (95.24%) and Nationwide Mutual Fire Insurance Company (4.76%). NWL is the depositor and sponsor of the Nationwide Multi-Flex Variable Account, Nationwide Variable Account-5 and Nationwide VLI Separate Account-3.

2. NWLAIC, a stock life insurance company organized under Ohio law, is a wholly owned subsidiary of NWL. NWLAIC is the depositor and sponsor of Nationwide VA Separate Account-A and Nationwide VL Separate Account-A.

3. Each of the Separate Accounts is registered under the 1940 Act as a unit investment trust (File Nos. 811–3338, 811–8692, 811–6140, 811–5606 and 811–6137). Nationwide Multi-Flex Variable Account, Nationwide Variable Account-5 and Nationwide VA Separate Account-A issue flexible premium variable annuity contracts that are registered under the Securities Act of 1933 (the ''1933 Act'') on Form N–4 (File Nos. 2–75174, 33–71440 and 33–22940). Nationwide VL Separate Account-3 and Nationwide VL Separate Account-A issue flexible premium and single premium variable life insurance contracts. Nationwide VL Separate Account-A also issues multiple payment variable life insurance contracts. The contracts issued by both separate accounts are registered under the 1933 Act on Form S–6 (File Nos. 33–44296, 33–44790, 33–44300, 33–44792 and 33–35775).

4. Each Separate Account maintains multiple sub-accounts each of which invests exclusively in the shares of a single portfolio that is a series of an open-end management investment company registered on Form N–1A. All Separate Accounts maintain sub-accounts that invest in shares of VP Advantage and VP Balanced. The two sub-accounts are included among the investment options available under all contracts issued by any of the Separate Accounts (the ''Contracts'').

5. The Contracts reserve to NWL and NWLAIC, as relevant, the right, subject to Commission approval, to substitute shares of another open-end management investment company for the shares of an open-end management investment company held by any sub-account. The reservation is disclosed in the prospectus for the Contracts.

6. Although the Contracts reserve to Nationwide the right to restrict transfer privileges, Contract Owners currently may make transfers among the sub-accounts once per business day without the imposition of any transfer charge. The substitution will not count as a transfer among the sub-accounts for the purpose of the daily transfer limit.

7. Within 45 days of receiving the Order of Approval requested by the application, Applicants propose to substitute shares of VP Balanced for shares of VP Advantage. On the date that the substitution is effected (the ''Exchange Date''), all shares held by the Separate Accounts in VP Advantage will be redeemed and, contemporaneously with the redemption, the Separate Accounts will purchase shares in VP Balanced. All shares will be purchased and redeemed at prices based on the current net asset values per share in a manner consistent with Rule 22c–1 under the 1940 Act.

8. The investment objective of VP Advantage is to seek long-term growth and current income. The fund achieves its objective by investing approximately 40% of its assets in equity securities, 40% in fixed income securities and the remaining 20% in cash and cash equivalents.

9. The investment objective of VP Balanced is to seek long-term growth and current income. The fund achieves its objectives by investing approximately 60% of its assets in equity securities and the remainder in bonds and other fixed income securities.

10. American Century Investment Management, Inc., the adviser VP Advantage and VP Balanced, has informed Applicants that its wishes to halt all management and operations associated with VP Advantage because the fund, since its inception on June 4, 1987, has not attracted sufficient assets to grow to an efficient size. Furthermore, because VP Advantage is not being actively marketed, it is not expected to attain economies of scale. American Century Investment Management, Inc. has informed Applicants that as of January 10, 2000, VP Advantage had assets totaling $21,832,751.26. As of the same date, VP Balanced had assets of $281,394,733.05.

11. The following table shows the average annual total returns for VP Advantage and VP Balanced for periods of one, three and five years and since inception as well as expense ratios for the funds for the year ended December 31, 1999.

	Management fees	Other expenses	Average annual total returns (performance) [1]			
			1 year	3 year	5 year	Since inception
VP Advantage (in percent)(inception: 8/1/91)	1.00	0.00	14.5	12.3	12.0	9.4
VP Balanced [2] (in percent) (inception: 5/1/91)	0.99	0.00	11.4	12.4	13.3	10.8

[1] Performance as of September 30, 1999.
[2] With expense reimbursement, the management fees and other expenses were 0.97% and 0.00% respectively.

12. On September 27, 1999, Nationwide supplemented the separate account prospectuses informing all existing and prospective Contract Owners that it is the process of applying for approval from the Commission to effect a substitution of VP Balanced for VP Advantage. In addition, the prospectus supplements state that Nationwide will not exercise any right reserved by it under the Contracts to impose an restriction or fee on transfers until at least 30 days after the proposed substitutions.

13. All Contract Owners have received a copy of the prospectus for VP Balanced because the portfolio is currently offered as an investment option under all contracts issued through the Separate Accounts.

14. Following the establishment of the Exchange Date, Contract Owners with interests remaining VP Advantage will be advised that the fund will be replaced on the Exchanged Date and that they are free to make any allocation change changes among the available investment options in advance of the Exchange Date.

15. Within five days of the Exchange Date, all Contract Owners affected by the substitution will receive a written confirmation of the substitution. The confirmation will state that Contract Owners may transfer all cash value in the affected sub-account to any other available sub-account(s). The confirmation will reiterate that Nationwide will not exercise any right reserved by it under the Contracts to impose any restriction or fee on transfers until at least 30 days after the proposed substitution.

16. The proposed substitution will take place at relative net asset value with no increase or decrease in the amount of any Contract Owner's policy value. The substitution will not result in any additional fees for Contract Owners nor will current charges increased. Contract Owners will not bear any added cost or expense, including any additional brokerage costs or expenses, associated with the proposed substitution. None of the contractual obligations currently assumed by Nationwide will in any way be abridged or modified as a result of the substitution. The proposed substitution will in no way alter a Contract Owner's right to surrender the contract at any time prior to or after the substitution in accordance with the terms of the contract. Finally, the substitution should in no way affect whatever tax benefits Contract Owners currently enjoy and will not engender any adverse tax consequences.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substitution of the securities held by the trust. The section further provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants assert that the proposed substitution meets the standards that the Commission has applied to past substitutions.

3. Applicants assert that the investment objectives and policies of VP Advantage and VP Balanced are sufficiently comparable that the investment strategies currently employed by Contract Owners may be maintained after the substitution. Both funds seek to provide investors with the benefits of a balanced portfolio of fixed income and equity securities that serves as a more conservative alternative to traditional growth funds and as a more aggressive alternative to traditional bond funds.

4. Applicants further assert that Contract Owners will benefit from the proposed substitution because VP Balanced has greater assets than VP Advantage. Accordingly, VP Balanced should continue to have lower expenses as a percentage of net asset than does VP Advantage, creating the opportunity for better performance.

Conclusion

Applicants assert, for the reasons stated above, that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and the requested order approving the substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14247 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42849; File No. SR–OPRA–00–05]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

May 26, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 18, 2000, the Options Price Reporting Authority (''OPRA'')[2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed OPRA Plan amendment would modify the current temporary capacity allocation plan for peak usage periods, which minimize the likelihood that during this period the total number of messages generated by the OPRA participant exchanges will exceed the processor's (*i.e.*, Securities Industry Automation Corporation (''SIAC'')) aggregate message handling capacity. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed OPRA Plan amendment and to grant accelerated approval to the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

OPRA proposes to modify the most recent amendment allocating the message handling capacity of its processor among the participant exchanges.[3] This modification will

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the International Securities Exchange (''ISE''); the New York Stock Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''PHLX'').

[3] The current temporary allocation program is embodied in an amendment to the OPRA Plan proposed by OPRA and approved by the Commission. Securities Exchange Act Release No. 42779 (May 12, 2000), 65 FR 31950 (May 19, 2000) (order approving File No. SR–OPRA–00–04). As proposed by OPRA, that program was to expire by its terms on May 25, 2000. However, in its approval order the Commission modified the OPRA Plan

commence on May 26, 2000, which is the day when ISE is scheduled to commence trading, and will continue until the earlier of the date when OPRA implements a system upgrade that will increase its maximum message handling capacity from the current 3,540 messages per second (''mps'') to 8,000 mps [4] or August 24, 2000. During the modification provided for in this amendment, the current allocation will continue in effect: from May 26, 2000, through June 22, 2000, ISE will be allocated 55 mps; from June 23, 2000, through July 27, 2000, ISE will be allocated 110 mps; and from July 28, 2000, through August 24, 2000, ISE will be allocated 165 mps. Each of the foregoing allocations to ISE is subject to being reduced if, on or before the third day preceding the first day preceding the first day of an allocation period, ISE notifies OPRA that it does not need its full share of capacity for the ensuing allocation period and agrees to accept a specified reduced capacity share. Any reduction in capacity share that may be agreed to by ISE will be reallocated proportionately to the other exchanges, and will not affect the capacity share to which ISE is entitled during the next allocation period.

OPRA has filed this proposed modification of its temporary capacity allocation program as an amendment to its national market system plan, and accordingly, is filing the proposed amendment for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2 under the Act.[5] ISE has represented to OPRA that it finds the capacity share proposed to be allocated to it in the proposed amendment to be acceptable.

II. Implementation of the Plan Amendment

OPRA believes the proposed modification of the temporary capacity allocation program is necessary and appropriate to avoid delays and queues in the dissemination of options market information, which in tern helps to achieve the objectives of Section 11A(a)(1)(C)(iii),[6] including assuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission permit the modification of the proposed allocation program be put into effect summarily upon publication of notice of this filing, pursuant to paragraph (c)(4) of Rule 11Aa3–2 [7] of the Act, based on a finding by the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–05 and should be submitted by June 28, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Prosed Plan Amendment

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[8] Specifically, the Commission believes that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets during peak usage periods, is consistent with Rule 11Aa3–2 under the Act [9] in that it will contribute to the maintenance of fair and orderly markets and remove impediments to, and perfect the mechanisms of, a national market system. The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of, and at times surpasses, OPRA's systems capacity. OPRA estimates that its current plans to expand OPRA systems capacity will not be completed until July 17, 2000. Consequently, the Commission is concerned that, absent a program to allocate systems capacity among the options markets, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the options markets. The Commission believes that the agreed-upon allocation plan is a reasonable means for addressing potential strains on capacity.

The Commission notes that the anticipated enhancements to the OPRA system should increase systems capacity from 3,540 mps to 8,000 mps. The Commission does not, however, believe that the enhancement will end the need for a capacity allocation [10] as the imminent move to decimalization and the dissemination of quotations with size will continue to strain OPRA systems capacity. For the above reasons, among others, the Commission modified the temporary allocation proposed by OPRA to extend its capacity allocation. [11]

amendment as filed by OPRA by extending the duration of the temporary allocation program for an additional 120 days from the date of the order, and further modified the program by providing an allocation of OPRA's capacity to ISE during this extended period. In its order, the Commission stated that any OPRA Plan amendment subsequently proposed by OPRA and found to be consistent with the Act would supersede the Commission's order. OPRA questions the authority of the Commission to impose such modifications to the OPRA Plan by order, as opposed to acting by rule, which is the procedure established in Rule 11Aa3–2(c)(2) for national market system plan amendments initiated by the Commission. Because the OPRA Plan amendment proposed in this filing would extend the temporary allocation program until the earlier of August 24, 2000, or the expansion of OPRA's capacity to the point where the allocation program is no longer needed, and because it would also provide an appropriate allocation of capacity to ISE during this period, OPRA believes that the approval of this amendment will obviate the need to resolve the issue of the Commission's authority to impose modifications to the OPRA Plan in its May 12 order.

[4] OPRA expects this upgrade to go into production on July 17, 2000.

[5] 17 CFR 240.11Aa3–2.

[6] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[7] 17 CFR 240.11Aa3–2.

[8] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 240.11Aa3–2.

[10] Consequently, the Commission recently solicited comment on a proposed amendment to the OPRA Plan to adopt an objective capacity allocation formula. *See* Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4–434). The comment period on this proposal expires on June 9, 2000.

[11] *See* Securities Exchange Act Release No. 42779 (May 12, 2000), 65 FR 31950 (May 19, 2000) (''May 12 order''). The Commission has authority to modify by order an amendment to a national market system plan submitted by plan participants as it did in the May 12 order. Rule 11a3–2(c)(2).

The Commission believes that the proposed amendment to the OPRA Plan is consistent with the Act and has determined to substitute the provisions of this proposal for the modifications made by the Commission to OPRA's previous capacity allocation amendment. [12] Therefore, OPRA capacity should be allocated according to the terms of the capacity allocation set forth in this amendment.

The Commission finds good cause to accelerate the proposed OPRA Plan amendment prior to the date of publication in the **Federal Register**. The Commission notes that the proposed OPRA Plan amendment is intended to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The Commission believes that approving the amendment will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate, and possibly implement, other quote mitigation strategies. In addition, the limited time frame of this capacity allocation program provides the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting accelerated approval of the proposed OPRA Plan amendment is appropriate and consistent with Section 11A of the Act.[13]

V. Conclusion

It Is Therefore Ordered, pursuant to Rule 11Aa3–2 of the Act,[14] that the proposed OPRA Plan amendment (SR-OPRA-00-05) is approved on an accelerated basis until the earlier of the date when OPRA implements a system upgrade that will increase its maximum message handling capacity to 8,000 mps or August 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14262 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[12] *See* note 11 *supra.*

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2.

[15] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42853; File No. SR–AMEX–00–19]

Self-Regulatory organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Establishment of an Interim Seat Allocation Program

May 30, 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 14, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex is filing with the Commission a proposed rule change to establish an Interim Seat Allocation Program that would allow a member or member organization designate one or more iterim members. Thereafter, the member or member organization would be permitted to allocate temporarily its membership, with certain restrictions, to the interim member whenever the member or member organization's active member or nominee is absent from the trading floor. The text of the proposed rule change is available for inspection at the places specified in item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Active Exchange seats are assigned to a person not a firm. Consequently, when a person to whom a seat is assigned is absent from the trading floor, the seat cannot be used to participate in trading activities on the floor. In effect, at any given time, some measurable percentage of one of the Exchange's most valuable assets lies dormant and unavailable for use. Therefore, the Exchange is proposing an Interim Seat Allocation Program which would allow an active member (*i.e.* the person to whom the seat has been assigned and who actively participates in securities transactions on the floor of the Exchange) temporarily to allocate the membership to an interim member when the active member is absent from the trading floor. The active member would pay an interim member status annual fee of $1,500 and a flat fee of $250 for each allocation. A temporary allocation may be for a minimum of one day to a maximum of one year.

The interim member would have to be approved for membership in accordance with the Constitution and Rules of the Exchange. Once approved, and upon payment of the flat allocation fee and submission of the appropriate from to the Exchange's Membership Services Department, an interim member could be allocated the membership held by the active member. Contracts made on the trading floor of the Exchange by an interim member would be considered contracts made by the active member. The active member would also be responsible for all obligations to the Exchange and all obligations to other members resulting from Exchange transactions or transactions in other securities conducted by the interim member. The Exchange would require prior approval of the interim members by lessor.

The owner of the membership, rather than the interim member, would be deemed to be the member of the Exchange for purposes of participating in any distribution of the assets and funds of the Exchange in the event of any voluntary or involuntary final liquidation, dissolution, or winding up of the Exchange's affairs. The owner of the membership or active member, as the case may be, rather than the interim member, would be the Participant in the Exchange's Gratuity Fund and entitled to the benefits described in Article IX of the Exchange Constitution. In addition, an interim member will not be permitted to vote the active member's

seat or serve on an Exchange committee in the place of the active member.[3]

If an interim member is not allocated the membership held by the active member within one year of approval by the Exchange's Membership Services Department, the individual's eligibility for interim membership would be terminated. To become eligible again for interim member status, the individual would have to requalify for membership pursuant to Article IV of the Exchange Constitution by repaying all fees, passing the test, and updating the application.

The Exchange believes that a confluence of competitive factors, such as the advent of the International Securities Exchange and the multiple listing of options, coupled with rising seat prices, make it critical for Exchange members to maximize their use of personnel and capital resources. This Interim Seat Allocation Program is an effort by the Exchange to assist its members in accomplishing that goal.

2. Statutory Basis

Amex believes that the proposed rule change would be consistent with the provisions of section 6(b) of the Act[4] in general and would further the objectives of section 6(b)(5)[5] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

[3] Telephone conversation between Ivonne T. Lugo, Assistant General Counsel, Legal and Regulatory Division, Amex, and Michael Gaw, Attorney, Division of Market Regulation, Commission, on May 22, 2000.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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 Amex consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–00–19 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14255 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42834; File No. SR–Amex–00–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Amendment of Rule 126 on a Pilot Program Basis

May 26, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 126 on a six month pilot program basis by adding a new Commentary .03 to implement a program for processing electronically transmitted orders for the common stock of business corporations admitted to dealings on the Exchange (''eQPriority[sm]''). Below is the text of the proposed rule change, which is entirely new.

* * * * *

.03. Orders Delivered Electronically to the Specialist. At all times other than an opening or a reopening (Rule 108) or a block sold at a ''clean-up'' price (Rule 155), a round lot, regular way order for the common stock of a business corporation admitted to dealings on the Exchange that is sent to the specialist electronically and is executable according to its terms in whole or in part shall be handled in the following manner. Upon receipt of the electronic order by the specialist's order book, the specialist shall announce the order to the crowd and the order shall establish priority with respect to all other bids and offers. Once the specialist has announced the order, members who have bids or offers incorporated in the Amex Published quote (''APQ'' shall not be permitted to withdraw or modify their interest except to provide price improvement (i.e., an execution between the APQ) to the incoming order.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Following the announcement of the order, the specialist and members in the crowd shall have a brief opportunity to provide price improvement to the incoming order. In the event that the incoming order is price improved but not entirely filled at the improved price, the sale shall not remove all bids and offers, and the incoming order shall retain priority over other bids and offers up to the full size of the APQ that was displayed at the time of the announcement of the order less any interest that provided price improvement to the order. In the event that the incoming order is larger than the size displayed in the APQ, the order shall be executed according to these procedures and any unfilled balance of the order shall be handled according to the Exchange's customary auction market processes.

This Commentary .03 will expire six months from the date the SEC approval. The SEC approved this rule change on (insert date of Approval Order when known).

* * * * *

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

Order execution has become increasingly automated and competitive. To encourage investors and order flow providers to send orders to the Exchange, the Amex is proposing to add a new Commentary .03 to Amex Rule 126. Commentary .03 would be effective for a six months pilot period. The commentary is intended to assure investors who send equity orders to the Exchange that their orders will be filled either (i) at the Amex Published Quote (''APQ'') [3] at the time the specialist announces the order up to the depth of the quote, or (ii) at an improved price.[4] Specifically, the proposed rule change would require that members may not withdraw or modify their bids and offers incorporated into the APQ during the processing of electronically delivered orders except to provide price improvement. The proposed rule change also provides that an incoming electronic order retains priority over other bids and offers on the Floor until the exhaustion of the APQ displayed at the time the specialist announces the electronic order. [5]

An example best illustrates how the program will work. Assume the APQ is 20 to 20⅛, 3,000 by 3,000 and that the *bid* consists of a broker in the crowd working a buy order (3,000 shares reflected in the APQ). Assume that the *offer* consists of a customer limit order (1,000 shares) and the specialist as principal (2,000 shares). (There is also a broker in the crowd working a sell order who has chosen not to reflect any of his interest in the APQ.) Assume that the specialist receives an electronic order to buy 3,000 shares at the market. Once the specialist announces the order, no one would be permitted to withdraw his or her interest from the APQ except to provide price improvement to the incoming electronic order. In this example, the specialist would announce to the crowd that there are 3,000 shares to buy. Both the specialist and the broker working the sell order each could sell, 1,500 shares to the incoming electronic order at an improved price of 20⅛.[6] If, however, the broker in the crowd were unwilling to price improve the order, and the specialist were willing to sell, 3,000 at 20$^{1}/_{16}$, then the electronic order would buy 3,000 at 20$^{1}/_{16}$ from the specialist. If neither the specialist nor the broker in the crowd were willing to price improve the order, it would be filled at 20⅛ against the customer limit order and the specialist's offer. The electronic order would have priority over all other purchasers at the Amex until the APQ displayed at the time it is announced is exhausted.

The Exchange's proposed eQPriority program is not limited to institutional size orders. In addition, the Exchange's program is available with respect to all interest displayed in the APQ at the time the order is announced. The Exchange believes that eQPriority will provide investors with the optimal combination of price improvement possibilities together with speed and certainty of execution.

The eQPriority program only will apply to the common stock of business corporations admitted to dealings. The Exchange believes that it would be inappropriate to apply eQPriority to options and equity derivatives because the Amex is not the price discovery market for these securities and the value of the underlying instruments may change very rapidly. The Exchange also believes that the program should not apply to openings and reopenings. Openings involve a balancing of supply and demand to reach a consensus price that, by definition, is the best execution. The program also will not apply to ''clean-up'' sales of blocks. The Exchange believes that the current

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[3] The APQ is the best bid or offer that Amex conveys to the Consolidated Quotation System. Conversation between Bill Floyd-Jones, Assistant General Counsel, Arne Michelson, Senior Vice President, Laurence McDonald, Managing Director, Lauren Brophy, Vice President, Amex, and Joshua Kans, Special Counsel, Madge Hamilton, Special Counsel, Division of Market Regulation (''Division''), Commission, April 5, 2000.

[4] Current practices do not guarantee that an incoming electronic order will interact against the APQ. When an electronic order arrives on the Exchange, the specialist in the security will announce a crossing market in an attempt to provide price improvement to the order. For example, if an electronic market order to buy arrives on the Exchange, the specialist will announce a bid at a minimal fractional variation away from the APQ ask price, and the specialist will announce an offer at the APQ ask price. This gives floor brokers an opportunity to price improve the order by selling to the bid. This method of crossing, however, may also permit a floor broker to take the offer despite the presence of the electronic order. If an electronic market order to sell arrives, a floor broker similarly has the opportunity to sell to the bid first.

Also, if an electronic order is filled in part at an improved price, current practice allows floor brokers to interact with the APQ on parity with the remainder of the electronic order. This is because Amex Rules 126(e)(3) and 126(f) provide that each sale cancels all bids and offers. In that case, Amex Rules 126(e)(2) and 126(f) require the bids or offers on parity to be filled as equally as practicable. Conversations between Bill Floyd-Jones, Assistant General Counsel, Arne Michelson, Senior Vice President, Laurence McDonald, Managing Director, Lauren Brophy, Vice President, Amex and Joshua Kans, Special Counsel Madge Hamilton, Special Counsel, Division, Commission, March 31, 2000 and April 5, 2000.

[5] The proposed rule change further provides that once the specialist announces the order, the specialist and members of the crowd will have a brief opportunity to provide price improvement. If part of the order is filled at an improved price, the sale would not remove bids and offers, and the incoming order retains priority over other bids and offers up to the full size of the APQ less any interest that provided price improvement. If the incoming order is larger than the size displayed in the APQ, the unfilled portion will be handled according to the customary auction market procedures.

[6] This example presumes that the floor broker and the specialist simultaneously sell to the bid. In that situation, Amex Rules 126(e)(2) and 126(f) provide that all such bids and offers are on parity and any securities to be sold in execution of bush bids or offers are divided as equally as practicable between the specialist and the brokers, except when the specialist has an accumulation of orders on his book representing a substantial amount of the security at the same price. Conversation between Bill Floyd-Jones, Assistant General Counsel, Arne Michelson, Senior Vice President, Laurence McDonald Managing Director, Amex, and Joshua Kans, Special Counsel, Madge Hamilton, Special Counsel, Division, Commission, March 31, 2000.

procedure for affecting a clean-up sale at a single price outside the APQ is fairest to all parties and, accordingly, does not propose to amend this process.

The Exchange is proposing to adopt eQPriority on a six-month pilot program basis to assess its benefits and costs.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–07 and should be submitted June 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14259 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42857; File No. SR–CBOE–00–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Governing the Final Settlement Value of Index Options in the Event of a Primary Market Closure

May 30, 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 February 15, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 25, 2000, the CBOE submitted 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 approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules governing the settlement procedures for its index options in certain unusual circumstances. The text of the proposed rule change is available at the CBOE and at the Commission's Public Reference Room.

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 CBOE 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 CBOE 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

Based on recent events, the Exchange proposes to change settlement procedures for index options when a primary market for underlying stocks in an index does not open on the scheduled settlement day. Under such circumstances, the proposed rule change will allow the use of the next available opening prices for the affected underlying securities to calculate the settlement value of the index options.

On Thursday, September 16, 1999, it was feared that the New York Stock Exchange, Inc. (''NYSE'') would not open for business the next day as Hurricane Floyd traveled up the Eastern seaboard. In the event that the NYSE had not opened on Friday, September 17, an expiration Friday, the settlement of index options and futures contracts would have been affected. A review of this situation demonstrates the critical need for this rule change.

Current CBOE index option settlement rules do not expressly address a situation when an entire primary market, such as the NYSE, fails to open for business. The closest applicable rules, such as CBOE Rule 24.9(a)(4), provide that a specific underlying security in an index does not open, the *last* reported sale price of such a security will be used to determine the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE corrected the filing number, changing it from SR–CBOE–99–02. *See* letter from Christopher R. Hill, Attorney, Office of Enforcement, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 24 (''Amendment No. 1'').

settlement price of index options. Thus, if Hurricane Floyd had prevented the NYSE from opening on Friday, September 17, the final settlement value of September index options would have been established by looking *backward* to the previous day's *closing* prices for NYSE stocks (*i.e.,* the closing prices on Thursday, September 16.)

This 'backward focus' of the CBOE index option settlement rules threatened to cause severe difficulties during the Hurricane Floyd situation, both for investors who traded stock index options against the underlying stocks as well as those who traded the index options against index futures. Both groups of investors rely upon the final settlement value of index options to converge with the corresponding values of the underlying stock index or stock index future. For both groups, however, the backward focus of the CBOE index option settlement rules threatened to prevent this convergence in September.

Many public customers and market makers use stock index options to hedge ''cash'' positions they hold in the stocks which make up the index. Because current CBOE settlement rules would have looked backwards to the Thursday, September 16, closing prices of NYSE stocks to determine the final settlement value of September stock index options if the NYSE had not opened on Friday, September 17, investors who wished to make sure their stock position converged with their option position in the event of a Friday NYSE closure would have had to exit their NYSE stock positions that Thursday.

Obviously, however, no investor could know for certain on Thursday whether weather conditions on Friday would prevent the opening of the NYSE. *Thus, the backward focus of the current CBOE settlement rule forced investors who wished to stay hedged to guess about the future.* If they guessed that Hurricane Floyd would keep the NYSE closed on Friday, they would have to exit their stock positions on Thursday. If they guessed that Floyd would not close the NYSE, they would hold their stock positions until Friday. Either way, if they guessed wrong, their stock and option positions would not converge at expiration, and they would be exposed to the very market risk they had sought to use options to avoid.

Public customers and market makers that trade index options against stock index futures faced similar difficulties. For example, numerous investors trade the SPX (the index option based on the S&P 500 Stock Index) against the S&P 500 future, which trades at the Chicago Mercantile Exchange, Inc. (''CME''). Unlike CBOE's settlement rules, the CME's settlement rules for the S&P 500 future are *forward*-focused. If a primary market for a component stock in the S&P 500 Index does not open on the day scheduled for determination of the Final Settlement price of the S&P 500 future, then the price of that stock is determined, for the purposes of calculating the Final Settlement Price of the future, based on the *opening* price of that stock on the *next* day that its primary market is open for trading.[4]

Thus, if Hurricane Floyd had prevented the NYSE from opening on Friday, September 17, the final settlement value of the September S&P 500 futures would have been established under CME rules according to the opening price that following Monday, September 20, of those stocks which had not traded on Friday. At the same time, the final settlement value of the SPX options would have been established under CBOE rules according to the closing price of those stocks on Thursday, September 16. In other words, the final settlement values of the September SPX options and the September S&P 500 futures would most likely have differed, rather than converged.

Had this occurred, the Exchange believes that it would have affected a significant number of SPX traders (both public customers and market makers) because a lot of them hedge their option positions with S&P 500 futures contracts. Had the S&P futures and the SPX not converged at expiration on Friday, September 17, these traders could have faced significant unexpected exposure to market risk.

The problems detailed above can be prevented if the CBOE changes its index option settlement rules to be forward-focused. If such a rule had been in place for SPX options on Thursday, September 16, no public customer or market maker would have been forced to guess on Thursday about the impact of Hurricane Floyd on Friday. If weather had shut the NYSE down until Monday, September 20, the final settlement value of the September SPX options would be calculated using the Monday opening prices of the NYSE stocks. Any investor using SPX options to hedge stock positions in the S&P 500 Index could have held their stock positions until they knew what was going to happen on Friday. Even if the NYSE had been closed that day, they could have simply exited their stock positions with confidence on Monday simply by entering ''Market on Open'' orders for all affected stocks. Further, a forward-focused settlement rule in cases of primary market closure would also have assured convergence at settlement between the value of index options and index futures.

For all the above reasons, there is a strong consensus among market participants consulted by the Exchange that the Exchange should change its index option settlement rules to be forward-focused, and this proposed rule change achieves that in its amendment of CBOE Rule 24.9(a)(4) and its addition of the new CBOE Rule 24.7(e). The provision set forth in the proposed new Rule 24.7(e) would apply to all index options traded on the Exchange. In the event that a primary market for one or more securities underlying a current index does not open for trading on a given day, the price of such securities shall be determined, for purposes of calculating the current index value at expiration, by reference to the opening price of those securities on the next day that their primary market reopens for trading.

This provision also recognizes the authority of the Options Clearing Corporation (''OCC'') to establish a final settlement value for index options in the event of a primary market closure pursuant to its Rules and By-Laws. The proposed rule change makes clear that such action by the OCC would take precedence in determining any final index settlement value.

2. Statutory Basis

CBOE believes that the proposed changes to CBOE Rules 24.7 and 24.9(a)(4) are consistent with and in furtherance of the provisions of section 6(b)(5)[5] of the Act. By establishing a CBOE Rule which defines current index option settlement values in the event of a primary market closure, and does so with a forward rather than a backward focus, this filing will help public customers and market makers alike to be better able to use stock index options to predictably hedge their transactions in stock index futures and/or the underlying stocks themselves. The Exchange believes that this will improve the efficiency of, remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, thus better protecting investors and the public interest.

[4] *See* CME Rule 4003.A. In part, CME Rule 4003.A states, ''If the primary market for a component stock in the index does not open on the day scheduled for determination of the Final Settlement Price, then the price of that stock shall be determined, for the purposes of calculating the Final Settlement Price, based on the opening price of that stock on the next day that its primary market is open for trading.''

[5] 15 U.S.C. 78f(b)(5).

3. Statutory Basis

The CBOE believes the proposed rule change is consistent with and furthers the objectives of section 6(b)(5)[6] of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Member, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–02 and should be submitted by June 28, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.[7] In particular, the Commission finds the proposal is consistent with section 6(b)(5)[8] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal promotes just and equitable principles of trade. In particular, the proposal clarifies index settlement procedures in the unusual situation when a primary market where component stocks trade is closed on the index settlement day. By way of example, the CBOE discusses a situation in the fall of 1999 when some people thought the NYSE would be closed on the settlement day. This closure would have affected many index options traded on CBOE, including S&P 500 index options. If the market did not open, CBOE's settlement rules would have required the Exchange and the OCC to look at the previous closing prices for component stocks that traded on the NYSE. This procedure varied from the settlement procedures of a futures exchange that traded futures on the S&P 500 index. Moreover, the settlement procedure also placed investors in S&P 500 index options in the unusual situation of having to guess as to whether the NYSE would open on the settlement day. By relying on the opening price of a security on the next day the primary market is open, the proposal helps clarify CBOE index settlement procedures and also makes these procedures conform to industry practice in the futures markets. Further, the proposal helps reduce investor confusion by implementing rules that foster investor certainty in the unusual situation when a primary market where component stocks trade is closed on the index settlement day.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. A virtually identical proposal, SR–OCC–00–01, was published in the **Federal Register** for the full 21-day comment period and the Commission received no public comments.[9] The current proposal mirrors the changes that were proposed by the OCC in SR–OCC–00–01. The Commission believes, therefore, that granting accelerated approval to the proposed rule change is appropriate and consistent with section 6 of the Act.[10]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–00–02), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14257 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b)(5).

[7] In addition, pursuant to section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Release No. 34–42769 (May 9, 2000), 65 FR 31036 (May 15, 2000) (order approving SR–OCC–00–01.)

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42850; File No. SR–CBOE–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Fees

May 30, 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 March 3, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On April 12, 2000, the Exchange submitted 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make certain changes to its fee schedule. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected the Schedule of Dues and Fees contained in Appendix A to reflect what the Exchange's fee schedule stated with respect to equity option customer order fees and trade match fees before the proposed rule change was filed. *See* Letter from Angelo Evangelou, Attorney, Legal Division, CBOE, to Jennifer Colihan, Attorney, Division of Market Regulation, SEC, dated April 11, 2000 (''Amendment No. 1'').

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 CBOE 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to rescind certain customer equity options fees. The foregoing fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22 and will be in effect as of March 1, 2000.

The Exchange proposes to rescind transaction fees for public customer equity option orders routed through CBOE's electronic Order Routing System (''ORS''). The Exchange further proposes to eliminate the trade match fee for public customer equity option orders routed through ORS. An overwhelming majority of CBOE customer orders are routed via ORS. The Exchange, therefore, believes this fee change will generate significant savings for its customers.

Manually executed public customer orders will retain the current $0.09 transaction fee and $0.05 trade match fee. Orders entered into ORS via the Exchange's Booth Entry and Routing System (BERS) after a manual execution will also be subject to the current $0.09 transaction fee and $0.05 trade match fee, and shall not be eligible for the fee reduction proposed herein.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with section 6(b)[4] of the Act in general and furthers the objectives of section 6(b)(4)[5] in particular because it provides for the equitable allocation of reasonable dues, fees and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate or unnecessary 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 with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or charged imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.[8]

All submissions should refer to the file number in the caption above and should be submitted by June 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14260 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42865; International Series Release No. 1225; File No. SR–DTC–00–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated, Temporary Approval of a Proposed Rule Change Relating to the Admission of Non-U.S. Entities as Direct Depository Participants

May 30, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 18, 2000, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated, temporary approval of the proposed rule change through May 31, 2001.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's admission criteria for entities that are organized in a country other than the United States (''non-U.S. entities'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's admission criteria for non-U.S. entities as direct DTC participants. On May 9, 1997, the Commission originally granted temporary approval through May 31, 1998.[3] The admission criteria are designed to permit well-qualified, non-U.S. entities to obtain direct access to DTC's services without requiring the non-U.S. entities to obtain financial guarantees from another DTC participant. According to DTC, DTC established the program for admission of non-U.S. entities in response to requests it received from certain participants. These participants requested that DTC consider changes in its admissions policy that would allow non-U.S. affiliates of U.S. participants to become direct participants without having to obtain financial guarantees from their U.S. affiliates that are DTC participants. The Commission has subsequently extended its original temporary approval through May 31, 2000.[4]

In November 1999, DTC admitted one non-U.S. entity as a direct participant under the standards for admission of non-U.S. entities. DTC has received several inquiries from other non-U.S. entities and expects to admit several non-U.S. entities under its standards for the admission of non-U.S. entities. DTC is seeking an extension of the temporary approval so it can complete the admission of these non-U.S. entities and gain further experience with the admission standards for non-U.S. entities and with the unique risks posed by the activities of non-U.S. entities as direct DTC participants.

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations promulgated because the admission criteria takes into account the unique risks to DTC raised by the admission of non-U.S. entities while not unfairly discriminating against non-U.S. entities seeking admission as participants.

[3] For a complete discussion of the admission criteria, refer to Securities Exchange Act Release No. 38600 (May 9, 1997), 62 FR 27086 [File No. SR–DTC–96–13].

[4] See Securities Exchange Act Release Nos. 40064 (June 3, 1998), 63 FR 31818 [File No. SR–DTC–98–11] and 41466 (May 28, 1999), 64 FR 30077 [File No. SR–DTC–99–12].

(B) Self-Regulatory Organization's Statement on Burden on Competition

While DTC acknowledges that the proposed additional admissions criteria applicable to non-U.S. entities may impose some additional burden, for the reasons stated above, DTC believes that any such burden necessary and 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

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[5] The Commission finds that the rule change is consistent with this obligation because DTC's admission criteria for non-U.S. entities has been designed in a manner that takes into account jurisdiction differences in regulatory structure and in business operations of non-U.S. entities with respect to DTC's risk control and management. Furthermore, DTC admission criteria should bind non-U.S. entities to DTC's rules and procedures in a manner similar to domestic participants and should lesson or eliminate the negative effects that jurisdictional issues could have on DTC's exercise of its rights against non-U.S. entities. Therefore, the Commission finds that the admissions criteria will assist DTC in assuring the safeguarding of securities and funds which are in its custody, control, or for which it is responsible.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because accelerated approval will permit DTC to continue to use and study the effectiveness of its admission criteria for non-U.S. entities without interruption when the current temporary approval of these criteria expires on May 31, 2000.

[5] 15 U.S.C. 78q–1(b)(3)(F).

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 in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the DTC. All submissions should refer to file number SR–DTC–00–07 and should be submitted by June 28, 2000.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–00–07) be, and hereby is, temporarily approved on an accelerated basis through May 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14254 Filed 6–6–00; 8:45 am]

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[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42830; File No. SR–MSRB–00–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Technical Amendments to Rules A–3, G–15, G–17, and G–18

May 25, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

notice is hereby given that on May 2, 2000, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') 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 MSRB. The Board has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of rule 19b-4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change consisting of technical amendments to Rule A–3, on Board membership; Rule G–15, on confirmation, clearance and settlement of customer transactions with customers; rule G–17, on conduct of municipal securities business; and Rule G–18, on execution of transactions. The proposed rule change would become operative on June 1, 2000.

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 may be examined at the places specified in Item IV below. The Board 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 Board proposes to adopt technical amendments to Rules A–3, G–15, G–17, and G–18 for the purpose of making certain non-substantive changes. The proposed amendments to subsections (a)(i), (c)(ii) and (c)(iv) of Rule A–3 correct an unintended omission from the technical amendments (the ''1999 Technical Amendments''),[5] filed with and approved by the Commission last year, with respect to the definition of public representatives on the Board and its Nominating Committee. The proposed rule change is intended to make the rule language consistent with Section 15B(b)(1) of the Act.[6]

The proposed changes to Rule G–15(d)(ii) make subsection and paragraph references consistent with the Board's general usage of such references throughout the rules.

The proposed amendments to Rule G–17 change certain terminology used in the rule from ''municipal securities business'' to ''municipal securities activities'' to avoid any ambiguity with the term ''municipal securities business'' as used in Rules G–37 and G–38. The Board represents that the term ''municipal securities business'' as used in Rules G–37 and G–38 has a specific limited definition, whereas Rule G–17 uses that term in a manner intended to include all of the municipal securities activities of the dealer or its associated persons.[7]

The proposed amendment to Rule G–18 would delete a definition of ''broker's broker'' that pre-dated the Commission's definition of that term under Rule 15c3–1(a)(8)(ii) of the Act.[8] Because the language used to define brokers' broker differs in the two definitions, the Board believes that it is possible that some ambiguity may exist as to whether the term is intended to cover the same universe of dealers under the general federal securities laws and Board rules. The Board represents that the deletion of this definition from Rule G–18 would eliminate this potential ambiguity.[9]

2. Statutory Basis

The Board believes that the proposed rule is consistent with Section 15B(b)(2)(C) of the Act.[10] The Board further believes that the proposed rule change will ensure that existing rule provisions are accurate and understandable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board represents that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five business days prior to the filing date; and (iv) does not become operative for 30 days after the date of its filing, the Board has submitted this proposed rule change, pursuant to Section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(6)[12] thereunder, to become operative on June 1, 2000. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

[3] 17 CFT 240.19b-4(f)(6).

[4] Pursuant to Rule 19b-4(f)(6), the Board provided the required five-day advance notice to the Commission of its intent to file the proposed rule change. In the notice, the Board represented that the proposed rule change: (1) Will not significantly affect the protection of investors; (2) will not impose any significant burden on competition; and (3) will not become operative for thirty days after the date of this filing. *See* letter from Ernesto A. Lanza, Associate General Counsel, MSRB, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 25, 2000.

[5] *See* Securities Exchange Act Release No. 41528 (June 15, 1999), 64 FR 33334 (June 22, 1999).

[6] 15 U.S.C. 78o–4(b)(1).

[7] The proposed changes to Rule G–17 are consistent with similar amendments made to Rules A–14, A–15, G–3 and G–27 in the 1999 Technical Amendments.

[8] 17 CFR 240.15c3–1(a)(8)(ii).

[9] Rule D–1 provides that, unless the context otherwise specifically requires, the terms used in Board rules shall have the respective meanings set forth in the Act and the rules and regulations of the Commission thereunder. Thus, the deletion of the definition of brokers' broker from Rule G–18 would automatically result in this term having the same meaning as set forth under Rule 15c3–1(a)(8)(ii) of the Act.

[10] Section 15B(b)(2)(C) of the Act states in pertinent part that the rules of the Board ''shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.'' 15 U.S.C. 78o–4(b)(2)(C).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 MSRB. All submissions should refer to File No. SR–MSRB–00–7 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14248 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42852; File No. SR–NASD–00–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Minimum Quotation Sizes in the OTC Bulletin Board

May 30, 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 10, 2000, 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 (''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 proposes an amendment to NASD Rule 6750 that would modify the minimum quotation sizes for securities quoted at a price exceeding $200 in the OTC Bulletin Board (''OTCBB''). Below is the text of the proposed rule change. Proposed new language is in *italic*; proposed deletions are in brackets.

6750. Minimum Quotation Size Requirements For OTC Equity Securities

(a) Every member firm that functions as a market maker in OTC Equity Securities by entering firm quotations into the OTC Bulletin Board Service (OTCBB) (or any other inter-dealer quotation system that permits quotation updates on a real-time basis) must honor those quotations for the minimum size defined in the table below. In this regard, it is the market maker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities (excluding OTC Equity Securities for which the OTCBB will not accept firm quotations). Depending on the price level of the bid or offer, a different minimum size can apply to each size of the market being quoted by the member firm in a given security.

Price (bid or offer)	Minimum quote size
0–.50*	5,000
.51–1.00	2,500
1.01–10.00	500
10.01–100.00	200
100.01–200.00	100
[200.01–+	50]
200.01–500	25
500.01–1000	10
1000.01–2500	5
2500.01+	1

*The OTCBB can accept bids/offers expressed in fractions as small as 1/256 or in decimals up to six places. In applying the price test for minimum quotation size, any increment beyond an upper limit in the right hand column will trigger application of the minimum quote size for the next tier. For example, a bid (or offer) of $.505 must be firm for a size of 2,500 shares.

[A Nasdaq officer at the Executive Vice President level or above, within its discretion, may modify the minimum quotation size for those securities with a price exceeding $200.]

(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 is proposing to modify the minimum quotation size for securities quoted on the OTCBB that exceed a price of $200 per share. Nasdaq believes that this modification is necessary to correct a previously unforeseen problem with the schedule contained in Rule 6750, which presently mandates that securities priced over $200 per share be traded in blocks of 50 shares or more.[3] For certain highly priced and/or thinly traded securities, this rule has had an undesired and detrimental effect on transparency and liquidity.

Rule 6750 was originally approved by the Commission in 1993[4] during the early stages of the OTCBB service. Prior to implementation of the rule, all priced quotations on the OTCBB were required to be firm for blocks of 100 shares or more. This approach soon proved unworkable for lower priced securities for which a quote of 100 shares could represent an insignificant aggregate dollar value commitment to the market.

To remedy this situation, the NASD implemented this minimum quotation size rule for securities priced at $200 per share and below on a ''graduated'' or ''tired'' basis.[5] For securities quoted

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that, in SR–NASD–99–32, the NASD added a provision to Rule 6750 allowing some Nasdaq officers to modify the minimum quotation size for securities with a price greater than $200 per share. *See* Exchange Act Release No. 41907 (Sept. 23, 1999), 64 FR 52817 (Sept. 30, 1999).

[4] *See* Exchange Act Release No. 32570 (July 1, 1993), 58 FR 36725 (July 8, 1993).

[5] This requirement applies only to market makers entering priced quotations. Market makers are

Continued

at 50 cents per share or less, the market maker quoting such security would be required to honor that quotation for a minimum of 5,000 shares. This approach was extended up to $200 per share, with different minimum block sizes at 2,500, 500, 200, and 100 shares. For all quotations exceeding $200 per share, the minimum quote size was determined to be 50 shares.

Since implementation of this rule, there have been unanticipated changes to the OTCBB. Among those changes has been the quotation of certain securities for thousands of dollars per share, and, in a few isolated instances, securities quoted in excess of $100,000 per share. The presence of these highly priced securities was not considered when Rule 6750 was originally proposed with the smallest minimum quotation size of 50 shares. A situation has resulted in which market makers have been unwilling to enter priced quotations for such highly priced and thinly traded securities for fear of potentially significant liability to their proprietary accounts.

To alleviate the potential exposure of quoting 50 shares of these highly priced securities, market makers have ceased entering quotations and instead post only indications of interest for these securities into the OTCBB. While posting an indication of interest is permitted in the OTCBB, the purpose of the OTCBB or any inter-dealer quotation medium is to permit multiple market participants to obtain quickly and efficiently the best bid or offer in a security and to execute the transaction without unnecessary delay. Additionally, priced quotations create a more competitive market and foster enhanced price discovery, ultimately benefiting the investing public.

Recognizing these goals and the present problems caused by the lack of flexibility in Rule 6750, the NASD recently proposed and was granted discretionary authority from the Commission to modify the tier sizes for securities quoted in excess of $200.[6] This authority was conferred to alleviate a pressing situation while providing Nasdaq with the necessary time to formulate and approve a permanent proposal for minimum quotation sizes. Accordingly, Nasdaq now submits this proposal to modify permanently the tier sizes for OTCBB securities quoted at prices in excess of $200 per share. The proposed new tier sizes were formulated to comport with the objectives of the original rule, effectively requiring that each quotation represent trading interest of approximately $5,000 to $20,000. At the same time, Nasdaq proposes to delete from Rule 6750 the provision granting certain officers of the Nasdaq discretionary authority to modify tier sizes, as this authority will no longer be necessary.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6) and 15A(b)(11) of the Act.[7] Section 15A(b)(6) requires, in part, that the rules of a registered national securities association be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals to trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 15A(b)(11) requires, among other things, that the rules of a registered national securities association be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

Nasdaq believes that the proposed rule specifically promotes the objectives of sections 15A(b)(6) and 15A(b)(11), respectively, by facilitating transactions free of impediments to a free and open market while producing fair and informative quotations. The rule will encourage market makers to display firm quotations in OTCBB securities, thereby providing increased transparency, competition, and price discovery.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–17 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14250 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

permitted to enter unpriced indications of interest into the OTCBB, *see* NASD Rule 6520, which are not held to the minimum quotation size standard.

[6] *See supra* note 3.

[7] 15 U.S.C. 78o–3(b)(6) and (11).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42851; File No. SR–NASD–99–49]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Regulation ATS

May 30, 2000.

I. Introduction

On September 21, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19(b)–4 thereunder,[2] a proposed rule change to amend NASD Rules 4623 and 4613(e) to incorporate the requirements of Regulation ATS into the NASD's rules.

The proposed rule change was published for comment in the **Federal Register** on March 2, 2000.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposal would amend the NASD Rules to incorporate the requirements of Regulation ATS. Specifically, the proposal would amend NASD Rule 4623, which currently governs electronic communications networks (''ECNs'') that display orders in Nasdaq (''ECN Rule''), and NASD Rule 4613(e), which governs locked and crossed markets (''Locked and Crossed Market Rule''). The amendments would: (1) Incorporate into the ECN Rule the new obligations that are imposed on ECNs under Regulation ATS, (2) extend the current ECN Rule so that it captures other types of alternative trading systems (''ATSs''), and (3) extend the current Locked and Crossed Market Rule to capture other types of ATSs.

ECN Rule

Regulation ATS requires ATSs (including ECNs) that account for a significant percentage of the volume in a security listed on Nasdaq to display in the public quotation stream the orders of all subscribers of the ATS, which includes orders from institutions and broker-dealers that are not market makers.[4] Currently, the ECN Rule only requires ECNs to display orders entered by market makers. Accordingly, the proposal would amend the ECN Rule to require ECNs to display in Nasdaq any subscriber orders required under Regulation ATS.

Regulation ATS also governs alternative trading systems that are organized other than as ECNs. Consequently, these other types of ATSs may be required to display orders in Nasdaq. The proposal would expand the current ECN Rule to encompass these other types of ATSs. These systems will have to fulfill a series of obligations identical to those imposed on ECNs that display orders in Nasdaq.

Locked and Crossed Markets

The Locked and Crossed Markets Rule, NASD Rule 4613(e), is designed to limit locked and crossed markets by imposing on market makers an obligation to take reasonable measures before locking or crossing a market. Currently included within the definition of market maker for purposes of this rule is: (1) Any NASD member that enters orders into an ECN, or (2) any NASD member that operates as an ECN (when the priced order being displayed by the ECN has been entered by an entity that is not an NASD member). Reasonable measures include attempting to execute against the contra side of the market prior to entering an order into Nasdaq's systems that would lock or cross the market in a security. The proposal would amend the Locked and Crossed Markets Rule to capture NASD members that place orders in an ATS or operate as an ATS (when the priced order being displayed by the ATS has been entered by an entity that is not an NASD member).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act [5] and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds the proposal is consistent with the requirements of Sections 11A [6] and 15A(b)(6) [7] of the Act. Section 11A(a)(1)(C) [8] provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Section 15A(b)(6) [9] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Recently, the Commission adopted a set of rules under the Act [10] that govern alternative trading systems, including ECNs.[11] Regulation ATS governs alternative trading systems that choose to register as broker-dealers (ATSs). The most familiar type of ATS is an ECN; however, the definition of ATS encompasses other types of trading systems that register as broker dealers. For example, an electronic trading system that only accepts orders from institutions and non-market-maker broker-dealers would be an ATS. Such a system would not be an ECN, however, because, by definition, an ECN is a system that accepts orders from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42461 (February 25, 2000), 64 FR 11359.

[4] Specifically, if during at least 4 of the preceding 6 calendar months an ATS accounts for five percent or more of the aggregate average share volume in a Nasdaq National Market (''NNM'') or SmallCap security, the ATS must display the best prices of orders entered by all subscribers (*e.g.,* market makers, nonmarket makers, and institutions). For example, if as calculated on July 1, 1999 an ATS account for 7% of the trading volume in an NNM security during January, February, April, and May 1999, the ATS would be required to reflect in Nasdaq its best priced order even if the order is from an institution or other entity that is not a Nasdaq market maker. The Nasdaq securities subject to this requirement are being phased-in according to a schedule set by the Commission. *See* Securities Exchange Act Release No. 41297 (April 16, 1999), 64 FR 19450 (April 21, 1999).

[5] The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78k–1.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78k–1(a)(1)(C).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 17 CFR 242.300 *et seq.* (''Regulation ATS'').

[11] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

market makers.[12] The NASD's current rules capture only those ATSs that meet the definition of ECN. Therefore, the Commission believes that it is necessary to amend these rules to capture those ATSs that do not meet the definition of ECN.

Accordingly, the Commission finds that the proposal is consistent with sections 11A(a)(1)(C) and section 15A(b)(6)[13] because it will permit Nasdaq to incorporate ATS orders into the Nasdaq quote montage and provide NASD members with the ability to access these orders. In addition, to limit market disruptions caused by locked or crossed markets, the proposal will require members that submit orders to ATSs and ATSs, in certain circumstances, to take reasonable measures before locking or crossing a market. Finally, the amendments will incorporate into the NASD's rules the new obligations imposed on ECNs by Regulation ATS.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–99–49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14251 Filed 6–6–00; 8:45 am]

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[12] SEC Rule 11Ac1–1(a)(8), 17 CFR 240.11Ac1–1(a)(8).

[13] 15 U.S.C. 78k–1 and 78o–3(b)(6).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 42858; File No. SR–NASD–99–05]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 4 and 5 to the Proposed Rule Change Relating to Margin for Exempted Borrowers, Good Faith Accounts, Joint Back Office Arrangements and Options Transactions

May 30, 2000.

On January 19, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending the margin requirements for exempted borrowers, good faith accounts, joint back office (''JBO'') arrangements, control and restricted securities, and options transactions. The NASD amended its proposal on June 1, 1999, July 7, 1999, July 15, 1999, October 7, 1999 and April 11, 2000.[3] The proposed rule change and Amendment Nos. 1, 2, and 3 were published for comment in the **Federal Register** on August 11, 1999.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments and is simultaneously approving, on an accelerated basis, Amendment Nos. 4 and 5.

I. Description of the Proposal

NASD Regulation proposes to amend NASD rule 2520, ''Margin Requirements,'' to revise the margin requirements for exempted borrowers, good faith accounts, JBO arrangements, control and restricted securities, and options transactions. NASD Regulation believes that the proposal will conform NASD Rule 2520 to recent changes to NYSE Rule 431 and recently adopted changes to Regulation T.[5] NASD Regulation is also proposing other minor changes to eliminate obsolete provisions and correct errors in the text of NASD Rule 2520.

A. Margin Requirements for Exempted Borrowers and Good Faith Accounts

Under the recent changes to Regulation T,[6] the Federal Reserve Board has created a new category of account called the ''good faith account'' to replace the ''non-purpose,'' ''arbitrage,'' and ''government securities'' accounts. In the good faith account, a customer may purchase certain securities (exempted and non-equity securities, and money market and exempted securities mutual funds) on ''good faith'' margin (the amount of margin specified by the creditor in the exercise of sound credit judgment) or the margin specified by the regulatory authority, whichever is greater. Regulation T no longer specifies initial margin, payment and liquidation time frames for transactions in these securities in a good faith account.

NASD Regulation believes that transactions in good faith accounts raise the same safety and soundness questions as transactions in cash and margin accounts. Accordingly, the proposal amends NASD Rule 2520(c) to require all accounts, including good faith accounts, to maintain margin as required by NASD Rule 2520.[7] Cash accounts will continue to be subject only to certain specific requirements, not to the overall requirements of the rule.

In addition, NASD Regulation states that the Federal Reserve Board established a classification of exempted borrowers which are exempt from Regulation T. An ''exempted borrower,'' as defined in Regulation T, is a broker-dealer ''a substantial portion of whose business consists of transactions with persons other than brokers or dealers.''[8] The proposal codifies this exemption

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 1, 1999 (''Amendment No. 1''); Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated July 7, 1999 (''Amendment No. 2''); Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division, Commission, dated July 15, 1999 (''Amendment No. 3''); Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division, Commission, dated October 7, 1999 (''Amendment No. 4''); and Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated April 11, 2000 (''Amendment No. 5''). Amendment No. 1 conforms several provisions of NASD rule 2520 to New York Stock Exchange (''NYSE'') Rule 431. Among other things, Amendment No. 1 indicates that, for purposes of the JBO provisions of NASD Rule 2520, the NASD will interpret the terms ''carrying and clearing member'' and ''carrying member'' in the same manner as the NYSE. Amendment No. 1 also provides additional information regarding the proposed changes to the provisions of NASD Rule 2520 governing control and restricted securities. Amendment Nos. 2 and 3 make technical changes to the text of NASD Rule 2520. Amendment No. 4 states that the NASD will allow a six-month phase-in period for implementation of the proposed rule's requirements relating to JBO arrangements. Amendment No. 5 incorporates certain proposed maintenance margin requirements for non-equity securities and options-related requirements that are the subject of related rule filings by NASD Regulation and to ensure consistency with similar proposed changes to NYSE Rule 431.

[4] *See* Securities Exchange Act Release No. 41704 (August 4, 1999), 64 FR 43797 (August 11, 1999).

[5] 12 CFR 220 *et seq.* The Board of Governors of the Federal Reserve System (''Federal Reserve Board'') promulgated Regulation T pursuant to Section 7(a) of the Exchange Act, which authorizes it to prescribe regulations relating to credit extensions on securities. *See* 15 U.S.C. 78g(a).

[6] *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923, and R–0944, 63 FR 2806 (January 16, 1998).

[7] *See* Amendment No. 1, *supra* note 3.

[8] 12 CFR 220.2.

from Regulation T by excluding ''exempted borrowers,'' as defined in Regulation T, from the definition of ''customer'' in NASD Rule 2520(a)(3), except for the proprietary account of a broker-dealer carried by a member pursuant to NASD Rule 2520(e)(6). Thus, proprietary accounts of an introducing member that are carried or cleared by another member will remain subject to the equity requirements of NASD Rule 2520(e)(6).

B. Amendments To Provide for Joint Back Office Arrangements

1. Background

Section 220.7(c) of Regulation T [9] allows special margin treatment for broker-dealers without clearing operations, known as ''JBO participants,'' who invest in a ''clearing and servicing'' [10] broker-dealer, known as a ''JBO-broker.'' Under Regulation T, the JBO participants are not treated as ''customers'' [11] of the JBO broker.

As part of a periodic review of its regulations, in 1995 the Federal Reserve Board proposed an amendment to Regulation T relating to JBO arrangements.[12] The Federal Reserve Board stated that the proposed amendment was prompted by the concerns of several stock exchanges that JBO brokers were extending credit to JBO participants far in excess of their ownership interests in the JBO broker.[13] Under the proposed amendment, the favorable margin treatment for a JBO arrangement would have been conditioned on the JBO participant's ownership interest in the JBO broker being related to the amount of business transacted through the JBO arrangement.

After Congress enacted the National Securities Market Improvement Act of 1996 (''NSMIA''),[14] the Federal Reserve Board stated that it decided not to adopt its proposed amendment to Regulation T relating to JBO arrangements.[15] Instead, the Federal Reserve Board stated that it ''believes it is appropriate to rely on the authority of the JBO's examining authority to ensure the reasonableness of JBO arrangements under its supervision.'' [16]

2. Original Filing and Amendments Nos. 1–4

NASD Regulation proposes to amend NASD Rule 2520(e)(6) to provide for JBO arrangements established pursuant to section 220.7 of Regulation T. Under the proposal, either a carrying and clearing or carrying broker would be permitted to be a JBO broker.[17] A JBO broker would be required to: (1) Provide written notification to the NASD prior to establishing a JBO arrangement; (2) maintain minimum tentative net capital [18] of $25 million as computed under the Net Capital Rule or minimum net capital [19] of $7 million if it is engaged in the primary business of clearing options market maker accounts; [20] (3) maintain a written risk analysis methodology for assessing the amount of credit extended to each JBO participant; and (4) deduct from its net capital each JBO participant's haircut requirement under the Net Capital Rule in excess of the equity maintained in the JBO participant's account.

If a JBO broker's tentative net capital or net capital, whichever applies, falls below the prescribed requirement, the JBO broker must (1) promptly notify the NASD in writing of the deficiency; and (2) resolve the net capital deficiency within three business days. If a JBO broker fails to correct a net capital deficiency within three business days it would not be permitted to accept new transactions through the JBO arrangement.

A JBO participant must be a registered broker-dealer subject to the Net Capital Rule and must maintain an ownership interest in its JBO broker in accordance with Regulation T. The JBO participant must maintain in the JBO arrangement a minimum of $1 million in liquidating equity, exclusive of the JBO participant's ownership interest in the JBO broker required under Regulation T. If a JBO participant's liquidating equity falls below $1 million, it must cure the deficiency within five business days or lose its JBO participant status. Unless the JBO participant was an ''exempted borrower,'' [21] a JBO participant that lost its JBO participant status would become subject to the margin requirements prescribed for customers in Regulation T and other maintenance margin requirements under NASD Rule 2520.[22]

NASD Regulation will allow a six-month phase-in period for implementation of the requirements relating to JBO arrangements. NASD Regulation believes that the six-month phase-in will allow sufficient time for members and member organizations to comply with the new capital and risk analysis requirements and to implement new or make changes to existing arrangements or systems.[23]

3. Amendment No. 5

Amendment No. 5 proposed to incorporate a related rule change (the ''Exempt Account Proposal'') into the current proposal.[24] Under the Exempt Account Proposal, a broker-dealer's maintenance margin requirement would be reduced below the haircut requirement under the Net Capital Rule for certain non-equity securities held in

[9] 12 CFR 220.7(c).

[10] Regulation T does not define the term ''clearing and servicing.'' However, Regulation T describes a JBO broker as a clearing and servicing firm.

[11] The term ''customer'' is defined in section 220.2 of Regulation T.

[12] Board of Governors of the Federal Reserve System Docket No. R–0772 (June 21, 1995), 60 FR 33763 (June 29, 1995).

[13] *Id.*

[14] National Securities Markets Improvement Act of 1996, Pub. L. 104–209, 110 Stat. 3416 (October 11, 1996).

[15] Board of Governors of the Federal Reserve System Docket No. R–0772 (April 24, 1996), 61 FR 20386 (May 6, 1996).

[16] *Id.*

[17] *See* Letter from Scott Holz, Counsel, Federal Reserve Board, to Raymond J. Hennessey, Vice President, NYSE, dated April 16, 1999 (stating that a carrying firm may be considered a clearing and servicing firm within the meaning of the JBO provisions of Regulation T).

[18] The term ''tentative net capital'' generally refers to net capital before haircuts and undue concentration charges on proprietary securities and options positions. Haircuts are specified percentages of the market value of a broker-dealer's proprietary securities by which a broker-dealer must reduce its net worth under Exchange Act Rule 15c3–1 (the ''Net Capital Rule'').

[19] The term ''net capital'' is defined under the Net Capital Rule and is generally calculated by deducting illiquid assets from a firm's ''net worth,'' as determined under Generally Accepted Accounting Principles (GAAP), adding to that amount properly subordinated debt under Appendix D of the Net Capital Rule, and further deducting haircuts from securities held in the firm's proprietary accounts.

[20] Under the proposal, the clearance of options market maker accounts would be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in its ratio of gross options market maker deductions to net capital (including gross deductions for JBO participant accounts) are options market maker deductions. Subparagraph (c)(2)(x) of the Net Capital Rule limits the amount of specialist and market maker options positions a firm may guarantee, endorse or carry to a ratio of 10 to one of options market maker and specialist deductions to net capital. In addition, subparagraph (a)(6) of the Net Capital Rule exempts an option market maker and specialist from the haircut provisions of the Net Capital Rule provided that, among other things, the firm maintains an account liquidating equity equal to the percentage described in subparagraph (a)(6)(iii)(A) of the Net Capital Rule.

[21] The term ''exempted borrower'' is defined in section 220.2 of Regulation T. NASD Rule 2520(a)(3), as revised by the current proposal, specifically excludes an exempted borrower from its definition of customer.

[22] *See* Amendment No. 5, *supra* note 3.

[23] *See* Amendment No. 4, *supra* note 3.

[24] In the Exempt Account Proposal (File No. SR–NASD–00–08), the NASD proposes to amend NASD Rule 2520(e)(2)(F) and to adopt NASD Rule 2520(e)(2)(G) to revise the margin requirements for certain non-equity securities held in ''exempt accounts,'' as defined in the proposal. The NASD filed the Exempt Account Proposal with the Commission on March 3, 2000. To date, the Commission has not taken action on the Exempt Account Proposal. Accordingly, this order does not approve the Exempt Account Proposal or its application to the margin requirements contained in this filing.

an exempt account. Under Amendment No. 5 to the current proposal, a JBO broker would be permitted to alternatively deduct from its net capital the difference between a JBO participant's account equity and the maintenance margin requirement under the Exempt Account Proposal, as opposed to the haircut requirement under the Net Capital Rule originally proposed. The NASD stated that this amendment would establish consistency by incorporating the most recent maintenance margin requirements of the Exempt Account Proposal into the JBO filing.[25]

C. Reduced Margin for Specialist, Market Maker, and Broker-Dealer Accounts

NASD Rules 2520(e)(5) and (e)(6) currently require a carrying broker-dealer to deduct from its net capital the difference between the equity maintained in the account of a specialist, market maker or broker-dealer and the required maintenance margin under NASD Rule 2520. The NASD proposes to amend subparagraphs (e)(5) and (e)(6) to require the carrying broker-dealer to deduct from its net capital the difference between the equity maintained in the account of a specialist, market maker or broker-dealer and the required haircut in accordance with the Net Capital Rule.[26]

D. Control and Restricted Securities

The ''Concentration Reduction'' provision in NASD Rule 2520(e)(8)(C)(ii) is designed to impose increasing margin requirements for customer positions in control and restricted securities based upon the percent of outstanding shares or the percent of average weekly volume that the position represented. However, the NASD believes that the provision unintentionally penalizes a customer for maintaining a position that exceeds the collateral necessary to cover his margin loan. To eliminate this unintended penalty, the proposed rule excludes ''excess securities'' from the concentration reduction calculation. The proposal defines ''excess securities'' as the amount of securities, if any, by which the aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on such control and restricted securities if the applicable margin requirement were 50%. Thus, under the proposed rule change, the concentration reduction calculation will be performed on an aggregate position that is only as large as the collateral necessary to support a margin loan of 50%.

In addition, the proposed rule change expands the exception in paragraph (e)(8) to include all restricted securities that are then saleable, including affiliate securities, pursuant to SEC Rules 144(k), 145(d)(2), or 145(d)(3). Accordingly, those customer-owned, restricted securities that are then saleable can be sold under SEC Rule 144(k) would be subject to the same maintenance margin requirements that presently apply to ordinary stock (25%).

E. Amendments to Margin Rules Governing Options Transactions

NASD Regulation is proposing to amend NASD Rule 2520(f)(2) to add subparagraphs (L) and (M)(i), which are identical to current provisions in NYSE Rule 431(f)(2)(L) and (f)(2)(M)(i).[27] Proposed NASD Rule 2520(f)(2)(L) will allow a customer to designate which security position in an account will be utilized to cover the requested margin at the time the option order is entered, provided the member offers such a service. Proposed NASD Rule 2520(f)(2)(M)(i) will permit options transactions in customer cash accounts if the transaction is permissible under section 220.8 of Regulation T.

II. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change, as amended, is consistent with the Exchange Act and the rules and regulations under the Exchange Act applicable to a national securities association. In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Exchange Act,[28] which requires the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[29]

A. Exempted Borrowers and Good Faith Accounts

The Commission finds that it is reasonable for the NASD to amend NASD Rule 2520(c) to apply the existing maintenance margin requirements of NASD Rule 2520 to transactions in ''good faith'' accounts permitted under Regulation T. Although transactions permitted in a good faith account will not be subject to the initial margin requirements, payment requirements and liquidation time frames of Regulation T, as the NASD notes, transaction in a good faith account may raise the same safety and soundness concerns with regard to maintenance margin as do transactions in margin accounts. Accordingly, the Commission believes that applying the maintenance margin requirements of NASD Rule 2520(c) to transactions in a good faith account will protect investors and the public interest and help to maintain fair and orderly markets by ensuring that good faith accounts contain adequate margin reserves. The Commission notes that it approved a similar change to NYSE Rule 431(c).[30]

In addition, the Commission believes it is reasonable for the NASD to amend the definition of ''customer'' in NASD Rule 2520(a)(3) to codify the NASD's position that exempted borrowers, as defined under Regulation T, will remain exempt from the requirements of NASD Rule 2520, except for the proprietary accounts of a broker-dealer carried by a member pursuant to NASD Rule 2520(e)(6). The Commission believes that it is reasonable for the NASD to continue to apply the equity requirements of NASD Rule 2520(e)(6) to the proprietary accounts of broker-dealers that qualify as ''exempted borrowers'' under Regulation T and that are carried by another NASD member. By continuing to apply the equity requirements of NASD Rule 2520(e)(6) to these proprietary accounts, the Commission believes that the proposal will help to ensure that these accounts contain adequate margin, thereby protecting investors and the public interest. The Commission notes that it approved an identical change to the definition of ''customer'' in NYSE Rule 431(a)(2).[31]

B. JBO Provisions

The Commission believes that NASD Regulation has proposed reasonable

[25] *See* Amendment No. 5, *supra* note 3.

[26] For example, in the case of a long position in an equity security, the proposal would require a carrying broker to compute its net capital deduction for deficient specialist, market maker and broker-dealer accounts based on the 15% haircut requirement of paragraph (c)(2)(vi)(J) of the Net Capital Rule, rather than the 25% maintenance margin requirement of NASD Rule 2520(c)(1).

[27] In Amendment No. 5, NASD Regulation revised its proposal to delete proposed subparagraph (f)(2)(M)(ii). On March 31, 2000, NASD Regulation filed a revised version of proposed subparagraph (f)(2)(M)(ii) in File No. SR–NASD–00–15. The Commission has not taken action on that proposal.

[28] 15 U.S.C. 78o–3(b)(6).

[29] In approving the proposed rule changes, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[30] *See* Securities Exchange Act Release No. 40529 (October 7, 1998), 63 FR 55567 (October 16, 1998) (''1998 Order'').

[31] *See* 1998 Order, *supra* note 29.

capital and equity requirements for JBO brokers and JBO participants. The Commission also believes that the proposed rule change fulfills the Federal Reserve Board's mandate for the SROs to provide rules that ''ensure the reasonableness of JBO arrangements.'' [32]

With respect to JBO brokers, the Commission believes that it is reasonable for the Association to require a JBO broker to: (1) Provide written notification to the Association prior to establishing a JBO arrangement; (2) provide prompt written notification to the Association if its tentative net capital or net capital, whichever applies, falls below the prescribed requirements; (3) resolve any net capital deficiency within three business days or not be permitted to accept additional transactions through the JBO arrangement; (4) maintain a written risk analysis methodology for assessing the amount of credit extended to each JBO participant; and (5) deduct from its net capital each JBO participant's haircut requirement in excess of the equity maintained in the JBO participant's account.[33] In addition, the Commission believes that it is reasonable for the Association to require a JBO broker to maintain a minimum of $25 million in tentative net capital or $7 million in net capital if the JBO broker's primary business is clearing options market maker accounts. The Commission also believes that it is reasonable to deem a broker-dealer's primary business to be the clearance of options market maker accounts if a minimum of 60% of its aggregate deductions in its ratio of gross options market maker deductions to net capital (including gross deductions for JBO participant accounts) are options market maker deductions.

In addition, the Commission believes that it is reasonable for the NASD to require a JBO broker to immediately notify the NASD if its tentative net capital or net capital, whichever applies, falls below the prescribe minimum levels. The Commission also believes that it is reasonable for a JBO broker to be subject to the equity capital withdrawal restrictions of paragraph (e) of the Net Capital Rule and the prohibitions against the reduction, prepayment, and repayment of subordination debt of paragraph (b) of Appendix D of the Net Capital Rule, as if the firm's net capital would be below the minimum standards specified by those sections.

The Commission believes that the $7 million net capital requirement for JBO brokers is a reasonable response to the need for a capital cushion for the fluctuations in net capital resulting from the daily changes in JBO participant accounts and would avoid unnecessary and inadvertent violations of the net capital requirements at the times when a firm's capital needs are more volatile, such as the week that options expire or during severe market stresses.

The Commission believes that it is reasonable for the Association to require a JBO broker to be either a clearing and carrying, clearing, or carrying firm in accordance with the requirements under Regulation T and the Federal Reserve Board's applicable interpretations.

With respect to JBO participants, the Commission believes that it is reasonable for the Association to require a JBO participant to: (1) Be a registered broker-dealer subject to the Net Capital Rule; (2) maintain an ownership interest in the JBO Broker in accordance with Regulation T; and (3) maintain a minimum liquidating equity of $1 million in the JBO arrangement. The Commission also believes that it is reasonable to require a JBO participant whose liquidating equity falls below the required $1 million to deposit the deficiency within five business days or lose its JBO participant status and become subject to the customer margin account requirements under Regulation T and the other NASD maintenance margin requirements.

The Commission believes that the requirement of $1 million equity in the account is not unreasonable, considering the lack of regular maintenance margin requirements and the substantial leverage that would be obtained by the JBO participant.

The Commission believes that it is important for the Association to be adequately prepared to implement and monitor the revised rules. Therefore, the Commission believes that it is appropriate to permit firms to allow a six-month phase-in of these new rules relating to JBO arrangements.

C. Reduced Margin for Specialist, Market Maker and Broker-Dealer Accounts

The Commission believes that it is reasonable to require a broker-dealer to deduct from its net capital the difference between the equity maintained in the account of a specialist, market maker and broker-dealer and the required haircut in accordance with the Net Capital Rule.[34] The Commission believes that it is appropriate and equitable for SROs to require the same maintenance margin requirements for specialist, market maker and broker-dealer accounts as JBO participant accounts.

D. Concentration Provisions for Control and Restricted Securities

The Commission believes that it is reasonable for the NASD to permit a firm to deduct the amount of its customers' excess control and restricted securities in determining if a concentration of control and restricted securities exists for purposes of deducting from its net capital any margin deficiencies in a customer's account under subparagraph (e)(8)(B)(i) of NASD Rule 2520. Excess securities includes securities by which a customer's aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on those securities, assuming a 50% margin requirement.

The Commission notes that the current concentration provisions for control and restricted securities appear to be inappropriate because they impose stricter requirements on accounts that have more control and restricted securities than necessary to collateralize a credit extension. By limiting the determination of whether a concentration of control and restricted securities exists to two times the credit extension, the proposal would subject these securities to a greater margin requirement based only on financed control and restricted securities. The Commission believes that this is a reasonable and appropriate margin requirement.

The Commission also believes that it is reasonable for the NASD to exempt affiliate securities from the margin provisions relating to control and restricted securities provided that the securities otherwise meet the requirements of subparagraph (e)(8)(D), including that: (1) The securities are considered then saleable under Securities Act Rule 144(k), Securities Act Rule 145(d)(2) or Securities Act Rule 145(d)(3); and (2) the issuer is current in its filings pursuant to the continuous disclosure system under the Act.

The Commission notes that its interpretations under Securities Act

[32] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (April 24, 1996), 61 FR 20386 (May 6, 1996).

[33] To date, the Commission has not taken action on the NASD's Exempt Account Proposal. Accordingly, this order does not approve the Exempt Account Proposal or its application to the margin amendments contained in this filing.

[34] As noted above, this order does not approve NASD's Exempt Account Proposal on its application to the margin requirements contained in this filing.

Rule 144(k) may, under certain circumstances, permit a broker-dealer to sell control and restricted securities of an affiliate in default without regard to the volume and other restrictions imposed on affiliates, In addition, subparagraph (d)(3)(iv) of Securities Act Rule 144 permits a broker-dealer to ''tack'' the ownership period of an affiliate in default to its own for purposes of determining if the time conditions of Securities Act Rule 144(k) are met. Accordingly, the Commission believes that it is appropriate for affiliate securities, which otherwise meet the requirements subparagraph (e)(8)(D), to be exempt from the maintenance margin rules for control and restricted securities.

E. Amendments to Margin Rules Governing Options Transactions

The NASD proposes to amend Rule 2520(f)(2) to add subsections (L) and (M)(i). Section 2520(f)(2)(L) incorporates the provisions currently contained in Regulation T regarding ''exclusive designation'' that allow a customer to designate which security position in an account is to be utilized to cover the required margin at the time an option order is entered, provided the member organization offers such a service. This section merely incorporates existing provisions of Regulation T into the NASD rule and, accordingly, is reasonable. The Commission notes that it approved an identical change to NYSE Rule 431.[35]

Further, proposed NASD Rule 2520(f)(2)(M)(i) does not raise new regulatory issues because it incorporates those provisions of Regulation T that allow certain defined options-related transactions to be maintained in a cash account. The Commission notes that it approved a similar change to NYSE Rule 431.[36]

F. Accelerated Approval of Amendment Nos. 4 and 5

The Commission finds good cause for approving Amendment Nos. 4 and 5 prior to the thirtieth day after the date of publication of notice of filing therefore in the **Federal Register.** Amendment No. 4 proposes a six-month phase-in of the rule changes relating to JBO arrangements. The Commission believes that this amendment is necessary because it is important for the NASD and its members to be adequately prepared to implement and monitor the new rules relating to JBO arrangements. Amendment No. 5 clarifies the proposal by incorporating references to the Exempt Account Proposal, and deleting a proposed change to NASD Rule 2520(f)(2)(m)(ii), which has been superseded by a change to subparagraph (f)(2)(m)(ii) proposed in File No. SR–NASD–00–15. Accordingly, the Commission finds it is consistent with sections 6(b)(5) and 19(b) of the Exchange Act to approve Amendment Nos. 4 and 5 on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 4 and 5, including whether Amendment Nos. 4 and 5 are 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 in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should appropriately refer to SR–NASD–99–05.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act,[37] that the proposed rule change, SR–NASD–99–05, as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14252 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[35] *See* Securities Exchange Act Release No. 38708 (June 2, 1997), 62 FR 31650 (June 10, 1997) (''1997 Order'').

[36] *See* 1997 Order, *supra* note 34. As discussed above, NASD Regulation withdrew proposed NASD Rule 2520(f)(2)(m)(ii) from the proposal.

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42876; File No. SR–NASD–99–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Clarifying Certain Listing Standards of the Nasdaq Stock Market, Inc.

May 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 November 22, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Association submitted Amendments No. 1[3] and No. 2[4] to the proposed rule change on April 10, 2000, and April 2000, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 7, 2000 (''Amendment No. 1''). Amendment No. 1 clarifies that the proposed time frame for gaining compliance with the continued inclusion market capitalization standards applies to issuers listed on both the Nasdaq SmallCap Market and the Nasdaq National Market. In addition, Amendment No. 1 clarifies that the method for regaining compliance with the continued inclusion requirement for the number of market makers set forth in Rule 4310(c)(8)(A) applies to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. Finally, Amendment No. 1 makes certain technical corrections to the proposed rule change.

[4] *See* Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 25, 2000 (''Amendment No. 2''). Amendment No. 2 clarifies that Rule 4310(c)(8)(C) is being amended to specify time frames for determining when an issuer is non-compliant or has regained compliance with the Association's market capitalization standards. Amendment No. 2 also clarifies that the NASD's Rule 4300 series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market.

clarify certain provisions of its listing standards. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4200. DEFINITIONS

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(19) No change.

(20) *''Market Capitalization'' means the closing bid price multiplied by total shares outstanding, including all common and convertible preferred shares (but excluding redeemable convertible preferred shares, other than preferred stock redeemable solely by the issuer).*

(20)–(36) renumbered as (21)–(37).

(b) No change.

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a) No change.

(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(7) No change.

(8)(A) A failure to meet the continued inclusion requirements for a number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard.

Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(B) No change.

(C) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(9)–(24) No change.

(25) Corporate Governance Requirements

* * * * *

(A)–(G) No change.

(H) Shareholder Approval

(i) Each issuer shall require shareholder approval of a plan or arrangement under subparagraph a. below, or prior to the issuance of designated securities under subparagraph b., c., or d. below:

a. No change.

b. When the issuance *or potential issuance* will result in a change of control of the issuer.

c. No change.

d. In connection with a transaction other than a public offering involving:

1. the sale*,* [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equal 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

2. the sale*,* [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(ii)–(vi) No change.

(26)–(28) No change.

(d) No change.

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1) No change.

(2) (A) No change.

(B) No change.

(C) No change.

(D) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(E) In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.

(3)–(20) No change.

(21) Corporate Governance Requirements.

* * * * *

(A)–(G) No change.

(H) Shareholder Approval

(i) Each issuer shall require shareholder approval of a plan or arrangement under subparagraph a. below, or prior to the issuance of designated securities under subparagraph b., c., or d. below:

a. No change.

b. When the issuance *or potential issuance* will result in a change of control of the issuer;

c. No change.

d. in connection with a transaction other than a public offering involving:

1. The sale*,* [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

2. the sale, [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock for 20% or more of the voting power outstanding before the issuance for less than greater of book or market value of the stock.

(ii)–(vi) No change.

(22)–(24) No change.

(f) No change.

4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), or (g) below. Initial Public Offerings substantially meeting

such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a)–(c) No change.

(d) *Rights and* Warrants

(1) *Rights or* warrants to purchase designated securities may be designated if [the warrants] *they* substantially meet the above criteria; provided, however, that they shall not be *subject to the publicly held shares, market value of publicly held shares, or bid price requirements and shall not be* required to meet the criteria set forth in paragraph (a)(2), *(b)(2), or (c)(1)* if immediately after the distribution, there are at least 450,000 *rights or* warrants outstanding.

(2) No change.

(e) Computations

The computations required by paragraph (a)(1), (a)(5), and (b)(1) shall be taken from the issuer's most recent financial information filed with Nasdaq. The computations required in paragraphs (a)(2), (a)(3), (b)(2), (b)(3), (c)(1), and (c)(2) shall be as of the date of application of the issuer. Determinations of beneficial ownership for purposes of paragraphs (a)(2), (b)(2), and (c)(1) shall be made in accordance with SEC Rule 13d–3. In the case of American Depositary Receipts, the computations required by paragraphs (a)(1), (a)(5), and (b)(1) shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S–12 under the Securities Act of 1933. *In the case of American Depositary Receipts, the underlying security will be considered when determining the computations required by paragraphs (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (b)(1), (b)(2), (b)(3), (b)(6), (b)(7), (c)(1), (c)(2), (c)(5), and (c)(6) of this rule.*

(f)–(g) No change.

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), and (f) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a)–(f) No change.

(g) American Depositary Receipts

In the case of American Depositary Receipts, the underlying security will be considered when determining the ADR's qualification for continued inclusion on Nasdaq under paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (b)(1), (b)(2), (b)(3), and (b)(5) of this rule.

4460. Non-Quantitative Designation Criteria for Issuers Excepting Limited Partnerships

(a)–(h) No change.

(i) Shareholder Approval

(1) Each NNM issuer shall require shareholder approval of a plan or arrangement under subparagraph (A) below, or prior to the issuance of designated securities under subparagraph (B), (C), or (D) below:

(A) No change.

(B) when the issuance *or potential issuance* will result in a change of control of the issuer;

(C) No change.

(D) in connection with a transaction other than a public offering involving:

(i) the sale, [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

(ii) the sale, [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(2)–(6) No change.

(j)–(n) 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 is proposing certain clarifying, non-substantive amendments to certain provisions of its listing standards. Specifically, the proposed changes will: (1) Define market capitalization; (2) codify the time frames for determining compliance with the continued inclusion requirements for market capitalization and number of market makers; (3) clarify the need for shareholder approval for a transaction in which the *potential* issuance of shares could exceed the applicable threshold; (4) codify the method used to determine whether an American Depositary Receipt complies with the listing standards; and (5) clarify the non-application of the publicly held shares, market value of publicly held shares, and bid price initial inclusion requirements to rights and warrants to be listed on the National Market.

Rules 4310(c)(2)(B)(ii) and 4450(b)(1)(A) set forth the market capitalization standards for continued inclusion on The Nasdaq SmallCap Market and the Nasdaq National Market, respectively. These rules, however, unlike the bid price requirement, do not provide time frames for determining when an issuer is non-complaint or when it has regained compliance with these standards. Accordingly, Nasdaq proposes to amend Rule 4310(c)(8)(C) [5] to clarify that a failure to meet the market capitalization continued inclusion requirement shall result if the deficiency continues for a period of ten consecutive business days and that compliance may be regained by meeting the applicable standard for a minimum of ten consecutive business days.[6] Furthermore, NASD rules do not define

[5] Although the time frames regarding compliance with the continued inclusion market capitalization standards are proposed to be set forth only in Rule 4310(c)(8)(A), these time frames, like those for the minimum bid price and market value of public float, are applicable to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. Specifically, the Rule 4300 Series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market. *See* Amendments No. 1 and 2, *supra* notes 3 and 4.

[6] Although this proposed rule, like the minimum bid price requirement, states that compliance may be regained by meeting the applicable standard for a minimum of ten consecutive business days, issuers are also required to demonstrate more than mere temporary compliance in order to protect the interests of prospective investors. *See, e.g., Ryan-Murphy, Inc.,* Securities Exchange Act Rel. No. 38999 (Sept. 2, 1997).

market capitalization. In making this calculation, Nasdaq has traditionally considered the market value of all common and convertible preferred stock (excluding redeemable convertible preferred shares other than preferred stock redeemable solely by the issuer). As such, Nasdaq proposes to codify this definition is proposed Rule 4200(a)(20).

Rule 4310(c)(8)(A) provides that an issuer that fails to meet the continued inclusion requirements for the number of market makers has 30 calendar days to regain compliance. The rule, however, does not indicate how the issuer can regain compliance. Consequently, Nasdaq proposes to amend this rule to provide that compliance is achieved by meeting the applicable standard for a minimum of ten consecutive business days, which is similar to the method for determining compliance with the bid price requirement.[7]

Rules 4310(c)(25)(H)(i)(b) and (d), 4320(e)(21)(H)(i)(b) and (d), and 4460(i)(1)(B) and (D) refer only to the issuance of shares in conjunction with the requirement for shareholder approval, while Rules 4310(c)(25)(H)(i)(c)(2), 4320(e)(21)(H)(i)(c)(2), and 4460(i)(1)(C)(ii), require shareholder approval based on the present or potential issuance of shares. Nevertheless, Nasdaq has consistently interpreted the former shareholder approval rules as including potential issuances in order to protect shareholders' right to vote on significant corporate transactions. The proposed rule changes would therefore conform the language of these rules.

Historically, Nasdaq has looked to the underlying security of an American Depositary Receipt (ADR) for determining compliance with certain standards (*e.g.,* round lot shareholders, number of shares in the public float, market value of public float, and market capitalization). Rule 4320 provides the initial and continued listing standards for ADRs, but does not make clear whether the underlying security should be considered when determining compliance. The proposed rule change would clarify the continued inclusion time frame requirements for market capitalization purposes, and the fact that the underlying security should be considered when determining compliance in the case of ADRs.

Rule 4420(d)(1) does not currently reference the initial listing of rights on the Nasdaq National Market. Specifically, although the Nasdaq National Market continued listing standards address both warrants and rights, the initial listing standards mention only warrants. This Rule also states that warrants to purchase designated securities may be listed on the Nasdaq National Market provided that they substantially meet the initial inclusion requirements applicable to common stock. Consistent with the industry practices for pricing this type of security, Nasdaq has not historically required issuers to satisfy the publicly held shares, market value of publicly held shares, or bid price initial inclusion standards. As such, Nasdaq proposes to amend this rule to clarify the initial inclusion rules apply to rights as well as warrants and that issuers are not required to satisfy the publicly held shares, market value of publicly held shares, or bid price initial inclusion standards with respect to rights or warrants.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] which requires, among other things, the Association's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. As noted above, Nasdaq's proposed rule changes are aimed at clarifying certain listing standards, thus providing greater transparency in the rules for issuers and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Association consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–69 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14280 Filed 6–6–00; 8:45 am]

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[7] Although the method of regaining compliance with the continued inclusion requirement for the number of market makers is proposed to be set forth only in Rule 4310(c)(8)(A), the method for regaining compliance is applicable to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. As stated previously, the Rule 4300 Series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets additional requirements for those securities designated for the Nasdaq National Market. *See* Amendments No. 1 and 2, *supra* notes 3 and 4.

[8] Issuers, however, must continue to comply with the requirement that there be at least 450,000 warrants outstanding immediately after the public distribution as set forth in existing NASD Rule 4420(d)(1). This rule is also being amended to clarify existing Nasdaq policy that there must be 450,000 rights outstanding immediately after the public distribution.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42871; File No. SR–NASD–00–21]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Trade-Reporting of Average-Price Trades

May 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 May 17, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 17, 2000, Nasdaq submitted 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 6420, Transaction Reporting, to require all transactions in exchange-listed securities that are executed on a weighted average basis, or effected based on other special pricing formulae, to be reported with a special indicator. Proposed deletions are in brackets.

* * * * *

Rule 6420. Transaction Reporting

(a)(1)–(5) No Change.

(6) All members shall report [agency cross] transactions at prices based on average-weighting or other special pricing formulae unrelated to the current or closing price of the security on the primary market to Nasdaq using a special indicator, as designated by the Association.

(b)–(e) 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

The NASD proposes to amend NASD Rule 6420, Transaction Reporting, to require all transactions in exchange-listed securities executed in the over-the-counter market and done on a weighted average or other special-pricing basis to be reported with a .W trade modifier.

NASD Rule 6420 sets out NASD member reporting obligations for transactions in exchange-listed securities effected in the over-the-counter market (*i.e,* third market transaction). NASD Rule 6420(a)(6) requires members to append a special indicator (.W) to a trade report when effecting agency crosses at prices based on average-weighting or other special pricing formulae unrelated to the current or closing price of the security. The NASD adopted this rule in 1994,[4] in part, because these weighted-average trades were being effected in the third market at a price that did not relate to the closing price on the primary exchanges, but such trades affected the reporting of the last sale in the exchange listed security to the media and vendors. Pursuant to Rule 6420, these weighted average or special pricing formulae trades, when reported with the .W modifier, do not affect the last sale price.

According to the NASD, when adopted, the scope of Rule 6420(a)(6) was limited to agency cross trades effected on a weighted average basis or other special pricing formulae because a majority of the trades at the time were being effected on an agency cross basis. Since 1991, the market has changed in many ways. In particular, the NASD recently amended a number of its rules to allow certain systems, including the Automated Confirmation and Transaction System (''ACT''), to stay open until 6:30 p.m. Eastern Time[5] to facilitate after-hours trading.[6] As part of this initiative, the NASD amended Rule 6420 to require members to report within 90 seconds transactions effected between 9:30 a.m. and 6:30 p.m. Prior to this change, the 90 second trade-reporting requirement applied to transactions effected between 9:30 a.m. and 5:15 p.m. and transaction effected between 5:15 and 6:30 p.m. were not subject to 90 second trade reporting requirements; rather, such transactions were reported the next day (*i.e.,* T+1) on an ''as of'' basis.

One effect of this rule change has been to subject transactions that previously were reported on an ''as of'' basis T+1—because they were effected between 5:15 p.m. and 6:30 p.m.—to 90 second trade reporting requirements. Recently, the NASD has learned that a sizable number of trades effected during the 5:15 p.m. and 6:30 p.m. time period are volume-weighted transactions, which are effected on a principal or riskless principal basis. These volume-weighted trades are often effected at a price unrelated to the close (or if effected during the trading day, the last sale) on the primary exchange. Because these trades are not executed as agency crosses and thus not subject to the .W reporting requirement in Rule 6420(a)(6), they are reported to the tape without a modifier and they affect the reporting to the media and vendors of the last sale in the exchanged-listed security. As such, there is the potential for disorderly markets when the security opens the next day on the primary exchange at a price that, although related to the last sale on the primary exchange, is unrelated to the last reported price that was effected on a weighted average basis on the previous day prior to 6:30 p.m. As a short-term method of alleviating confusion before this rule change could be proposed, the NASD requested that NASD members report these weighted average trades effected between 4:00 and 6:30 p.m. on an ''as of'' basis, T+1.

The NASD proposes to amend NASD Rule 6420 to require all transactions, not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq originally filed the proposal on April 14, 2000, pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2). On May 17, 2000, Nasdaq submitted a letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, Commission, amending the proposal (''Amendment No. 1''). In Amendment No. 1, Nasdaq requested that the Commission consider the proposal under Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). Because Nasdaq amended the proposal to file it under Section 19(b)(3)(A) of the Act, the Commission considers the proposal re-filed as of the date of the amendment. Therefore, the date of the amendment is deemed the date of the filing of the proposal.

[4] *See* Securities Exchange Act Release No. 29632 (August 30, 1991), 56 FR 46022 (September 9, 1991) (order approving File No. SR–NASD–91–37).

[5] All times mentioned in this proposal are Eastern Standard times.

[6] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (order approving File No. SR–NASD–99–57 on a pilot basis).

just agency crosses, in exchange-listed securities that are based on a weighted average or other special pricing formulae, to be reported with the .W modifier.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6) [7] of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. In addition, Nasdaq believes that the proposed rule change furthers the objective set forth in Section 11A(a)(1)(C)(iii) [8] of the Act by ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Nasdaq believes that reporting transactions in exchange-listed securities that are marked with a special indicator to identify their unique pricing formulae is appropriate for regulatory purposes and will reduce investor confusion with regard to these transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from May 17, 2000, the date on which it was filed and, since the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,[9] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–21 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14281 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78*o*-3(b)(6).

[8] 15 U.S.C. 78k-1(a)(1)(C)(iii).

[9] The Commission notes that Nasdaq gave the Commission notice of its intent to file the proposed rule change through its original filing of the proposal pursuant to Section 19(b)(2) of the Act on April 14, 2000.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42859; File No. SR–NSCC–00–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Change in Fee Schedule

May 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 6, 2000, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission '') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of changes to NSCC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 30, 1999, NSCC filed a rule change to amend its fee schedule to charge fees to members using its Insurance Processing Services (''IPS'') for the transmission of test, as well as production, files.[3] These charges became effective on January 3, 2000. However, in order to encourage industry participation in pilot test development programs, NSCC has determined that it

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 42336 (January 12, 2000), 65 FR 3514.

will not impose test fees on participants participating with NSCC in pilot test programs to develop service enhancements or additional IPS products. Thus a participant in a pilot test program will not be charged for the transmission of pilot test files for the period of time from the date the participant commences participation in the pilot program through the date that is the last business day of the calendar month immediately following the month during which the pilot enhancement or new IPS product is first released by NSCC into production. Any current IPS participants participating in a prior pilot development program will not be charged for their applicable test files through April 30, 2000. Thereafter, they will be charged in accordance with NSCC's revised fee schedule.

The proposed rule change is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder since it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [4] of the Act and Rule 19b–4(f)(2) [5] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78s(b)(3)(A)(ii)

[5] 17 CFR 240.19b–4(f)(2).

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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–04 and should be submitted by June 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14249 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42864; File No. SR–NSCC–99–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Additional Procedures for Class A Surveillance of Certain Settling Members and to the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members

Pursuant to section 19(b)(i) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 16, 1999, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on May 12, 2000, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through May 31, 2001.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the temporary approval of additional procedures that govern the placement of NSCC members on Class A surveillance and the clearing fund deposit and other collateral requirements for such members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC seeks to extend the temporary approval of Addendum O, which governs the application of Class A surveillance procedures to and the additional collateralization requirements for settling members that engage in certain over-the-counter (''OTC'') market making activities. Addendum O is designed to decrease the risks associated with OTC market makers by use of Class A surveillance and special collateralization procedures. The Commission originally granted temporary approval on May 10, 1996, and has subsequently extended its approval through May 31, 2000.[4]

[2] In its amendment, NSCC withdrew any proposed changes to Addendum O to NSCC Rules and requested that the Commission extend the temporary approval of Addendum O in its current form. Letter from Richard Paley, Associate Counsel, NSCC (May 11, 2000).

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] For a complete discussion of NSCC's Class A Surveillance procedures and collateralization requirements, refer to Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR–NSCC–95–17]; 38622 (May 19, 1997), 62 FR 27285 [File No. SR–NSCC–97–04]; 40034

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act [5] and the rules and regulations thereunder because the surveillance and additional collateralization procedures will facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and in general will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest. As the Commission previously stated, it finds that NSCC's proposed rule change is consistent with these obligations under the Act because it should help NSCC protect itself, its members, and investors from members that pose an increased risk because of their involvement in OTC market making.[6]

Under the proposal, NSCC will continue to have the authority with respect to members which participate in OTC market making activities or clear for correspondents that engage in such activity (1) to place such members on Class A surveillance, (2) to require such members to post additional collateral with NSCC, and (3) to calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help ameliorate NSCC's exposure, which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control of or is responsible for and to protect investors and the public interest.[7]

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing because accelerated approval will allow NSCC to continue to utilize its Class A surveillance procedures, the interim collateralization policy, and the alternative clearing fund formula without interruption until it makes a filing requesting permanent approval of the rule change. The Commission finds good cause for granting approval prior to the thirtieth day after the date of publication of the notice because this should allow NSCC to continue to protect itself and its participants from the potential risks of OTC market making activities without interruption when the current approval of Addendum O expires on May 31, 2000.

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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–99–09 and should be submitted by June 28, 2000.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–99–09) be, and hereby is approved on an accelerated basis through May 31, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14253 Filed 6–6–00; 8:45 am]

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(May 27, 1998), 63 FR 30277 [File No. SR–NSCC–98–03]; (June 4, 1999), 64 FR 31664 [File No. SR–NSCC–99–06].

[5] 15 U.S.C. 78q–1.

[6] *Supra* note 4.

[7] As noted in each of the previous approval orders, prior to filing a proposed rule change seeking permanent approval of the procedures set forth in this temporary approval order, NSCC shall present to the Commission a more detailed report of its findings regarding the adequacy of the controls and discussing any changes to be made to the procedures.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42873; File No. SR–NSCC–00–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Related to Certain Mini-Tender Offers

May 31, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 26, 2000, the National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change permits NSCC to process certain securities which are subject to mini-tender offers through NSCC's continuous net settlement (''CNS'') system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B),

and (C) below, of the most significant aspects of such statements. [2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to permit NSCC to keep McDonalds Corp., USX-Maraton GR., and Blackrock Inc., securities, which are subject to mini-tender offers, in the CNS system. Under normal circumstances because these mini-tender offers have no protect period, NSCC would exit these securities from CNS. However, because of the high trading volume in these securities and the operational impact exiting this security from CNS would have on NSCC's participants, NSCC has filed this rule change to allow NSCC to continue to process these securities in CNS. If NSCC receives a request from a long participant, NSCC will exit the relevant position and will issue a receive and deliver instruction naming short participants selected by an allocation procedure using the oldest short position first. Participants who wish to participate in any of the tender offers must contact NSCC Operations no later than 1:00 PM on Tuesday, May 30, 2000, so arrangements can be made to remove the relevant positions from CNS.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with section 17A(b)(3)(F) of the Act [3] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).[4] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Allowing these securities which are subject to mini-tender offers to continue to be processed in the CNS system should help ensure the securities will be promptly and accurately cleared and settled.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will allow NSCC to continue to process these securities in the CNS system.

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 in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–07 and should be submitted by June 28, 2000.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–NSCC–00–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14258 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42848; File No. SR–PCX–99–18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc., Relating to Facilitation Crosses

May 26, 2000.

I. Introduction

On June 4, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to give member firms a participation right in trades proposed as facilitation crosses in certain circumstances; and to allow facilitation crosses for broker-dealer orders. Notice of the proposed rule change was published for comment in the **Federal Register** on September 21, 1999.[3] On May 26, 2000, the PCX filed Amendment No. 1 to the proposal. [4] No comments were received on the proposal. This order approves the proposed rule change, as amended, accelerates approval of Amendment No. 1, and solicits comments from interested persons on that amendment.

II. Description of the Proposal

PCX Rule 6.47(b) sets forth the procedures by which a floor broker representing the order of a member firm's public customer may cross it with a contra side order provided by the firm from its own proprietary account. In these circumstances, the firm is said to be ''facilitating'' the customer order, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41867 (September 13, 1999), 64 FR 51171.

[4] The substantive modifications of Amendment No. 1 are incorporated in the description of the proposal in Section II below, and are further discussed in Section III below.

the transaction is called a ''facilitation cross.''

Under the current version of the rule, a floor broker seeking to execute a facilitation cross must first bring the transaction to the trading floor and request a market from the trading crowd. After receiving bids and offers from the crowd, the floor broker must propose a price at which to cross the order that improves upon the price provided by the crowd. However, before the floor broker can execute the cross, the market makers in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under the current rule, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to take part of the order, however, the crowd has precedence and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to take the entire order, the floor broker will not be able to cross any part of the order.

The proposed rule change, applicable to both equity options and index options,[5] would entitle the floor broker, under certain conditions, to cross a specified percentage of the customer order on behalf of the member firm before market makers in the crowd can participate in the transaction. This provision would apply only to orders of 200 contracts or more. The percentage of the floor broker's guarantee would depend upon whether the price at which the order is ultimately traded is at the crowd's best bid or offer in response to the broker's initial request for a market, or at an improved price.

First, the floor broker would be granted a right under the proposal to execute a facilitation cross event at the price that does not improve upon the best bid or offer provided by the crowd in response to his initial request for a market. The proposed rule change provides that where the trade takes place at the market provided by the crowd, all public customer orders in the book[6] and those represented in the crowd at the time the market was established would first need to be satisfied. Once these public customer orders are satisfied, the floor broker would be entitled to facilitate 25% of the contracts remaining in the customer order.

The proposed rule change further provides that if the floor broker proposes the facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker would be entitled to priority over the crowd to facilitate 40% of the contracts[7] remaining after any public customer orders represented at that improved price have been satisfied.[8]

In the case of orders for less than 200 contracts, the proposed rule change makes clear that the floor broker would be permitted to facilitate a customer order by following PCX Rule 6.47(b) procedures, but would not receive any priority over the crowd.[9]

As under the current version of the PCX facilitation cross rule, the order tickets for both the customer order and the firm's facilitation order would be required under the proposal to display all the terms of the orders, including any contingencies involving, and all related transactions in, either options or the underlying security. Similarly, the floor broker would continue to be required to disclose all securities that are components of the customer order before requesting the crowd's market.[10]

The proposed rule change adds a stipulation that would require the floor broker to clearly disclose to the crowd that he is intending to execute a facilitation cross when he initially asks for its market. Once the trading crowd provides that market, it would remain in effect under the proposal until (a) a reasonable amount of time has passed; (b) a significant change has occurred in the price of the underlying security of the option; or (c) the market is improved. ''Significant change'' would be interpreted on a case-by-case basis by two Floor Officials, based upon the extent of recent trading in the option and the underlying security and any other relevant factors.

The proposed rule change also provides that if the trade takes place at the quoted bid or offer of the Lead Market Maker (''LMM'') in the options class being traded, the guaranteed participation to which the LMM is ordinarily entitled in such case[11] would apply only to the number of contracts remaining after all public customer orders have been filled and the facilitating firm's crossing rights have been exercised. Further, the total number of contracts allocated in the aggregate to the facilitating firm and the LMM as the result of their guaranteed participations could not exceed 40%.[12]

The proposed rule change makes clear, however, that it is not intended to prohibit either a floor broker or LMM from trading more than their percentage entitlements if the other members of the trading crowd do not choose to trade with the remainder of the order.[13] The proposal further makes clear, in accordance with PCX Rule 6.82, that if the trade takes place at a price other than that of the LMM's quoted bid or offer, the LMM would not be entitled to a guaranteed participation.[14]

The proposed rule change also provides that the members of the crowd who establish the facilitation market in response to the floor broker's initial request would have priority over all other non-public customer orders[15] that were not represented in the crowd at the time that market was established, except for orders that improve upon those quotes. Further, a floor broker holding a customer order and a facilitation order who calls for a facilitation market would be deemed to be representing both the customer order and the facilitation order, so that the customer order and the facilitation order would also have priority over all other non-public customer orders[16] that were not being represented in the trading crowd at the time the market was established.

Finally, the proposed rule change would permit facilitation crosses for broker-dealer orders.[17]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of the Act applicable to a national securities exchange, particularly those of section

[5] Telephone conversation between Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, and Ira L. Brandriss, Attorney, Division of Market Regulation, the Commission, on May 23, 2000 (''Telephone conversation with the PCX'').

[6] Telephone conversation with the PCX.

[7] *See* Amendment No. 1, which reduces the proposed percentage guarantee from 50% to 40%.

[8] Such orders are included within the meaning of ''all public customer orders represented in the trading crowd'' in the proposed rule text. Telephone conversation with the PCX

[9] *See* Amendment No. 1, concerning proposed subsection 6.47(b)(1). In this case, the members of the trading crowd would have priority over the floor broker seeking to cross a transaction. Telephone conversation with the PCX.

[10] As codified in PCX Rule 6.46, the floor broker must make all persons in the crowd aware of his request for a market, and must allow adequate time for a response. In its proposed amendments to Rule 6.47, the PCX has deleted current references to these procedural obligations to avoid redundancy. Telephone conversation with the PCX.

[11] *See* PCX Rule 6.82(d)(1).

[12] *See* Amendment No. 1, concerning proposed subsection 6.47(b)(5).

[13] *Id.*, concerning proposed subsection 6.47(b)(6).

[14] Thus the LMM participation right is not a concern where the facilitating firm receives a 40% crossing right, because that right is granted only when the trade occurs between the best bid and offer given by the crowd, which is by definition at a price other than the LMM's quoted bid or offer.

[15] *See* Amendment No. 1, concerning proposed subsection 6.47(b)(6).

[16] *Id.*

[17] Current Rule 6.47(b) authorizes facilitation crosses only for public customer orders.

6(b)(5) [18] and section 6(b)(8) [19] of the Act, and the rules and regulations thereunder.[20] The Commission believes that the proposal will enable the PCX to better compete with other options exchanges in attracting the order flow of broker-dealer firms seeking to facilitate customer orders, with adversely impacting the prices those orders receive.

The Commission finds that the PCX's proposal to grant participation rights, under certain conditions, to member firms seeking to execute facilitation crosses on the Exchange is reasonable. Currently, PCX market makers have priority rights for the full size of a customer order over the firm that brings a crossing transaction to the PCX floor, as long as the market makers are willing to trade at the proposed price.

While the proposal entitles the member firm to a specified percentage of a facilitation transaction when executed at the trading crowd's best bid or offer, it does not eliminate the crowd's ability to trade with a portion of the order proposed to be crossed, or even so substantially reduce that ability so as to raise serious concern that the proposal would reduce price competition by the crowd. Moreover, the Commission believes that the proposal may contribute to better prices for crossing transactions. Specifically, it provides an incentive for upstairs firms to improve on the prices quoted by the crowd by offering these firms a greater participation in the trade when they better the crowd's price. In addition, market makers will always have an opportunity to improve the market and compete for a greater portion of the trade.

In evaluating the proposed rule change, the Commission considered, among other matters, whether the PCX's proposal to guarantee that a member firm could cross up to 40% of an order would reduce the incentive of crowds to compete for orders, and thus impair the price discovery mechanism of the Exchange's market.

In its recent approval of the application of the International Securities Exchange (''ISE'') for registration as a national securities exchange, the Commission discussed the same concern with respect to the ISE's proposed ''facilitation mechanism,'' a system designed to effect a type of facilitation guarantee in an electronic context. The Commission wrote:

> It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that 40% is not clearly inconsistent with the statutory standards of competition and free and open markets.[21]

By the same token, the Commission believes that the PCX's proposed rule change, which allocates no more than 40% of an order to the firm seeking to facilitate an order, is not inconsistent with the statutory standard. The Commission notes, moreover, that for those crossing transactions in which an LMM is entitled to an allocation in addition to the proposed allocation for the facilitating firm, the PCX has included a provision to limit the combined allocations awarded to the firm and the LMM an aggregate of no more than 40% of the order.

Although facilitation cross rules have heretofore been limited to public customer orders, the Commission believes it is reasonable to permit the PCX to allow firms to facilitate orders of broker-dealers—to the degree permitted under the proposed rule change—in its belief that this will enable the PCX to better compete with other exchanges in attracting order flow to its market.

The Commission finds good cause, pursuant to section 19(b)(2) [22] of the Act, for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 includes the provisions described above that limit the total percentage of an order that may be guaranteed to no more than 40%, a percentage that the Commission has previously found consistent with the Act. It also clarifies the application of the facilitation cross rule, as amended by the proposal, for orders of less than 200 contracts. Amendment No. 1 further includes several changes to the proposed new rule text that clarify its meaning and thus strengthen the proposal.[23] Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) [24] and 19(b)(2) [25] of the Act to accelerate approval of Amendment No. 1 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–18 and should be submitted by June 28, 2000.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PCX–99–18), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14256 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[19] 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary to appropriate in furtherance of the purposes of the Act.

[20] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[22] 15 U.S.C. 78s(b)(2).

[23] Among these is a textual revision that makes clear that members of the trading crowd who established the facilitation market will not maintain priority over any order that improves the market.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–42860; File No. SR–Phlx–00–07)]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Disclosure of Securities Accounts

May 30, 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 January 31, 2000, the Philadelphia Stock Exchange, Inc. ''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 757 (''Disclosure of Securities Accounts''), which would require Exchange members, member organizations, foreign currency options participants, and foreign currency options participant organizations (''Exchange members and organizations'') to report to the Exchange all securities accounts in which they have any financial interest or power to make investment decisions. In addition, the rule would require that Exchange members and organizations notify the institution that services the accounts, or at which the accounts are located, that the Exchange members and organizations are members of the Exchange. Below is the text of the proposed rule change, which is entirely new.

* * * * *

Rule 757—Disclosure of Securities Accounts

(a) *Every member, member organization, participant, and participant organization shall promptly report to the Exchange any securities account, including any error account, in the name of the member, member organization, participant, or participant organization or in which the member, member organization, participant, or participant organization has, directly or indirectly, any financial interest or power to make investment decisions.*

(b) *Every report shall, at a minimum, include the name of the account, the account number, the type of account, the current securities position(s) in the account, and the name, address, and telephone number of the institution that services the account or at which the account is maintained. A report shall contain such additional information as the Exchange may from time to time require.*

(c) *Every member, member organization, participant, or participant organization having a reportable account for purposes of this rule shall notify each institution that services an account or at which an account is maintained that the member, member organization, participant, or participant organization is a member of the Exchange.*

Commentary:

.01 *Purchases of a security of a publicly traded registered investment company directly from the issuer or the principal underwriter shall not be deemed a reportable security for the purposes of this section. Interest in a non-publicly traded investment vehicle, including a hedge fund, is a reportable security for purposes of this section.*

* * * * *

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 Phlx 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

Proposed new Rule 757 would require Exchange members and organizations to report to the Exchange information about all securities accounts in which they have any financial interest or power to make investment decisions.[3] The Phlx states that this proposed rule change would aid the investigative efforts of the other exchanges, as well as its own efforts, by assisting the Intermarket Surveillance Group (''ISG'') in creating a floor member securities account database.[4] The Phlx would transmit information it receives about accounts of Exchange members and organizations to the Securities Industry Automation Corporation, which would maintain the information on behalf of the ISG.[5]

Under the proposed rule, each report would include, at a minimum, the name of the account, the account number, the type of account, the current securities position(s) in the account, and the name, address, and telephone number of the institution that services the account or at which the account is maintained.[6] In addition, the rule requires every Exchange member and organization that has a reportable account to inform each institution that services the account, or at which the account is maintained, that the Exchange member or organization is a member of the Exchange. Also, a report shall contain such additional information as the Exchange may from time to time require. The proposed commentary to new Rule 757 states that purchases of a security of a publicly traded registered investment company directly from the issuer or the principal underwriter shall not be deemed a reportable security for the purposes of the rule. Interest in a non-publicly traded investment vehicle, including a hedge fund, would be a reportable security.

The Exchange represents that proposed new Rule 757 would also enhance Exchange surveillance and regulatory efforts by expanding current account reporting requirements. Phlx Rule 751 presently requires employees of Exchange members and organizations to report certain account information to the Exchange members and organizations that employ them, but there is no corresponding obligation on Exchange member and organization employers to report their account information to the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Proposed new Rule 757 does not impose an obligation on Exchange members and organizations to report the securities positions in their accounts on an ongoing basis. Telephone conversation between Jurij Trypupenko, Counsel, Phlx, and Ira Brandriss, Attorney, Division of Market Regulation (''Division''), Commission, February 22, 2000.

[4] The ISG is an organization formed by representatives of exchanges in the United States (and certain international exchanges) to address surveillance issues.

[5] Telephone conversation between Jurij Trypupenko, Counsel, Phlx, and Ira Brandriss, Attorney, Division, Commission, and Joshua Kans, Special Counsel, Division, Commission, March 9, 2000.

[6] The term ''institution'' includes a non-member brokerage firm, investment adviser firm, bank, or other financial institution. Telephone conversation between Jurij Trypupenko, Counsel, Phlx, and Ira Brandriss, Attorney, Division, Commission, February 22, 2000.

Exchange believes that proposed new Rule 757's requirement that Exchange members and organizations report securities accounts to the Exchange should provide the Exchange with the capability to monitor and investigate quickly the trading of securities by personnel that trade on the equity, options, and foreign currency floors of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[7] in general, and furthers the objectives of section 6(b)(5)[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest by requiring disclosure of securities accounts in which Exchange members have a financial interest or power to make investment decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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–Phlx–00–07 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14261 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3256]

State of Oklahoma

Creek County and the contiguous counties of Lincoln, Okfuskee, Okmulgee, Osage, Pawnee, Payne, and Tulsa in the State of Oklahoma constitute a disaster area as a result of damages caused by severe thunderstorms, rain, and flooding that occurred May 5–8, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 24, 2000 and for economic injury until the close of business on February 26, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	(Percent)
For Physical Damage:	
Homeowners with credit available elsewhere	7.375
Homeowners without credit available elsewhere	3.687
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 325606 for physical damage and 9H4300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 25, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–14224 Filed 6–6–00; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Administrative Review Process, Test of the Elimination of the Fourth Step of Administrative Review in the Disability Claim Process (Request for Review by the Appeals Council) in Conjunction With Testing of Modifications to the Disability Determination Procedures; Disability Claims Process Redesign Prototype

AGENCY: Social Security Administration.

ACTION: Notice of a test.

SUMMARY: The Social Security Administration (SSA) is announcing a test of the elimination of the fourth step of administrative review in the disability claim process (Request for Review by the Appeals Council) in conjunction with the present disability prototype test. Before making any decisions on the merits of the elimination of the request for review, SSA must obtain valid and reliable data on the effects of such elimination—including the impact it may have on agency operations, notices and other procedures, rates of filing to Federal District Courts, and quality and timeliness of service to the public.

DATES: Cases to be included in the test of the elimination of the Request for Review will be selected from those prototype case requests for hearing which are received in servicing hearing offices on or after June 1, 2000, or the date of this notice—whichever is later; and in which an initial application for Social Security Disability Insurance or Supplemental Security Income Disability Benefits was filed effective

between and including January 1, 2000 and July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3632 or TTY 410–966–5609 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: Current rules codified at 20 CFR 404.966 and 416.966 authorize us to test procedures for eliminating the request for Appeals Council Review (''Request for Review Eliminated''—RRE) on randomly selected cases. Additional rules codified at 20 CFR 404.906 and 20 CFR 416.1406 authorize us to test other modifications to the disability determination procedures individually or in any combination. One test has already been conducted using the former authority and several tests have already been conducted using the latter. In fact, the sole test using the authority for elimination of request for Appeals Council Review was combined with a test using the authority to test modifications to the disability determination procedures individually or in any combination that we termed the full process model (FPM).

The FPM was an integrated test (authorized in part under 404.906 and 416.1406) that we initiated on April 7, 1997 (published in the **Federal Register** on April 4, 1997 (62 FR 16210)) that combined several modifications to the disability determination process including enhanced decision making authority for Disability Determination Services (DDS) disability examiners and a restructuring of the role of the DDS medical consultant; provision for a predecision interview conducted by the decision maker if the evidence is insufficient to support a fully favorable disability determination; and elimination of the reconsideration step of review for initial disability claims. It also included testing of the use of an adjudication officer for cases in which a request for hearing was filed. The test of the adjudication officer is authorized under rules at 20 CFR 404.943 and 416.1443.

As an adjunct to the FPM test, using regulatory authority at 20 CFR 404.966 and 416.1466 (published in the **Federal Register** on September 23, 1997 (62 FR 49598)) we tested the RRE in order to assess the effects of this change, in conjunction with the other FPM modifications. We are now announcing a retest of the RRE (''RRE II'') because initial RRE study results failed to produce sufficient data upon which to base policy decisions and because testing the RRE in conjunction with recently implemented initiatives would yield valuable data for assessing the effects of the RRE upon claimant service and administrative processes.

Initial Level Prototype Testing

The latest test using the regulatory authority at 20 CFR 404.906 and 20 CFR 416.1406 was announced in the **Federal Register** on August 30, 1999 (64 FR 47218). There we announced a prototype that incorporates multiple modifications to the disability determination procedures employed by State Disability Determination Services (DDSs) which have been shown to be effective in earlier tests. Specifically, the prototype incorporates a series of changes that improve the initial disability determination process by: providing greater decisional authority to the disability examiner and more effective use of the expertise of the medical consultant; ensuring development and explanation of key issues; increasing opportunities for claimant interaction with the decision maker before a determination is made; and simplifying the appeals process by eliminating the reconsideration step. The test is focused on 10 states to enable us to further refine the process and learn more about potential operational impacts of the changes identified. This strategy should allow us to put the complete process together and ensure that the changes meet our goal of improved service to disability applicants.

The prototype test is being conducted in 10 states. Eight include all Social Security and Supplemental Security Income disability applications:

Alabama

—Department of Education, Disability Determination Services, 2545 Rocky Ridge Lane, Birmingham, AL 35216
—Department of Education, Disability Determination Services, 2000 Old Bayfont Drive, Mobile, AL 36652

Alaska

—Division of Vocational Rehabilitation, Disability Determination Unit, 619 East Ship Creek Avenue, Suite 305, Anchorage, AK 99501

Colorado

—Department of Human Services, Division of Disability Determination, 2530 South Parker Road, Suite 500, Aurora, CO 80014–1641

Louisiana

—Department of Social Services, Office of Family Support, Disability Determination Services, 5905 Florida Blvd. Suite 3, Baton Rouge, LA 70806
—Department of Social Services, Office of Family Support, Disability Determination Services, 2920 Knight Street, Suite 232, Shreveport, LA 71105
—Department of Social Services, Office of Family Support, Disability Determination Services, 3510 North Causeway Blvd., Metairie, LA 70002

Michigan

—Family Independence Agency, Disability Determination Services, 608 W. Allegan Street, Third Floor, Lansing, MI 48933
—Family Independence Agency, Disability Determination Services, MI Plaza Building, Tenth Floor, 1200 Sixth Street, Detroit, MI 48226
—Family Independence Agency, Disability Determination Services, 315 E. Front Street, Traverse City, MI 49684
—Family Independence Agency, Disability Determination Services, 151 South Rose Street, Kalamazoo, MI 49007–4715

Missouri

—Division of Vocational Rehabilitation, Section of Disability Determinations, 1500B Southridge Drive, Jefferson City, MO 65109
—Division of Vocational Rehabilitation, Section of Disability Determinations, 1845 Borman Court, Suite 200, St. Louis, MO 63146
—Division of Vocational Rehabilitation, Section of Disability Determinations, 4040 Seven Hills Drive, Florissant, MO 63033
—Division of Vocational Rehabilitation, Section of Disability Determinations, 8500 East Bannister Road, Kansas City, MO 64134
—Division of Vocational Rehabilitation, Section of Disability Determinations, 3014 Blattner Drive, Cape Girardeau, MO 63701
—Division of Vocational Rehabilitation, Section of Disability Determinations, 2530 I South Campbell, Springfield, MO 65807

New Hampshire

—Division of Adult Learning and Rehabilitation, Disability Determination Services, State Dept. of Education Building JB, 78 Regional Drive, Concord, NH 03301

Pennsylvania

—Bureau of Disability Determination, Room 200—Central Operations, 1171

South Camerson Street, Harrisburg, PA 17104–2594

—Bureau of Disability Determination, 264 Highland Park Blvd., Wilkes-Barre, PA 18702

—Bureau of Disability Determination, 351 Harvey Avenue, Greensburg, PA 15605

Two include only applicants whose disability claims are processed in designated Disability Determination Services (DDS) branches:

California

—Los Angeles North and West—Department of Social Services, Disability and Adult Programs Division, 3425 Wilshire Blvd., Suite 1500, Los Angeles, CA 90010

New York

—Brooklyn—New York State Department of Social Services, Division of Disability Determinations, 300 Cadman Plaza West, 13th floor, Brooklyn, NY 11201–2701

—Albany—New York State Department of Social Services, Division of Disability Determinations, 99 Washington Avenue, Room 1239, Albany, NY 12260.

Administrative Appeals Process Improvements and Testing of the RRE Paired With Prototype Test

Testing the use of an Adjudication Officer (AO) authorized under 20 CFR 404.943 and 416.1443 is not included in the prototype.

Along with the prototype changes, we are incorporating several initiatives to improve the hearings process, including administrative efficiencies designed to streamline case processing; structural changes in the management organization of hearings offices; improvements in automation and data collection; and implementation of a ''national workflow model'' that combines pre-hearing activities, a standardized pre-hearing conference, and processing-time benchmarks for various tasks. This initiative was announced in the **Federal Register** on August 30, 1999 (64 FR 47218) as the Hearing Process Improvement (HPI) initiative.

Additionally, since the announcement of the HPI initiative, we have undertaken an Appeals Council Process Improvement (ACPI) initiative. ACPI includes short range initiatives to reduce pending workloads and processing times and long-range improvements in structure and operations enabling high quality, timely, and efficient case processing. The short-range elements that already are being implemented and will be in place during this test include:

• ''Differential case management''—a systematic technique of differentiating cases for processing based on substantive issues in the case.

• Processing of appeals by Office of Appellate Operations managers and supervisors without prior examination by hearings and appeals analysts;

• Temporary use of attorneys from the Office of the General Counsel to augment staff in the Appeals Council;

• Expedited presentation of cases to adjudicators; and

• Temporary use of Administrative Law Judges as Acting Administrative Appeals Judges to enhance the adjudicatory and analytic strength of the Appeals Council in the short term.

If appealed to the ALJ level, most, but not all, of the cases from the prototype sites will go to hearing offices (HOs) that are in the first phase of the HPI. Thus, they will be processed using the efficiencies such as the ''national workflow model'' mentioned above. The prototype process is effective in prototype sites for cases effectively filed October 1, 1999 or after, with the exception of Albany, New York which became operational on April 1, 2000.

Under the existing regulatory authority authorizing us to test RRE at 20 CFR 404.966 and 416.1466 (published in the **Federal Register** on September 23, 1997 (62 FR 49598)) we intend to add to the previously announced prototypes a test of the effects of the RRE on prototype cases that could potentially reach the Appeals Council level, following an unfavorable ALJ decision, that meet the following criteria:

• Effective date of initial filing is between and including January 1 and July 31, 2000.

• Request for an ALJ hearing has been filed;

• Case is received in the servicing HO on or after June 1, 2000 or the effective date of this notice *whichever is later;* and

The servicing HO has implemented HPI (''HPI Phase One''). A case meeting the other criteria but whose servicing HO is not an HPI phase One Office will not be included.

Cases meeting the criteria received at the following HOs will be included:

DDSs	HOs
Alabama	Burger-Phillips Centre, 1910 3rd Ave. North, Suite 100, Birmingham, AL 35203.
	Walnut St. Executive Center, 205 S. Walnut St., Suite D, Florence, AL 35630.
	3605 Springhill Business Park, Mobile, AL 36608.
	3381 Atlanta Highway, Montgomery, AL 36109.
Alaska	2101 4th Ave., Suite 900, Seattle, WA 98121.
California:	
Los Angeles West/ North.	City National Bank Bldg., 606 S. Olive St., Suite 1200, Los Angeles, CA 90014.
	11000 Wilshire Blvd., Rm. 8200, Los Angeles, CA 90024.
	Grosvenor Plaza, 150 S. Los Robles Avenue, Suite 500, Pasadena, CA 91101.
	8345 Firestone Blvd., Second Floor, Downey, CA 90241.
Colorado	1244 Speer Blvd., Suite 752, Denver, CO 80204.
Louisiana	3403 Government St., Alexandria, LA 71302.
	1515 Poydras St., Suite 1600, New Orleans, LA 70112.
	First Bank Center, 1 Galleria, Suite 2000, Metairie, LA 70001.
	700 Louisiana Towers 401 Edwards St., Shreveport, LA 71101.
Michigan	Patrick J. McNamara Federal Bldg., 477 Michigan Ave., Room 430, Detroit, MI 48226.
	605 N. Saginaw St., First Floor, Suite A, Flint, MI 48502.
	15 Ionia St. S.W., Third Floor, Grand Rapids, MI 49503.
	Everett Plaza, 3500 S. Cedar St, Suite 109, Lansing, MI 48910.
	Crown Pointe, 25900 Greenfield Rd., Room 430, Oak Park, MI 48237.
Missouri	11475 Olde Cabin Rd., Creve Coeur, MO 63141.

DDSs	HOs
	Old Post Office Bldg., 815 Olive St., Rm. 220, St. Louis, MO 63101.
	901 E. St. Louis St., Suite 210, Springfield, MO 65806.
New Hampshire	Daniel Webster Hwy. North, 207 Hooksett Rd., Manchester, NH 03104.
New York—Brooklyn*	111 Livingston Street, 18th Floor, Brooklyn, NY 11201.
Pennsylvania	8380 Old York Rd., Suite 250, Elkins Park, PA 19027.
	Penn National Office Bldg., 2 N. 2nd St., 8th Floor, Harrisburg, PA 17101.
	334 Washington St., Suite 200, Johnstown, PA 15901.
	1601 Market St., 9th Floor, Philadelphia, PA 19103.
	601 Grant St., Suite 500, Pittsburgh, PA 15219.
	7 N. Wilkes-Barre Blvd., Suite 210, Wilkes-Barre, PA 18702.

*Prototype cases processed at New York—Albany will not be included in the test becasuse of Albany's later start date.

As stated in the **Federal Register** of August 30, 1999 (64 FR 47218) it is estimated that annually on a national level approximately 20 percent of applicants for disability benefits would potentially participate in the prototype. Since those applications covered under the provisions of this notice include just over half a year, we estimate that approximately 10–12% of applicants for disability benefits (effective filings between 1/1/00 and 7/31/00) would potentially participate in at least one aspect of the prototype. Based on past case experience, those actually included in the RRE II cohort would be well below 1 percent of the national applicant workload.

Selection of test and control cases will be done on a random basis. For those selected as test cases, the right to request review by the Appeals Council will be eliminated and the right of the claimant to appeal, in the case of an unfavorable ALJ decision, will be directly to Federal District Court.

Claimants who could potentially be included in this retest of the RRE will be supplied notice of their appeal rights.

Case outcome and appeals information about both Request for Review Retained (RRR) (control) and RRE II (test) cases will be collected and analyzed. Before making any decisions on the merits of the RRE, SSA must obtain valid and reliable data on the effects of such elimination—including the impact it may have on agency operations, notices and other procedures, rates of filing to Federal District Courts, and quality and timeliness of service to the public.

Dated: May 31, 2000.

Rita S. Geier,

Associate Commissioner for Hearings and Appeals.

[FR Doc. 00–14216 Filed 6–6–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3332]

Bureau of Educational and Cultural Affairs; U.S.-China Youth Exchange Initiative: Pilot Project; Notice: Request for Proposals

SUMMARY: The Youth Programs Division, Office of Citizen Exchanges, of the Bureau of Educational and Cultural Affairs announces an open competition to award one grant for the U.S.-China Youth Exchange Initiative: Pilot Project. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals for the recruitment and screening of schools, an assessment of communication technology, and the implementation of a pilot project of a reciprocal youth exchange program between secondary schools in the United States and in China. This program will develop linkages between schools and communities in the U.S. and China for the purpose of mutual education and the development of student participation in community affairs.

Program Information

Overview

During a June 1998 visit to China, President Clinton announced a youth exchange program that would link schools and communities in China and the United States. The program has been projected to span three years and to provide funding for the reciprocal exchange of students and teachers from the paired schools. It is in anticipation of this program being enacted in fiscal year 2001 that the Office of Citizen Exchanges offers this opportunity for organizations to apply for an assistance award to pilot a modest school exchange project this year. Expansion beyond the pilot phase is subject to the availability of funding in subsequent fiscal years, as well as to assessments by the Bureau of Educational and Cultural Affairs (ECA) and the U.S. Embassy in Beijing of the desired pace of expansion. The goal is to expand the program incrementally over the next few years.

The focus of the principal program is to link schools and communities in as many provinces of China as possible with schools and communities across the United States and to foster interaction and lasting relationships between these partnered schools through Internet connections and reciprocal student and educator exchanges with strong academic content. Each one-to-one school partnership will choose a theme relevant to their communities; students will work together to complete a joint project related to this theme. Support for Internet connectivity and computer training is also an important component of the program so that the paired schools can communicate throughout the school year and work on these joint projects. The three-to four-week exchange visits to the partner community will involve studying at the host school, working on the thematic project, participating in cultural activities, and spending time with host families. The overarching goals of this program are to support student participation in community affairs and to advance mutual understanding between the youth and teachers of the U.S. and China.

This competition is intended to allow the Youth Programs Division to select the organization that will best be able to establish these linkages and facilitate the joint projects and exchanges. The objectives of this project are (1) to plan for the principal program by recruiting and screening schools, (2) to assess the opportunities for establishing Internet access in the schools, and (3) to develop and implement a pilot partnership that will serve as a model for future development.

The components of the program are as follows:

(1) Planning and Selection

(a) Announce the program to recruit a strong pool of candidate schools and communities in the U.S. and China. Communities should represent the great geographic diversity of each country.

(b) Conduct an open, merit-based competition to screen secondary schools for participation in the principal program. Applicants should be prepared to select approximately 50 schools, or 25 partnerships.

(c) Determine the capacity of the schools to develop lines of

communication, especially through the use of the Internet.

(2) Pilot Project

(a) Select a partnership to conduct a pilot exchange program (this will be selected outside of the larger competitive process noted above).

(b) Oversee the communications and project activity between the two schools.

(c) Manage the exchange of 22 participants: nine students and two educators (or one educator and one community member chaperone) from each school will visit the partner school for three to four weeks while the host school is in session.

(d) Monitor and evaluate the pilot project.

Guidelines

The grant will begin on or about November 1, 2000, and conclude 14 months later. The pilot project activity should begin as soon as possible. The exchanges should take place in Fall 2001.

This pilot project will create the foundation for the follow-on program. This project should be designed to best prepare the organization for the implementation of the full program. However, all applicants should be aware that there are no assurances of a specific level of funding for a follow-on program. As is the case with all Bureau exchange programs, actual funding for future activities is contingent upon the Congressional Appropriation and Authorization Process and final availability of funds. Funding to support the initial phase of this project is $98,900. Upon successful implementation of the pilot phase and pending the availability of funds, ECA reserves the right to amend the grant to support future program activities.

As ECA and the U.S. Embassy in Beijing will need to carefully gauge the appropriate rate of growth of this program (in terms of the number of states or provinces, schools, and participants) and future funding is indefinite, ECA requests that applicants create a rank ordered list of the schools that they recruit and screen so that the schools can be approached to participate once the FY–2001 funding level has been determined. ECA expects to work up to the participation of as many as 50 schools over the course of the initiative.

Eligible applicant organizations will have the following:

- Experience working in China;
- A demonstrated track record of conducting youth exchange;
- Experience with managing international institutional linkages and/or experience developing the program content for short-term exchanges;
- An established partnership with an individual or organization based in China or own branch office or representative there; and
- Access to schools in both the United States and China through the partner organization.

Programs must comply with J–1 visa regulations. Please refer to the complete Solicitation Package, which includes the Project Objectives, Guidelines, and Implementation (POGI) and the Proposal Submission Instructions (PSI), for further information.

Budget Guidelines

An initial assistance award for no more than $98,900 will be awarded. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–00–58.

For Further Information Contact: The Youth Programs Division, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW, Washington, DC 20547, telephone (202) 619–6299; fax (202) 619–5311; e-mail address: clantz@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5:00 p.m. Washington, DC time on Friday, July 28, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original proposal and eight copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–00–58, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Section at the U.S. Embassy in Beijing for its review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take

appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * ; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: May 30, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–14361 Filed 6–6–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7465]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Subsection (c) of section 7405 of the Transportation Equity Act for the 21st Century makes $5,000,000 available each of five fiscal years to the Secretary of Transportation for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. The Act also requires that the Secretary publish annually in the **Federal Register** a detailed accounting of the projects, programs, and activities under this subsection. This is the first report.

ADDRESSES: You may obtain a copy of this notice by calling the U. S. Coast Guard Infoline at 1–800–368–5647. This notice is available on the Internet at http://dms.dot.gov or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org.

FOR FURTHER INFORMATION CONTACT: Captain Michael F. Holmes, USCG, Chief, Office of Boating Safety, telephone 202–267–1077, fax 202–267–4285, or Mr. Albert J. Marmo, Chief, Program Management Division, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century became law on June 9, 1998. The Act requires that of the $5 million made available to carry out the national recreational boating safety program, $2,000,000 shall be available only to ensure compliance with chapter 43 of title 46, U.S. Code—Recreational Vessels. This responsibility is delegated to the Commandant of the United States Coast Guard. The statute directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized by this section. Amounts made available each fiscal year, 1999–2003, shall remain available until expended. Upon passage of the Act the U.S. Coast Guard Office of Boating Safety began the process of developing basic spending plans for this new source of revenue. For accounting purposes, funding was divided into two program elements: Boat Safety Compliance and National Recreational Boating Safety Program. Use of these funds entails compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. An accounting of the use of the funds to date follows, including a narrative summary and a table that reflects commitment, obligation, or expenditure of fiscal years 1999 and 2000 funds.

Boat Safety Compliance

Factory Visit Program

A contract was awarded to establish a national recreational boat factory visit program using contractor personnel. The contract includes the development

of a plan of action and a pilot program to validate the elements of the plan and the concept of the program. The plan was completed at a cost of $133,912.55 using fiscal year 1999 funding. The pilot program will commence in the summer of 2000. The factory visit program will allow contractor personnel, acting on behalf of the Coast Guard, to visit approximately 2,000 recreational boat manufacturers each year to communicate with the manufacturers as to why they need to comply with the Federal regulations, educate them, as necessary, on how to comply with the Federal regulations, and inspect for compliance with the Federal regulations.

Associated Equipment Compliance Testing

Currently, the Office of Boating Safety conducts compliance testing by purchasing recreational boats in the open market and testing them for compliance with the Federal flotation standards. As a new initiative, the Office of Boating Safety is planning to buy recreational boat ''associated equipment,'' e.g., starters, alternators, fuel pumps, bilge pumps, etc., and test this equipment for compliance with Federal safety regulations. The anticipated annual cost of this multi-year effort is estimated at $100,000. To date $44,000 of fiscal year 1999 funds have been expended, and $83,000 of fiscal year 2000 funds has been committed for this testing.

Articulated Mannequins/Computer Simulation Model

The objective of this multi-year program is to improve the safety of recreational boaters by encouraging the design of new/unique personal flotation devices (PFDs) through the development of a computer simulation program to evaluate the effectiveness of new/unique PFD designs. The computer simulation program will be validated through the use of a family of anthropomorphic articulated mannequins. Fiscal year 1999 funding for this effort is $300,000.

Compliance Associated Travel

Travel is being performed to carry out additional compliance actions and to gather background and planning information for proposed compliance initiatives or to research possible new compliance initiatives. Fiscal year 1999 funding for this travel has amounted to $13,332.44.

New Boat Manufacturer Outreach Package

A fiscal year 1999 contract for $357,582.34 was awarded to design and develop a comprehensive and user friendly outreach package for distribution to new recreational boat manufacturers. Included will be a brochure and video that will outline the many facets of the recreational boat manufacturing business, including, Federal regulations, voluntary standards, self-certification, financial aspects, insurance concerns, liability issues, points of contact and the steps necessary to become a new recreational boat manufacturer. The package will also include plain language guidelines that help clarify Federal requirements. The new outreach package is expected to increase the level of compliance with the Federal regulations among new recreational boat manufacturers.

Risk Analysis Study

This effort will develop a risk-based compliance approval process for Personal Flotation Devices (PFDs) using a Life Saving Index methodology. Fiscal year 1999 funding for this project amounted to $229,465.64. The results of this effort will provide a formal structure and consistency to the process for accepting new approaches to designing devices for drowning prevention. The risk-based process identifies critical factors for evaluating PFD lifesaving potential and defines the minimum level of performance necessary for approval.

Virtual Reality Personal Watercraft (PWC)

A contract was awarded to develop a virtual reality personal watercraft. If this application of virtual reality technology proves to be effective it will provide a platform to gather valuable data in many areas that would otherwise be unobtainable or would require more costly methods and sources. The data from this effort will give greater insight into the human/machine interface related to PWC and will assist in the effort to attempt to reduce PWC accidents. The contract award amount using fiscal year 2000 funds was $133,620.

National Recreational Boating Safety Program

Boating Accident Report Database (BARD)

The BARD system is aimed at effectively providing the capability to all States and the Coast Guard for the successful exchange of recreational boating accident data and information using BARD software. New fiscal year 1999 funding of $392,234 allows software module development, software module rework and unit testing, module integration testing and system testing associated with this innovative program, and for providing the software to the 50 States, five territories, and the District of Columbia.

Transfer of Funds to the Seventeenth Coast Guard District

A non-recurring transfer of $25,000 fiscal year 1999 funds was made to the Seventeenth Coast Guard District in support of a Coast Guard Boating Safety Detachment to assist in the transition of State of Alaska assumption of Recreational Boating Safety Program responsibilities.

National Boating Registration System

As a service for States/Territories that currently have inadequate (or no) computer software program to maintain their vessel numbering system information, $24,000 has been transferred to the U.S. Coast Guard Operations Systems Center (OSC) to develop a National Boating Registration System software program. OSC will modify an existing program currently used by the Coast Guard in Alaska (the only State that does not have a Coast Guard-approved vessel numbering system) to develop a generic version that can easily be adapted by any State/Territory for their own use. The software, which will be provided to interested States/Territories at no cost, will include a function to automatically generate the annual report on numbered vessels that must be submitted to the Coast Guard each year, which currently can be a very time-consuming process for States whose systems are not automated. The current schedule calls for delivery of the beta version system in July 2000.

Federal Requirements Publication

A customer friendly ''Federal Requirements and Safety Tips for Recreational Boaters'' publication is being developed based on easy to read high visibility graphics, focusing on provision of subject specific safety tips with retention factors built in. Support for this effort using fiscal year 1999 funds is $73,000. The Coast Guard anticipates expanding this development effort and intends to evaluate recreational boater retention factors for Federal regulations in August 2000. The end result will be publication of both hard copy and electronic interactive versions for public use.

Coast Guard Infoline/Office of Boating Safety Website

This effort provides both technology and educational enhancements to the Coast Guard Infoline, a toll free 800 telephone number (including a dedicated line for the hearing impaired) accessible to callers anywhere in the United States. The Infoline provides information about safety, regulations, communications, Coast Guard policy, and available material related to boating safety issues. Additionally, this effort provides a complete interactive recreational boating safety website that offers the public and boating safety agencies and organizations with up-to-the-minute information on every aspect of recreational boating safety. One of the goals of this program is to create a ''one-stop'' customer service center for all users. Fiscal year 1999 funding amounted to $186,435.

Marine Dealer Display Kiosks

An expenditure of $23,950 of fiscal year 1999 funds supports the Hunters and Anglers Outreach Program and supplies marine dealers with U.S. Coast Guard and U.S. Coast Guard Auxiliary literature display racks, including associated boating safety information pertaining to the hazards associated with Boating Under the Influence (BUI) as well as discipline specific information to this target group. Additional target group research and testing will be conducted during calendar year 2000 validating outreach components. This research will result in the release of a national ''point-of-purchase'' kiosk system, serving as an extension to the Office of Boating Safety's ''one-stop'' information system.

There are three new projects that are in final stages for commitment of funds.

The Vessel Safety Check Program

Fiscal year 2000 funding, estimated at less than $50,000 will be used to support the efforts of the U.S. Coast Guard Auxiliary, U.S. Power Squadrons and the National Association of State Boating Law Administrators in providing free safety inspections of recreational boats. The ''safety check'' provides a complete review of a recreational vessel ensuring that the vessel is in compliance with all Federal and State specific carriage requirements. Ultimately the end result will lead to fewer recreational boating accidents, injuries and fatalities.

Knowledge Management System and SEAFIT (State Electronic Administrative, Financial and Information Technology System)

This effort will enable the Coast Guard to reduce the amount of paper transactions required and obtained by its external customers. The States are one of the Coast Guard's largest external customer groups. The Knowledge Management and SEAFIT systems will provide for quicker more effective and efficient program oversight while providing each customer with the ability to electronically do business with the Coast Guard. This system will assist in the electronic monitoring, storage and daily use of all multi-disciplined information and materials within the Office of Boating Safety. We plan to convert current business processes that support activity in grant administration, program oversight, financial payments and requested program information to an electronic format and be web-based compatible.

National Boating Survey

The contracting process is being initiated for a comprehensive major national recreational boating survey. The survey will provide information on boats, boaters and their activities. In order to avoid taking the large amount of money required for a large-scale survey from available funds for a single fiscal year, we will escrow funds each year. We placed $900,000 of fiscal year 1999 funds and $400,000 of fiscal year 2000 funds in escrow.

The following table reflects commitment, obligation, or expenditure to date of fiscal years 1999 and 2000 funds.

RECREATIONAL BOATING SAFETY PROGRAMS ACCOUNTING

	FY 1999	FY 2000
Boat Safety Compliance		
Factory visit program	$133,912.55	
Associated equipment compliance testing	44,000.00	$83,000.00
Articulated mannequins/computer simulation model	300,000.00	
Compliance associated travel	13,332.44	
New boat manufacturer outreach package	357,582.34	
Risk analysis study	229,465.64	
Virtual reality personal watercraft		133,620.00
Total boat safety compliance	1,078,292.97	216,620.00
National Recreational Boating Safety Program		
Boating accident report database (BARD)	392,234.00	
17th CG District boating safety detachment	25,000.00	
National boating registration system	24,000.00	
Federal requirements publication	73,000.00	
CG Infoline/Office of boating safety website	186,435.00	
Marine dealer display kiosks	23,950.00	
Total recreational boating safety	724,619.00	
National boating survey escrow	900,000.00	400,000.00
Grand total	2,702,911.97	616,620.00

Note: This Chart Shows FY 1999 and FY 2000 Dedicated Funds Committed, Obligated, or Expended for the Individual Projects Listed.

Dated: June 2, 2000.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 00–14362 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–443]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on the revalidation of recommendations for 46 CFR part 151 will meet to discuss the previous recommendations of CTAC.

DATES: The Subcommittee will meet on Wednesday, June 21, 2000, from 8:30 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before June 20, 2000. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before June 19, 2000.

ADDRESSES: The Subcommittee will meet in room 6103, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC. Send written material and requests to make oral presentations to Commander Robert F. Corbin, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas J. Felleisen, Coast Guard Technical Representative to the Subcommittee, or Lieutenant Gregory F. Herold, Deputy Assistant to the Executive Director of CTAC, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda of the Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on the revalidation of recommendations for 46 CFR part 151 includes the following:

(1) Introduction of the Subcommittee members.

(2) Review and discussion of CTAC's previous recommendations.

(3) Evaluation of the validity of the CTAC's previous recommendations.

(4) Discussions of the comments submitted on the ANPRM.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. All attendees at the meeting are encouraged to fully review CTAC's previous recommendations prior to the meeting; additional copies of CTAC's previous recommendations are available from the Deputy Assistant to CTAC. At the discretion of the Subcommittee Chair, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard Technical Representative to the Subcommittee on or before June 20, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Coast Guard Technical Representative to the Subcommittee no later than June 19, 2000.

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 the Deputy Assistant to the Executive Director of CTAC as soon as possible.

Dated: May 31, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–14276 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD–2000–7470]

Farrell Lines Incorporated; Notice of Application for approvals to the proposed transfer of Maritime Security Program Operating Agreements MA/MSP–18 through 20

By applications dated June 1, 2000, Farrell Lines Incorporated (Farrell) and counsel for FLI Ships, Inc. (FLI Ships) have notified the Maritime Administration (MARAD) of the proposed transfer of three Maritime Security Program (MSP) Operating Agreements (MA/MSP–18 through 20) from Farrell to FLI Ships, a wholly owned subsidiary of Farrell, pursuant to section 652(j) of Subtitle B, Title VI, Merchant Marine Act, 1936, as amended (1936 Act). The vessels currently covered by those contracts are presently owned by FLI Ships, and will continue to be covered by those contracts after transfer.

The transfer of MSP Operating Agreements MA/MSP–18 through 20 is part of a series of overall transactions whereby Farrell will merge with P & O Nedlloyd Acquisition Corporation, a wholly owned subsidiary of P & O Nedlloyd Limited. After merger, Farrell will be the surviving entity (reconstituted Farrell).

With respect to the transfer of MSP Operating Agreements, section 652(j) of the 1936 Act provides that ''A Contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person eligible to enter into that Operating Agreement under this subtitle after notification of the Secretary [of Transportation] in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of Notification. A person to whom an Operating Agreement is transferred may receive payments from the Secretary under the agreement only if each vessel to be covered by the agreement after the transfer is an eligible vessel under section 651(b).''

In implementing the proposed transaction, FLI Ships is to be spun off by sale of all its stock to FLI Ships Holdings, Inc. (Holdings), a U.S. citizen corporation within the meaning of section 2 of the Shipping Act, 1916, as amended. Holdings will be independently capitalized and operationally independent of P & O Nedlloyd Limited and any of its affiliates. The MSP vessels will be time chartered from FLI Ships to either P&ONL FAME, Inc. (FAME), a U.S. documentation citizen owned by P & O Nedlloyd B.V., a Dutch corporation, or to a reconstituted Farrell for operation. In the event that Farrell becomes the time charterer, it will also become a documentation citizen. The time charters of two other MSP vessels owned by First American Bulk Carrier Corp. (FABC) and chartered to Farrell, will be novated to either FAME, or remain with the reconstituted Farrell for operation. FLI Ships will manage and operate the former Farrell vessels utilizing former Farrell personnel. The FABC vessels will continue to operate under their existing charters. One additional vessel operated by Farrell under bareboat charter from MARAD may be turned back to MARAD subject to settlement under that charter. Another vessel bareboat chartered by

Farrell under a sale/leaseback agreement will most likely be paid off and scrapped.

A redacted copy of the transfer application will be available for inspection at the Department of Transportation (DOT) Dockets Facility and on the DOT Dockets website (address information follows). Any person, firm or corporation having an interest in this proposal, and desiring to submit comments concerning the application, may file comments as follows. You should mention the docket number that appears at the top of this notice. Written comments should be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the internet at http://dmses.dot.gov/submit/ . You may call Docket Management at (202) 366–9324. You may visit the docket room to inspect and copy comments at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov. Comments must be received by close of business June 14, 2000.

This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the application, as filed, or as may be amended. MARAD will consider all comments submitted in a timely fashion, and will take such action thereto as may be deemed appropriate.

By Order of the Maritime Administration.

Dated: June 2, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–14354 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund Open Meetings

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meetings.

SUMMARY: The Community Development Financial Institutions Fund (the ''Fund'') is considering revising its regulations implementing the Bank Enterprise Award (''BEA'') Program. Before revising such regulations in the form of an interim rule, the Fund seeks to provide the public with meaningful participation in advance of the rulemaking process. Specifically, the Fund intends to convene four regional meetings that are open to the public for purposes of gathering facts and information on how to improve the BEA Program. The Fund will consider the facts and information gathered from such regional meetings in deciding whether to revise the BEA Program regulations.

DATES AND LOCATIONS: The four regional meetings are scheduled for the following cities and dates: (1) June 21, 2000, Los Angeles, CA; (2) June 23, 2000, Dallas, TX; (3) June 28, 2000, New York, NY; and (4) June 30, 2000, Chicago, IL. Registration is required, because space is limited in each city to 40 members of the public.

FOR FURTHER INFORMATION OR TO REGISTER CONTACT: The Community Development Financial Institutions Fund (the Fund), U.S. Department of Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC, 20005, (202) 622–8662 (this is not a toll free number) or visit the Fund's website at http://www.treas.gov/cdfi. Other information regarding the Fund and its programs also may be obtained through the Fund's website at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION: The purpose of the BEA Program is to assist in the revitalization of distressed urban and rural communities. Under the BEA Program, the Fund issues grant awards annually (e.g. in September 1999) to insured depository institutions that have increased their level of investment in Community Development Financial Institutions and distressed communities (''BEA Program activities'') between a six month assessment period (e.g. January 1 through June 30, 1999) and a six month baseline period (e.g. January 1 through June 30, 1998). As part of its strategy to maximize the effectiveness of scarce public resources, the Fund is considering various means to enhance the efficacy of the BEA Program in revitalizing distressed urban and rural communities.

For example, the Fund is considering whether to measure increases in BEA Program activities from six month baseline/assessment periods (e.g. January 1 through June 30) to annual baseline/assessment periods (e.g. January 1 through December 31) for purposes of affording insured depository institutions greater flexibility in planning BEA Program activities year round as part of their community reinvestment strategies and to take into account the longer lead times often required to close complicated large dollar transactions.

The Fund also is considering selecting insured depository institutions to participate in the BEA Program before the commencement of the assessment period. The Fund is considering such a change to: (1) Provide greater incentives for insured depository institutions to engage in BEA Program activities that they would not otherwise engage in by (a) Assuring such institutions that if they carry out their BEA Program activities within the assessment period, they will receive a BEA Program award and (b) enabling such institutions to take into consideration the economic value of an award when underwriting a transaction; and (2) reduce paperwork burdens for those insured depository institutions that are not deemed competitive by relieving such institutions of the burden of having to submit a final report at the end of the assessment period. As part of this change, the Fund would utilize a competitive evaluation and selection process.

The Fund intends to provide the public with meaningful participation in improving the efficacy of the BEA Program by obtaining facts and information from the public prior to making any regulatory changes. The Fund intends to accomplish this by convening four regional information gathering sessions in the month of June that are open to the public. The Fund will consider the facts and information from such public meetings in deciding whether to revise the BEA Program regulations.

Authority: 12 U.S.C. 4703; 12 U.S.C. 4713; 12 U.S.C. 1834a; and E.O. 12866, § 6(a).

Dated: June 1, 2000.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 00–14308 Filed 6–6–00; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0219]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of

Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed Reinstatement, with change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to adjudicate and pay healthcare benefit claims.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 7, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0219'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or Fax (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. Application for CHAMPVA Benefits, VA Form 10–10D.

b. CHAMPVA Claim Form, VA Form 10–7959A.

c. CHAMPVA—Other Health Insurance (OHI) Certification, VA Form 10–7959C.

d. CHAMPVA Potential Liability Claim, VA Form 10–7959D.

e. VA Spina Bifida Healthcare Benefits, Claim for Miscellaneous Expenses, VA Form 10–7959E.

OMB Control Number: 2900–0219.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The following forms are used by Civilian Health and Medical Program-VA (CHAMPVA) and spina bifida claimants to claim reimbursement for medical care and by VA to determine eligibility, process claims, detect fraud and recover costs from third parties.

a. VA Form 10–10D is used to determine eligibility of persons applying for healthcare benefits under the CHAMPVA program.

b. VA Form 10–7959A is used to adjudicate claims for CHAMPVA benefits.

c. VA Form 10–7959C is used to systematically obtain Other Health Insurance information and to correctly coordinate benefits among all liable parties.

d. VA Form 10–7959D is used to recover costs associated with healthcare services related to injury or illness caused by a third party.

e. VA Form 10–7959E is used by VA Spina Bifida Healthcare beneficiaries to claim payment or reimbursement for healthcare services and related travel expenses.

Affected Public: Individuals or Households, Business or Other for-Profit.

Estimated Annual Burden: 60,467 hours.

a. VA Form 10–10D—1,500 hours.
b. VA Form 10–7959A—50,000 hours.
c. VA Form 10–7959C—6,200 hours.
d. VA Form 10–7959D—1,167 hours.
e. VA Form 10–7959E—1,600 hours.

Estimated Average Burden Per Respondent

a. VA Form 10–10D—10 minutes.
b. VA Form 10–7959A—10 minutes.
c. VA Form 10–7959C—6 minutes.
d. VA Form 10–7959D—7 minutes.
e. VA Form 10–7959E—4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 405,000.

a. VA Form 10–10D—9,000.
b. VA Form 10–7959A—300,000.
c. VA Form 10–7959C—62,000.
d. VA Form 10–7959D—10,000.
e. VA Form 10–7959E—24,000.

Dated: May 11, 2000.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–14265 Filed 6–6–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

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 July 7, 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. 2900–0098.''

SUPPLEMENTARY INFORMATION:

Title: Application for Survivors' and Dependents' Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5490 serves as an application for Dependents' Educational Assistance (DEA). Spouses, surviving spouses, and children of veterans must submit evidence to establish eligibility and entitlement to DEA under Title 38, U.S.C., 3513. VA uses the information to determine if an individual claimant qualifies for DEA 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 March 9, 2000 at page 12627.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,050 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once—Initial Application.

Estimated Number of Respondents: 20,100.

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. 2900–0098'' in any correspondence.

Dated: May 18, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–14264 Filed 6–6–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 65, No. 110

Wednesday, June 7, 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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42758; File No. SR-NYSE-99-48]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Change To Rescind Exchange Rule 390

May 5, 2000.

Correction

In notice document 00–11682 beginning on page 30175 in the issue of Wednesday, May 10, 2000, make the following correction:

On page 30175, in the second column, after the heading, the date is added to read as set forth above.

[FR Doc. C0–11682 Filed 6–6–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Asthma Disease Management, Inc.; Order of Suspension of Trading

May 8, 2000.

Correction

In notice document 00–11798 appearing on page 30154 in the issue of Wednesday, May 10, 2000 make the following correction:

In the third column, after the heading, the date is added to read as set forth above.

[FR Doc. C0–11798 Filed 6–6–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42760; File No. SR-NASD-99-26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Denial of Access Procedures

May 5, 2000.

Correction

In notice document 00–11807 beginning on page 30460 in the issue of Thursday, May 11, 2000, make the following correction:

On page 30460, in the third column, after the heading, the date is added to read as set forth above.

[FR Doc. C0–11807 Filed 6–6–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 7, 2000

Part II

Department of Justice

Antitrust Division

United States v. Allied Waste Industries, et al.; Response to Public Comments on Antitrust Consent Decree and Joint Motion for Entry of a Modified Final Judgment; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 99–1962]

United States v. Allied Waste Industries, et al.; Response to Public Comments on Antitrust Consent Decree and Joint Motion for Entry of a Modified Judgment

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that on May 10, 2000, the United States filed its responses to public comments on the proposed Final Judgment in *United States* v. *Allied Waste Industries, Inc., et al.* (''Allied''), Civil No. 99–1962 (D.D.C. filed July 20, 1999), with the United States District Court in Washington, DC.

On July 20, 1999, the United States filed a civil antitrust complaint, which alleged that the proposed acquisition by Allied of Browning-Ferris Industries, Inc. (''BFI'') would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal services, or both, in a number of markets around the country, including the greater Chicago metropolitan market.

The proposed Final Judgment, filed on July 20, 1999, requires Allied and BFI to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Complaint. This includes the divestiture of commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry and Lake counties, IL. These routes included municipal franchise waste business. Because of comments received objecting to the divestiture of the municipal franchises, the United States determined and Allied agreed that instead of the municipal franchise contract work being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed Final Judgment. These additional assets consist of residential and rolloff waste hauling business in the greater Chicago metropolitan market. A modified version of the proposed Judgment (Modified Final Judgment), filed on May 11, 2000, permits Allied to retain the municipal franchise business and to divest instead the residential and rolloff waste hauling business.

Public comment on the proposed Judgment was invited within the statutory 60-day comment period. The public comments and the United States responses thereto are hereby published in the **Federal Register** and have been filed with the Court. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, Competitive Impact Statement, the United States Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act (to which the public comments and the United States responses are attached), proposed Modified Final Judgment, and the Memorandum of the United States in Support of Entry of the Proposed Modified Final Judgment are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481), and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

Note: The letter dated October 5, 1999 from Peter Anderson of Recycle Worlds Consulting was not able to be published in the **Federal Register** but a copy can be obtained from the U.S. Department of Justice, Document Group, 325 7th Street, NW., Room 215, Washington, DC 20530 or you may call and request a copy at (202) 514–2481.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Peter Anderson,

Recycle Worlds, 4513 Vernon Blvd., Suite 15, Madison, WI 53705–4964.

Re Comment on Proposed Final Judgment in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Anderson: This letter responds to your letter of October 5, 1999 commenting on the Final Judgment in this case on behalf of Recycle Works. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you urged the United States not to approve any asset divestiture under the proposed Final Judgment to one of the major integrated waste collection and disposal firms. In your view, these firms may be more inclined to cooperate with the defendants in raising prices in some markets in order to avoid potential price wars with the defendants elsewhere. You state that selling the assets to a major integrated company could reduce competition and result in increased prices.

The United States could not categorically conclude that selling the assets required to be divested under the proposed Final Judgment to a large national waste collection and disposal firm would be less competitive than a sale to a municipal agency or small independent firm, or that large waste companies are more prone to collude, when given the opportunity, than small independent firms. Also, large waste collection and disposal companies may enjoy some competitive advantages, such as better access to capital and more extensive experience. These advantages would make them in some respects more formidable competitors than small independent firms.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

House of Representatives

Committee on the Judiciary

October 5, 1999.

J. Robert Kramer II, Esq.,

Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re United States v. Allied Waste Industries, No. 99 CV 01962.

Dear Mr. Kramer: On August 6, 1999, the Department of Justice published a Tunney Act notice of a proposed final judgment in the above referenced case. 64 Fed. Reg. 42962 (August 6, 1999). As required by the Act, the Department has invited public comment on the proposed final judgment.

I have received correspondence from the DuPage Mayors and Managers Conference, representing most of the local governments in my district, and the Village of Lisle requesting, certain changes to the proposed final judgment. A copy of this correspondence is attached for your review.

In essence, the Conference asks that the consent decree not require local governments to rebid their waste collection contracts in the middle of the contract terms. I understand that these contracts tend to run from three to six years and that the current contracts are generally viewed as advantageous to the communities. By allowing current contracts to run their term, local governments will receive substantial savings, and the potentially procompetitive benefits of the consent decree will be delayed for only a short period. This strikes me as a reasonable short term accommodation, and I recommend it to you.

I appreciate your attention to my views and those of the local governments in my district.

Please place this letter in whatever public files are appropriate under applicable law. Please feel free to contact me if I may be of further assistance.

Sincerely,

Henry J. Hyde,

Chairman.

cc: Mr. Ronald S. Ghilardi, DuPage Mayors and Managers Conference; Ms. Barbara J. Adamec, Village of Lisle.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Honorable Henry J. Hyde,
U.S. House of Representives, 2138 Rayburn Building, Washington, DC 20515–6216.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999)

Dear Congressman Hyde: This letter responds to your letter of October 5, 1999 commenting on the final Judgment in this case on behalf of the DuPage Mayors and Managers conference (''Conference'') and Village of Lisle. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you state that the Conference and the Village of Lisle express concern that the Final judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The communities believe that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

I have responded directly to the Conference and the Village of Lisle addressing their concerns. Copies of my responses are enclosed.

Thank you for bringing your concerns and theirs to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and those of the Conference and Village of Lisle, and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Robert Kramer II,

Chief, Litigation II Section.

DuPage Mayors and Managers Conference

September 22, 1999.

Anthony Harris,
Antitrust Division, U.S. Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, DC 20530.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 01962.

Dear Mr. Harris: The DuPage Mayors and Managers Conference, an association of the 35 municipalities located in DuPage County, Illinois, respectfully submits the following comments related to the proposed Final Judgment Order issued in United States v. Allied Waste Industries and Browning-Ferris Industries (BFI)

The proposed Final Judgment Order requires BFI to sell their small container commercial waste collection operations in several highly concentrated markets, including the Chicago region. BFI's divestiture of these operations will have the following adverse impacts on communities that have exclusive contracts with BFI for the provision of commercial and/or multi-family collection services;

(1) Since the proposed Final Judgment Order would allow BFI to maintain its hand pick-up collection services, it is likely that one company would be responsible for collecting small container solid waste from commercial and multi-family customers while BFI would still be responsible for the hand pick-up of recyclables from the same customers. This will undermine the policy decision made by many communities to have an exclusive contract with a single company to provide all waste collection services in the community.

(2) Many communities will have to re-bid their existing contracts to identify a new provider for small container commercial waste collection services.

The DuPage Mayors and Mangers Conference requests that the Department of Justice consider amending the proposed Final Judgment Order in a manner that would protect BFI's existing franchise agreements with units of local government.

The Conference supports consideration of the following suggestions previously submitted to the Department of Justice by the West Cook County Solid Waste Agency:

(1) Modify the definition of ''Collection of small container solid waste'' to exclude from the definition ''any collection of waste from customers that is being provided subject to the terms of a properly executed, legally binding contract or franchise agreement with a unit of local government,'' or

(2) Modify the proposed Final Judgment Order to limit the divestiture of commercial routes that ''serve any non-franchised or open competition ares.''

Implementing either of these two suggestions will avoid the adverse impacts to local governments that currently have franchise agreements with BFI, while also preserving the Department of Justice's goal of promoting competition in waste hauling services.

Sincerely,

Ronald S. Ghilardi,

President, DuPage Mayors and Managers Conference.

cc: House Speaker Dennis Hastert; U.S. Senator Dick Durbin; U.S. Senator Peter Fitzgerald; Congresswoman Judy Biggert; Congressman Henry J. Hyde.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Ronald S. Ghilardi,
DuPage Mayors and Managers Conference, 1220 Oak Brook Road, Oak Brook, IL 60523–2203.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Ghilardi: This letter responds to your letter of September 22, 1999 commenting on the Final Judgment in this case on behalf of DuPage Mayors and Managers Conference. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you expressed concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection

business between two firms—the purchaser who would have the franchise commercial waste business, and Allied, which would retain the residential and recycling collection services. The communities fear that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Natural Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts intially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Solid Waste Association of North America

October 5, 1999.

Mr. J. Robert Kramer II,

Chief, Litigation II Section, Anti Trust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Re Proposed Consent Decree in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 01962

Dear Mr. Kramer: With over 6,700 members, and 47 chapters in the U.S. and Canada, the Solid Waste Association of North America (SWANA) is the largest professional association in the solid waste management field. Our mission is to advance the practice of environmentally and economically sound municipal solid waste management. On behalf of SWANA, I am writing to offer comments regarding the draft Final Judgment order that has been filed with the U.S. District Court for the District of Columbia in the above referenced case.

SWANA supports, in principle, the proposed Final Judgment directive which requires Allied Waste Industries, Inc. (''Allied'') to divest itself of the Relevant Disposal Assets and Relevant Hauling Assets. One of SWANA's members, the West Cook County Solid Waste Agency (representing 36 local governments in Cook County, Illinois), has begun the process of pursuing its own interest in purchasing a portion of the Relevant Disposal Assets. The purchase of these assets by a unit of local government such as the Agency would enhance and foster competition in the marketplace. Yet the proposed timeline for the ordered divestitures in this case would make it virtually impossible for the Agency to successfully compete for this asset.

Requiring Allied to divest itself of these assets within 60 days after the approval of the Final Judgment by the Court creates an unfair and unreasonable bias towards large, highly liquid, waste hauling firms and denies smaller companies and local governments (either individually or in the form of a consortium) sufficient time to conduct proper due diligence and arrange for the necessary financing to be able to effectively bid on the available assets.

The proposed Final Judgment as drafted, would serve to exacerbate the decline in the number of local government agencies and independent solid waste companies that are able to compete in the marketplace. This would be especially true if, as according to recent press reports, Allied were to sell all assets in the Chicago area to only one entity. This would reduce competition to only three significant competitors—all of which would be vertically integrated and in a position to control pricing within the market. Such an event could create an anti-competitive market environment that could lead to increased prices that would clearly be harmful to municipalities and to the general business community.

Therefore, in order to ensure that all interested parties are provided a fair and equal opportunity to bid on one or more of the assets, SWANA strongly recommends that the proposed Final Judgment be modified to require Allied to take bids on the assets individually. Furthermore, SWANA recommends that the proposed Final Judgment be modified to require Allied to receive bids to acquire Relevant Disposal Assets and Relevant Hauling Assets for 180 days after the Final Judgment has been approved by the Court (rather than within a 60 day limit as specified in the proposed Final Judgment).

SWANA appreciates the opportunity provided by the Court to file these comments and looks forward to your favorable consideration of this request.

Sincerely,

John H. Skinner Ph.D.,

Executive Director and CEO.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

John H. Skinner,

SWANA, 1100 Wayne Avenue, Suite 700, Silver Spring, MD 20910.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Skinner: This letter responds to your letter of October 5, 1999 commenting on the Final Judgment in this case on behalf of SWANA. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you urged the United States not to approve any asset divestiture under the proposed Final Judgment to one of the major integrated waste collection and disposal firms. In your view, these firms may be more inclined to cooperate with the defendants in raising prices in some markets in order to avoid potential price wars with the defendants elsewhere. You state that selling the assets to a major integrated company could reduce competition and result in increased prices.

The United States could not categorically conclude that selling the assets required to be divested under the proposed Final Judgment to a large national waste collection and disposal firm would be less competitive than a sale to a municipal agency or small independent firm, or that large waste companies are more prone to collude, when given the opportunity, than small independent firms. Also, large waste collection and disposal companies may enjoy some competitive advantages, such as better access to capital and more extensive experience. These advantages would make them in some respects more formidable competitors than small independent firms.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Village of Lisle

August 24, 1999.

Anthony Harris,

Anti Trust Division, U.S. Department of Justice, 1401 H. Street, Northwest, Suite 3000, Washington, DC 20503.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 0192.

Dear Mr. Harris: I am writing to you on behalf of the Village of Lisle Mayor and Board of Trustees, with regard to the above captioned matter.

With a population of 21,000, the Village of Lisle, Lisle, Illinois, is considered small compared to neighboring municipalities in the Chicago region. However, we are well known in this region and other parts of the United States as a leader in developing user fee based programs designed to significantly reduce solid waste to be landfilled. The Village has spent many hours and dollars developing creative, innovative programs

based on sound economic theories. Our programs have greatly reduced the municipal solid waste stream in Lisle and, when other communities have copied our programs, those communities have experienced similar starting results.

To demonstrate a few of the many ways we have impacted solid waste programs across the nation, please note the following accomplishments:

1. Signed the first user-fee based, comprehensive solid waste program for refuse, recyclable and yard waste in the State of Illinois. Developed the program in 1989 and implemented it in 1990. Subsequently, the majority of communities in northern Illinois have adopted similar plans with great results. The success in Illinois was parroted in neighboring states and as word spread, our program was copied in states across the county. Attached please find a copy of an article published in Resource Recycling magazine shortly after our program in Lisle began. We handled hundreds of calls from people requesting information on the program and, in fact, received requests for information from as far away as Great Britain and Brazil.

2. Lisle is unique in that over 53% of the living units in the Village are multi-family residences. Once the single family program was up and running smoothly, we developed a pilot multi-family recycling program and experimented with ways to encourage waste reduction through on-site recycling centers. After analyzing the results of our experiments, we developed a comprehensive; user fee based system for all of the multi-family units in Lisle, meaning townhouses, coach homes, apartments and condominiums. Typically these units have dumpsters (small containers) on the site for refuse disposal along with mini-recycling centers for recyclable. *One waste hauler collects both materials from the property* As you can see from the attached brochure, the program has been extremely successful.

The proposed Final Judgment Order, which requires BFI to sell for their small container commercial waste collection operations, would destroy our LEAP Multi-Family Program and would severely impact our LEAP Curbside Program. BFI currently holds an exclusive contract with the Village of Lisle to service all of our residential living units, both single-family and multi-family, and those services are intertwined. If BFI must diversify itself or just the container business, then our contract will be challenged.

The suggestion that we can re-bid the existing contract to identify a new provider will be a severe hardship for the Village of Lisle. We just spent several months this year completing a Request For Competitive Proposals For Solid Waste Services, which resulted in an exclusive contract with BFI effective June 1, 1999. Subsequently, we incurred the expense of mailings to our residents, the time taken to re-educate residents on changes to our programs, and the exposure to higher prices for services for our residents.

As far as competition is concerned, attached please find a copy of my analysis of the three proposals received. Note the wide gap in prices between the Waste Management and ARC bids. If the Village of Lisle's contract is voided, and BFI/Allied is removed from bidding process, it is very likely that Waste Management will submit similar prices or higher prices on dumpsters which would represent an increase over the current contract costs.

The proposed Final Judgment Order will have a negative impact on both of our programs and will probably increase costs to our residents because fewer vendors will be proposing/bidding on our contract. In past bidding sessions, Waste Management and BFI were the only bidders in close competition with respect to prices and equivalent services. With BFI out of the picture, the opportunity to secure the same or lower prices appears less likely.

With increased costs aside, the greatest loss of all will be the loss of a very innovative, comprehensive program for Lisle residents whereby the pickup of refuse, recyclables and yard waste are collected by one vendor in a smooth, seamless manner. This user fee based program has influenced solid waste programs across the country and the damage done to our program in Lisle will be a loss others communities as well because we will not be able to continue to fine tune and experiment with our program as designed.

Historically speaking, the waste industry has defined residential service as curbside service whereby residents place garbage in bags or cans at the curb. They also defined commercial service as service whereby refuse is placed in a dumpster. We decided to change the definition in 1993 to suit our own needs. Therefore, in Lisle we define residential service as service for our residents, to include all living units (single-family homes or multi-family homes). Commercial service is defined as non-residential service. Perhaps you should consider applying our definitions to the Final Judgment Order and force BFI/Allied to diversify their ''non-living unit'' accounts. Opening competition up in the commercial/business arena would allow small waste hauler to compete fairly, particularly considering the fact that most small waste haulers do not have the equipment and manpower needed to handle large-scale community programs.

To reduce municipal garbage, programs must offer recycling opportunities, and the convenience factor of both activities must be very high before people will participate. Thus, most municipal solid waste officials will tell you that refuse removal/collections and recycling programs should not be separated from each other, either by physical location or by different vendors. Programs that fall to address this ''marriage'' lack continuity and more often than not fall.

We would appreciate it if you would find way to protect our current franchise agreement with BFI so that our current single family and multi-family programs remain intact and the Village of Lisle can continue to develop additional methods to reduce the municipal solid waste stream.

Sincerely,

Village of Lisle,

Barbara J. Adamec,

Assistant Village Manager.

Enclosures:
LEAP Curbside Program brochure
LEAP Multi-Family Program brochure
Illinois Recycling Association newsletter—4–9–93
Analysis A—Overview Analysis of Solid Waste Services
Village of Lisle Mayor & Board of Trustees
Carl Doerr, Village Manager

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Barbara J. Adamec,
Assistant Village Manager, Village of Lisle, 1040 Burlington Avenue, Lisle, IL 60532–1898,

Re Comment on Proposed final Judgment in the (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., No. 99 CV 1962 (D.D.C. July 21, 1999).

Dear Ms. Adamec: This letter responds to your letter of August 24, 1999 commenting on the Final Judgment in this case on behalf of the Village of Lisle. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, is approved by the Court, would establish one of more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of the BFI's small container commercial waste business, may interfere with BFI's existing government franchise contract which also includes the disposal of the village's residential waste. The Village of Lisle fears that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. You believe that this will result in the purchases providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved

by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Department of the Navy

September 17, 2000.

Mr. J. Robert Kramer II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Dear Mr. Kramer: I am forwarding information for your consideration in making a Final Judgment regarding the merger between Allied Waste Industries (Allied) and Browning Ferris Industries (BFI). The Department of the Navy contracts for the collection and disposal of residential and commercial solid waste generated at the Naval Training Center, Great Lakes, Illinois. This installation has a population of some 40,000 sailors, families and civilian employees. Current solid waste services are provided by BFI under two separate contracts.

The proposed Final Judgment requires that BFI divest the Zion landfill, commercial waste collection routes within Lake County, and transfer stations in Northern Cook County. Historically, the Navy has received only two competitive proposals for our waste service at this location—Waste Management and BFI. I am concerned that divesting the transfer and commercial collection routes from the Zion landfill operations will significantly reduce the competitive position of one of only two regional service providers. This concern could result in increased cost and decreased service quality due to a lack of competition.

Your consideration of this information in making a Final Judgment is appreciated. For further information, contact Mr. Mark Schultz, Environmental Director at (847) 688–5999, extension 40.

Sincerely,

E.J. Katzwinkel,

Captain, Civil Engineer Corps, U.S. Navy, Commanding Officer, Navy Public Works Center and Engineering Field Activity, Midwest.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

E.J. Katzwinkel,

Captain, Civil Engineer Corps, U.S. Navy, Navy Public Works Center, Bldg. 1–A, 201 Decatur Avenue, Great Lakes, IL 60088–5600.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., No. CV 1962 (D.D.C., July 21, 1999)

Dear Captain Katzwinkel: This letter responds to your letter of September 17, 1999 commenting on the Final Judgment in this case on behalf of the Department of the Navy. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contract which also includes the disposal of the Great Lakes residential waste. You fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. You believe that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down the streets of Great Lakes.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

City of Naperville

September 15, 1999.

Mr. J. Robert Kramer II,

Chief Litigation II Section, Anti-Trust Division, United States Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, DC 20530.

Regarding United States vs. Allied Waste Industries, Inc. and Browning-Ferris Industries Inc.; Case 199 CV 01962.

Dear Mr. Kramer: The City of Naperville, as one of the largest municipalities in Illinois, contracts for waste services for the majority of our 125,000 residents. We competitively bid our refuse and landscaping service contract in 1998 and awarded a five-year contract to Browning-Ferris Industries, Inc. (also known as BFI.) In reviewing the proposed final judgment, we are concerned that the proposed final judgment in the antitrust action against BFI will have an adverse impact on the City's five-year contract with BFI. The City is also concerned that if BFI is unable to find a successor to parts of its Naperville contract under the specific terms and conditions of the contract, the City may be forced to re-bid all or portions of the City's largest monetary contract within an unacceptably short time frame of sixty days. I believe that the final judgment, if implemented as presented, will create serious problems for the City of Naperville.

The City has three specific concerns related to the final judgment:

1. The final judgment dictates that BFI must sell the only transfer station within DuPage County. Three years ago, the City considered siting a transfer station when the nearest landfill closed. We declined because industry experts assured us that private haulers would site transfer stations. BFI was the only company in the area that pursued this goal and it took them until a few months ago to open a transfer station. As part of our contract with BFI, we receive collection service at a guaranteed rate per ton utilizing this transfer station. We are concerned that the sale of BFI's transfer station and its possible unavailability for Naperville's solid waste, may result in longer driving distances and increased disposal costs. The City needs written assurance that any successor to Naperville's contract with BFI will be bound by the terms and conditions of the contract, particularly the cost of $34.75 per ton for the cost of landfill, incinerator, or transfer station tipping fees.

2. The proposed divestiture of all small container collection services may require the City to waive its no-subcontract provision of its contract with BFI to accommodate BFI's commitments contained within the final judgment. We believe that to bid small container collection service separately from the rest of our services in the future will work to our economic disadvantage. That yard waste is not included in the decision and is collected at several City sites in small containers further complicates this situation.

3. If successors to BFI's small container collection service will not be bound by the terms and conditions already present in our contract with BFI, the sixty-day divestiture time frame does not provide the City with adequate time to prepare, release and evaluate bids on the services voided by the final judgment.

Finally, as you determine the wisest course of action to ensure competitiveness throughout the United States, please consider that municipalities such as Naperville face the possibility of rebidding entire collection agreements. If Naperville's agreement with BFI is re-bid, the proposed final judgment may impair Allied/BFI's ability to compete, and we believe invalidate the Justice Department's goal by resulting in an environment where there is less competition than currently exists.

If you or your staff would like to discuss the issues raised in this letter further please contact Mr. David Barber, Director of Public Works, 630/420–6096.

Thank you for your consideration.

Sincerely,

A. George Pradel,

Mayor, City of Naperville.

cc: U.S. Senator Richard Durbin, Congressman William O. Lipinski, Congressman Rod Blagojevich, Congressman Danny Davis, Congresswoman Judy Biggert, Mr. Peter T. Burchard, City Manager, U.S. Senator Peter Fitzgerald, Congressman Luis Gutierrez, Congressman Henry Hyde, Congressman Dennis Hastert, City Council Members.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

A. George Pradel,

Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60566–7020.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Pradel: This letter responds to your letter of September 15, 1999 commenting on the Final Judgment in this case on behalf of the City of Naperville. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contract which also includes the disposal of the city's residential waste. The city fears that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The city believes that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Fulton County Board

September 14, 1999.

Mr. J. Robert Kramer II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20005.

Re Allied/BFI Consent Decree Case No. 1:99CV01962.

Dear Mr. Kramer: The purpose of this letter is provide comment on the proposed Consent Decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically, the County of Fulton objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Fulton County, Illinois.

In your analysis of the Chicago market, it is stated that Allied's divestiture of the Spoon Ridge Landfill would insure that the benefits of competition, lower prices and better service would be preserved. It is the opinion of the County of Fulton that the Spoon Ridge Landfill is not an important waste disposal operation for the Chicago market. Requiring the divestiture of the Spoon Ridge Landfill would eliminate an opportunity for Allied to send waste from New York City to Spoon Ridge Landfill as previously planned by BFI. As such, the divestiture removes an important potential economic development opportunity for the County of Fulton.

Spoon Ridge Landfill/BFI is the second largest tax payer in the County of Fulton. It has a current assessed valuation of $2,292,970.00. It pays and annual tax to the various taxing districts in the County of Fulton slightly in excess of $232,077.00.

It is the understanding of the County of Fulton that Spoon Ridge Landfill was designated as a primary landfill site for waste from the City of New York. Spoon Ridge Landfill has been closed for the approximate last year. The New York contract previously secured by BFI would have caused the reopening and continued operation of Spoon Ridge Landfill.

It is the understanding of the County of Fulton that Allied was to receive benefit of the New York contract and would have continued with the plan to dispose of the New York waste at the Spoon Ridge Landfill.

It is the Country's understanding that the Spoon Ridge Landfill is proposed to be conveyed to another landfill/waste disposal firm known as Republic. It is the understanding of the County that Republic, if it acquires this site, would have no immediate plans to reopen the facility and would not be accepting any waste from New York.

The Spoon Ridge Landfill has previously entered into an agreement with the County of Fulton for payments of certain sums to the County of Fulton as and for or in lieu of a solid waste tippage fees. The County of Fulton is required by state law to have a solid waste management plan and implement its terms. The agreement between Spoon Ridge Landfill and the County of Fulton has generated for the County of Fulton since April of 1995; $180,000.00 to implement such plan.

If the Spoon Ridge Landfill is required by the proposed Consent Decree to go to another landfill operator, such as Republic, there does not appear to be much of a likelihood that Spoon Ridge Landfill will open, operate, or generate funds for the County of Fulton to implement its Solid Waste Management Plan.

The County of Fulton would disagree with a premise upon which the proposed Consent Decree has been based. The City of Chicago is 200 miles or more away from the Spoon Ridge Landfill site in Fulton County, Illinois. There is no direct rail access from Chicago to Spoon Ridge Landfill. Further, there is no direct interstate highway from Chicago to Spoon Ridge Landfill.

As previously indicated in this letter, Spoon Ridge Landfill has been closed for the approximate last year or so, except for opening for a day or two during the summer of 1999 to accept waste. If this facility was part of the Chicago geographic area, it would seem that there would be a steady stream of waste coming from Chicago to this site in Fulton County. Real economic facts have made the transportation of waste from the Chicago market to the County of Fulton cost prohibitive.

The County of Fulton and a number of affected taxing districts will likely suffer

extreme if not devastating economic consequences if the proposed Consent Decree requires Allied to divest this property to a concern such as Republic. This landfill facility is the second largest tax payer in the County. If this facility is not reopened, certainly a fair argument could be made that its assessed valuation is over valued. If the assessment is reduced, the County of Fulton and a certain school district will see adverse financial consequences. Finally, if this facility can not have a ready stream of waste, then, the County of Fulton will be without sufficient funds to meet a state mandate requiring further implementation of a Solid Waste Management Plan.

It is respectfully requested that the Department of Justice reconsider and amend its Consent Decree with regard to the requirement that Allied divest itself of the Spoon Ridge Landfill. I remain.

Sincerely yours,

Mr. Bernard Oaks,

Chairman of the Fulton County Board.

cc: U.S. Senator Richard J. Durbin, U.S. Senator Peter G. Fitzgerald, Congressman Lane Evans, Governor George H. Ryan, State Senator George P. Shadid, State Representative Michael K. Smith, Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Bernard Oaks,

Chairman, Fulton County Board, Fulton County Courthouse, 100 North Main Street, Lewistown, IL 61542.

Re Comment on Proposed Final Judgment in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Oaks: This letter responds to your letter of September 14, 1999 commenting on the Final Judgment in this case on behalf of Fulton County. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibly to help alleviate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to compete for the contract to dispose of New York City's waste, and undermines the chances of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Spoon River Valley Schools

September 13, 1999.

Mr. J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20005.

In Re Allied/BFI Consent Decree Case No. 1.99CV01962.

Dear Mr. Kramer: The purpose of this letter is to provide comment on the proposed consent decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically the Spoon River Valley Community Unit School District No. 4 Board of Education wishes to comment on the requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Illinois.

Spoon River Valley CUSD No. 4 Overview

Spoon River Valley CUSD No. 4 is a rural school district comprised of 157 square miles in Fulton and Knox Counties. The school district serves the communities of Ellisville, Fairview, London Mills, Maquon, and Rapatee. The enrollment of the school district in grades K–12 as of August 31, 1999 was 429. The current equalized assessed valuation of the school district is $27,665,810. The current tax rate of $5.7774 generates $1,598,365 of local revenue for the school district. The total budgeted revenue for the school district is $3,717,512. Therefore, local property taxes represent 43% of the total budgeted revenue for the school district.

Spoon River Valley CUSD No. 4 Concerns

The current assessed valuation of the Spoon Ridge Landfill is approximately $2,000,000 or about 7.2% of the total assessed valuation of the school district. The landfill generates about $115,548 in property taxes for the district which is the equivalent of four (4) full-time teacher salaries. The Board of Education is naturally concerned with decisions related to Spoon Ridge Landfill that could have adverse consequences for the school district. We are concerned that the company that owns the landfill will have the necessary resources both in operating capital and viable disposal contracts to adequately maintain and operate the landfill so that it remains a major source of property tax income for the school district. The loss of this source of income would definitely have adverse affects upon the quality of education that we now provide to the students of the Spoon River Valley School District.

Summary

The Spoon River Valley CUSD No. 4 Board of Education respectfully requests that the Department of Justice re-examine its decision requiring that Allied divest itself of the Spoon Ridge Landfill. We ask that the Department re-evaluate its decision based upon what is best for the residents and students who would most closely be affected by this decision.

Sincerely,

David D. Smith,

President, Board of Education.

cc: U.S. Senator Richard J. Durbin, U.S. Senator Peter G. Fitzjerald, Congressman Lane Evans, Governor George H. Ryan, State Senator George P. Shadid, State Representative Michael K. Smith, Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

David D. Smith,

President, Board of Education, Spoon River Valley Schools, Community Unit Dist. No. 4, Rt. 1, London Mills, IL 61544.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Smith: This letter responds to your letter of September 13, 1999 commenting on the Final Judgment in this case on behalf of the Spoon River County

Schools. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities and the Spoon River Valley School District. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. This should ensure that the landfill remains a major source of property tax income for the school district. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

West Cook County Solid Waste Agency

August 13, 1999.

Mr. J. Robert Kramer II,
Chief, Litigation II Session, Anti Trust Division, U.S. Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, D.C. 20530.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 01962.

Dear Mr. Kramer: On behalf of the 36 local governments represented by the West Cook County Solid Waste Agency (Cook County, Illinois) (hereinafter, the ''Agency''). I am writing to offer our comments and objections regarding the draft Final Judgement order that has been filed with the U.S. District Court for the District of Columbia (''Court'') in the above referenced case.

The Agency strongly supports, in principle, the proposed Final Judgement directive which requires Allied Waste Industries, Inc. (''Allied'') to divest itself of the Relevant Disposal Assets and Relevant Assets. However, the Agency objects to the time line by which Allied must divest of the Relevant Disposal Assets and Relevant Hauling Assets. The Agency has begun the process of pursuing its own interest in purchasing a portion of the Relevant Disposal Assets—namely the Browning-Ferris Industries, Inc. (''BFI'') Melrose Park Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160 (''Melrose Park Facility''). The purchase of the Melrose Park Facility by a unit of local government such as the Agency would enhance and foster competition in the marketplace. Yet the proposed time line for the ordered divestitures in this case would make it virtually impossible for the Agency to successfully compete for this asset.

Requiring Allied to divest itself of these assets within 60 days after the approval of the Final Judgement by the Court creates an unfair and unreasonable bias towards large, highly liquid waste hauling firms and denies smaller companies (either individually or in the form of a consortium) and local governments sufficient time to conduct proper due diligence and arrange for the necessary financing to be able to effectively bid on the available assets. By denying small waste hauling companies and local governments fair access to the opportunity to bid on these assets, *the proposed Final Judgement itself serves to restrict and retard competition.* This is contrary to the intent and purpose of the proposed Final Judgement.

This bias is of great concern to the Agency given that competition in the solid waste services industry within the Agency's jurisdiction has been dramatically reduced in recent years as a result of previous consolidation efforts by Allied as well as Republic Services, Inc. (''Republic''). For example, whereas in 1997 there were eight non-vertically integrated solid waste companies serving the Agency's municipal/residential waste services needs, today there are only two such firms remaining.

By allowing the proposed Final Judgement to stand as drafted, the Court would serve to exacerbate this decline in the number of local, independent solid waste companies that are able to compete in the Agency's marketplace, thereby reducing competition to only three significant competitors—all of which would be vertically integrated and in a position to control pricing within the market. This would clearly by harmful to the Agency and its member local governments by creating an anti-competitive market environment. This, in turn, will increase costs to the Agency, its 36 member municipalities and to the general business community.

Consequently, the Agency respectfully recommends that the proposed Final Judgement be modified to allow Allied to divest itself of the Relevant Disposal Assets and Relevant Hauling Assets in the Chicago Metropolitan Area (collectively the ''Assets'') within 180 days after the Final Judgement has been approved by the Court (rather than the current 60-day limit as specified in the proposed Final Judgement). Furthermore, the Agency strongly recommends that the proposed Final Judgement be modified to *require* Allied to divest itself of the Assets individually rather than as a package in order to ensure that all interested parties are provided a fair and equal opportunity to bid on one or more of these assets.

Specific to this objection is the fact that Republic notified the Agency on August 4, 1999 (only 15 days after the proposed Final Judgement order was filed with the Court) of its intent to purchase the Melrose Park Facility as part of a larger acquisition of all the Assets from Allied pursuant to the proposed Final Judgement. The Agency strongly objects to the sale of all of the Assets to Republic for all of the reasons stated above. In addition, the Agency objects to the fact that Republic has reportedly executed a definitive letter of intent to purchase the Assets, including the Melrose Park Facility, within days after the proposed Final Judgement was filed with the Court. *This has not allowed the Agency* (or any other prospective purchaser) *sufficient time to pursue its interest in bidding for the Melrose Park Facility.* Given that the Agency, as a statutory unit of local government in Illinois, must follow a strict set of procedures which are designed to protect the public interest when attempting to purchase fixed assets such as the Melrose Park Facility, and given that the Agency must follow strict procedures in order to secure public debt, it is not fair or reasonable, nor is it in the best interest of the public, for the Court to allow Republic to purchase the Melrose Park Facility in such a hurried and non-competitive manner.

Therefore, the Agency respectfully requests that the United States exercise its authority as provided for in Article IV. Section A. of the Final Judgement order and withhold its approval of the sale of the Assets (particularly the Melrose Park Facility) to Republic for at least 180 days after the Final Judgement has been approved by the Court. This would allow the Agency and any other interested parties sufficient time to complete their due diligence process and secure the necessary financial commitments to fairly and equitably bid on any or all of the Assets.

The Agency's third point of comment and objection to the proposed Final Judgement is specific to the definition in Article II. Section H., ''Collection of small container solid waste.'' In the context of the use of this phrase in the proposed Final Judgement, the definition would serve to force Allied to

divest itself of a subset of customers from which it is now obligated to collect waste. This subset of customers is part of a larger group of customers serviced in accordance with legally binding contracts between BFI/Allied and nine municipalities within the Agency's jurisdiction. This issue is also relevant to and will affect dozens of other municipalities throughout the Chicago Metropolitan Area.

In addition, since this part of the Final Judgement, as drafted, only applies to municipal solid waste, the order would have the effect of causing one company to be responsible for collecting waste from the affected customers who are served by the exclusive municipal contract, while Allied would still be responsible for collecting recyclable from those same customers! As a practical matter, this part of the order will force each municipality to void its current valid and binding refuse and recycling collection contract and rebid the very same contract or issue two contracts—one for the collection of small container solid waste only, and one for hand pick-up waste collection services and all recycling services. Philosophically, then, *the Final Judgement would undermine and interfere with local government's authority to determine the most appropriate way to protect the health, safety and welfare of its community.*

This part of the proposed order would not serve to enhance competition within the affected communities, but rather would cause serious disruption to the municipalities' traditional cost-effective methods of competitively procuring waste collection services for their communities. Furthermore, it would unnecessarily and unduly burden the affected communities by interfering with their existing contracts and forcing them to rewrite and rebid their contracts for solid waste services. *All of this would come at considerable expense to the communities.*

Therefore, the Agency respectfully requests that the Department of Justice recommend to the Court that the definition in Article II. Section H of the proposed Final Judgement to modified to exclude from the definition ''any collection of waste from customers that is being provided subject to the terms of a properly executed, legally binding contract or franchise agreement with a unit of local government.'' Alternatively, in keeping with the precedent set with respect to the City of Dallas and Dallas County, TX in Article II. Section D. Paragraph 5., the proposed Final Judgement could be modified universally to limit the divestiture of commercial routes, in all cases, to only those commercial routes that ''serve any nonfranchised or open competition areas.''

The Agency appreciates the opportunity provided by the Court to file these comments and objections. If appropriate, the Agency would be available to discuss these matters in more detail.

Sincerely yours,

Timothy R. Hansen,

Chair, West Cook County Solid Waste Agency, President, Village of LaGrange, IL.

cc: U.S. Senator Richard Durbin, U.S. Senator Peter Fitzgerald, Congressman William O. Lipinski, Congressman Luis Guiterrez, Congressman Rod Blagojevich, Congressman Henry Hyde, Congressman Danny Davis, David M. Foster, Esq. (for BFI) Tom D. Smith, Esq. (for Allied)

West Cook County Solid Waste Agency

December 9, 1999.

Mr. J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, DC 20530.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries Inc.—Case No. 1: 99 CV 01962.

Dear Mr. Kramer: The West Cook County Solid Waste Agency (Agency) is writing to respectfully request that the Agency be informed when Allied Waste Industries submits a potential buyer for approval by the Department of Justice, concerning the proposed divested assets located in or relevant to the Chicago metropolitan areas marketplace. These assets are:

BFI Orchard Hills landfill
BFI Zion landfill
BFI Spoon Ridge landfill
BFI Active transfer station
BFI Brooks transfer station
BFI Rolling Meadows transfer station
BFI Melrose Park transfer station
BFI DuKane transfer station
All BFI small container commercial collection routes in Cook, Lake, DuPage McHenry and Will countries, Illinois

As you may recall, the Agency previously submitted comments concerning the proposed Final Judgement of August 13, 1999. Since this time, the proposed sale of the above assets to Republic Services Inc. has been terminated and through press accounts, another sale to Superior Waste Services has been announced. However, the details of the proposed sale to Superior were not disclosed—namely which assets in the Chicago metropolitan area are included or excluded.

In order for the Agency to provide comments to the Department of the potential impact on the solid waste market place that a potential sale would have, the details of the proposed sale or sales of these assets needs to be known. Therefore, the Agency respectfully requests that the Department inform the Agency of all pending sales of the before mentioned assets prior to the Department granting approval of these sales.

Sincerely,

Allen P. Bonini,

Solid Waste Director.

U.S. Department of Justice

Antitrust Division

May 10,2000.

Timothy R. Hansen,

Chair, West Cook County Solid Waste Agency, President, Village of LaGrange, IL, 1127 S. Mannheim Road, Suite 102, Westchester, IL 60154–2551.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Hansen: This letter responds to your letter of August 13, 1999 and Allen P. Bonini's letter of December 9, 1999, commenting on the Final Judgment in this case on behalf of the West Cook County Solid Waste Agency (''Agency''). The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in the federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchase who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The communities fear that this will result in the purchase providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Mr. Bonini requests that the Agency be informed of all pending sales of the assets to be divested pursuant to the proposed Final Judgment. These assets include the three BFI landfills; five BFI transfer stations; an the BFI small container commercial routes in Cook, Lake, DuPage, McHenry and Will Counties, Illinois. He states that the Agency would evaluate the potential impact the sales may have on its solid waste marketplace.

Under the terms of the Final Judgment, the defendants must sell all of the relevant disposal and hauling assets described in the Final Judgment to a purchaser or purchasers

acceptable to the United States, in its sole discretion. In approving a purchase, we always consider the competitive impact in the local market of that purchaser's acquisition of the hauling or disposal assets.

The Orchard Hills and Zion landfills have been acquired by Superior Services, Inc. a purchaser approved by the United States. Superior has no current hauling or disposal operations in the greater Chicago metropolitan market. Groot Industries is a potential purchaser of the Spoon Ridge landfill and is in the process of conducting a due diligence evaluation. The five transfer stations have also been divested with the approval of the United States—Superior has acquired four of the transfer stations, and Groot Industries has acquired one.

The BFI small container commercial routes in the five counties have been divested to Superior except for the municipal franchise contracts. These will be retained Allied if the court approves a modification to the Final Judgment. The United States and Allied have field a motion to have the court modify the Final Judgment to permit Allied to retain the franchise work which initially had to be divested.

Thank you for bringing your concerns to our attention and thank Mr. Bonini for bringing his concerns to our attention. We hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C.16(d), a copy of your comments and Mr. Bonini's comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Solid Waste Agency of Northern Cook County

September 2, 1999.

Mr. J. Robert Kramer II, Esquire,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, Suite 3000, Washington, DC 20005.

Re Proposed Consent Decree in United States of America v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.

Dear Mr. Kramer: The Solid Waste Agency of Northern Cook County (SWANCC or the Agency) is a unit of local government formed in 1988 by 23 Illinois municipalities having a total population of 700,000. The Agency's role in solid waste management is to provide for the efficient and environmentally sound disposal of waste generated by residences and businesses within its member municipalities.

SWANCC member municipalities collect residential waste themselves or by contracting with private entities. Most of that residential waste passes through a SWANCC-owned transfer station, managed by a private contractor, that processes over 250,000 tons of residential waste annually. That waste is disposed of in a private sector landfill.

The concerns expressed in this letter relate to the commercial and business waste stream. We estimate that the commercial and business sector in the Agency's territory—in which over 500,000 persons are employed—generates over 600,000 tons of waste annually. Currently a number of private entities compete for the collection and hauling of commercial and business waste in the SWANCC territory. An ever decreasing number of transfer and disposal locations process that waste.

The Agency is greatly concerned about the impact of the proposed consent decree (at least as Allied-BFI currently plan to satisfy it) on the commercial hauling and transfer services offered to the businesses located in our territory. For the reasons described more fully below, we ask that the proposed consent decree be modified (1) to prohibit the sale of the BFI transfer stations and landfill assets to any entity that currently operates a trnasfer station or landfill in northern Cook or Lake Counties and (2) to permit BFI, or its successor in the merger, to continue to provide small container commercial collection service when it does so as part of a franchise or contract for residential waste collection.

I. The Proposed Sale of Transfer Stations and Landfill Assets to Republic Services Would Reduce Competition and Likely Lead to Higher Prices

Unless there is competition in hauling, transfer and disposal services offered to our members and to businesses in the Agency's territory, the Agency's interests in a cost effective system will not be met, and residents and businesses will pay unnecessary amounts for this essential service.

In 1988 twelve private sector firms provided hauling, transfer and disposal services in the area; after entry of the proposed order, it will be four. The consolidation trend over the last decade has seen all but one of the independent operators in the area acquired by national firms. The proposed merger involves the joinder of two national firms. The divestiture that the combined Allied-BFI proposes to make to satisfy the consent decree merely would move some of the assets from one large national firm in the area to another.

Specifically, in metropolitan Chicago, the proposed consent decree currently would require that the following divestitures take place:

—BFI Zion landfill, Zion, Illinois
—BFI Active transfer station, Evanston, Illinois
—BFI Brooks transfer station, Northbrook, Illinois
—BFI Rolling Meadows transfer station, Rolling Meadows, IL
—BFI Melrose Park transfer station, Melrose Park, Illinois
—BFI DuKane transfer station, West Chicago, Illinois
—All BFI small container commercial collection routes in Cook, Lake, DuPage, McHenry, and Will counties, Illinois.

These proposed divestitures involve significant assets. Depending on the identity of the purchaser, they could increase competition in the solid waste collection and disposal markets in the Chicago metropolitan area. On the other hand, the sale of a portion of these assets to an existing competitor in the market place could further reduce competition in the solid waste collection and disposal market.

According to press accounts, Allied has entered into an agreement to sell the to-be-divested assets to Republic Services Inc. (''Republic''). If the BFI Active transfer station in Evanston, Illinois, the BFI Brooks transfer station in Northbrook, Illinois the BFI Rolling Meadows transfer station in Rolling Meadows, Illinois and the BFI Zion landfill in Zion, Illinois are sold to a single company like Republic that already operates in northern Chicago metropolitan area will be negatively impacted through the loss of one significant competitor. The only other remaining major competitor in northern Cook and Lake Counties would be Waste Management Inc., with Groot Industries existing as a minor nonintegrated (no landfill ownership) competitor.

Focusing on the prospective reduction in the number of competing transfer stations in the SWANCC territory illustrates the problems that are likely to result if Republic buys the disposal assets described above. The heavy congestion in the Chicago metropolitan area (specifically including northern Cook County) reduces to about 10–15 miles (for FEL trucks) and 8–10 miles (for roll-off trucks) the distance that a commercial waste collection firm can travel economically to a transfer station. Indeed, BFI's own transfer station development over the past two years demonstrates the limited economic travel distance for REL and FEL trucks. The three facilities that BFI developed were the Rolling Meadows transfer station, Melrose Park transfer station and the DuKane transfer station. These facilities are all within 15 miles of each other (see attachment A) and demonstrate the reduced economic travel time in the Chicago metropolitan area.[1]

In the attached map (Attachment B), we have shown the locations and owners of the privately operated transfer stations and landfills in northern Cook and Lake Counties. As shown in Attachment A, if Republic is allowed to purchase all of the proposed divested Allied-BFI assets in northern Cook and Lake Counties, the number of significant competitors for the disposal of solid waste would be reduced from three to two; Groot Industries would remain a minor nonintegrated competitor.[2]

With the choices of realistic disposal options reduced from three to two significant competitors, price competition will be

[1] If transporting waste 50 miles was economical in the Chicago area (as the Department of Justice suggested generally in ¶ 37 of the Complaint) then BFI would have built one large transfer station instead of three to reduce capital costs. In fact, BFI's Melrose Park transfer station has the capacity to handle all of the waste transferred through the three facilities.

[2] In addition, the two nearest transfer stations available for use outside of northern Cook and Lake Counties would be the to-be-divested BFI DuKane and BFI Melrose transfer stations, which Republic also proposes to buy. The closest landfills would be the Waste Management Woodlands landfill in Kane County and the Waste Management Pheasant Run landfill in Kenosha County, Wisconsin. The nearest fully integrated competitor would be the Allied National Transfer Station located in the City of Chicago, over 22 miles away through heavy Chicago traffic.

reduced, and the firms that collect and haul commercial and business waste in the SWANCC territory will face the prospect of substantial price increases as a result. Significantly, the Complaint in this matter acknowledges that having only two significant competitors and one minor competitor would be unacceptable; see ¶ 50, complaining that ''In Chicago, the merger would reduce from four to three the number of significant competitors in the disposal of MSW * * *''

For the above reasons, the Agency respectfully requests that the divested assets located in northern Cook and Lake Counties not be sold to a company that already has a disposal presence, either a transfer station or landfill, in that area. Otherwise, the proposed divestiture is likely to have the perverse result of itself substantially reducing competition and increasing costs for business and commercial customers in northern Cook and Lake Counties.

II. The Proposed Divestiture of BFI's Small Container Commercial Collection Routes Would Disrupt Current Efficient Residential Waste Collection in Several Communities

A second and distinct problem would result from the provision in the proposed consent decree that would require Allied-BFI to divest all of BFI's small container commercial waste collection service in the Chicago metropolitan area. The DOJ defines this service in the Competitive Impact Statement as ''* * * the collection of MSW from commercial businesses such as offices and apartment buildings and retail establishments * * *''.

The divestiture of all of BFI's small container commercial collection routes would have significant impact on the current franchises and contracts of a number of municipalities in northern Cook County. All municipalities in northern Cook County have either franchises or contracts with a single hauler to collect residential waste—including, to varying degrees, waste from apartment buildings. BFI has four franchises or contracts with SWANCC municipalities pursuant to which BFI collects waste from apartment buildings as part of the arrangement.

Requiring the divestiture of small container commercial collection service that includes residential waste (i.e., from apartment buildings) that is collected as part of a franchise or contract for residential waste would be burdensome to the municipalities involved—for example, by increasing the number of solid waste collection vehicles in the community—and could increase costs due to the loss of route density. Further, it is likely that the relatively small amounts of apartment waste collected separately from other residential waste after the proposed divestitures would need to be combined for further disposal with waste from unknown sources from outside the municipality. That is likely to increase the costs of disposal and the potential environmental liability of these municipalities.

In addition, two BFI municipal franchises or contracts in northern Cook County provide for BFI to collect all residential *and* commercial waste in the jurisdiction. The inclusion of commercial waste as part of a residential contract provides benefits for those municipalities by lowering the cost of residential service and reducing the number of large solid waste vehicles in the community. These benefits are likely to be lost if the commercial component of the service is divested as proposed in the consent decree.

As a result, we respectfully request that small container commercial collection service that is part of a municipal franchise or contact in northern Cook County be excluded from the assets of Allied-BFI to be divested pursuant to the proposed consent decree.

The Agency appreciates the opportunity to provide these comments and would be pleased to provide any additional information that may be helpful.

Respectfully submitted,

C. Brooke Beal,

Executive Director.

Note: Attachments A & B of the letter dated September 2, 1999 from C. Brooke Beal, Executive Director of Solid Waste Agency of Northern Cook County was not able to be published in the **Federal Register** but a copy can be obtained from the U.S. Department of Justice, Document Group, 325 7th Street, NW., Room 215, Washington, DC 20530 or you may call and request a copy at (202) 514–2481.

Solid Waste Agency Of Northern Cook County

December 9, 1999.

Mr. J. Robert Kramer, III, Esquire,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1400 H Street, Suite 3000, Washington DC 20005.

Re Proposed Consent Decree in United States of America v. Allied Waster Industries, Inc. and Browning Ferris Industries, Inc.

Dear Mr. Kramer: The Solid Waste Agency of Northern Cook County (the Agency) is writing to request that the Agency be informed when Allied Waste Industries submits a potential buyer for approval concerning the proposed divested assets located in the Chicago metropolitan area. These assets are:

—BFI Orchard Hills landfill
—BFI Zion landfill
—BFI Active transfer station
—BFI Rolling Meadows transfer station
—BFI Melrose Park transfer station
—BFI DuKane transfer station
—All BFI small container commercial collection routes in Cook, Lake, DuPage, McHenry, and Will counties, Illinois.

As you already know, the Agency submitted previous comments concerning the proposed consent decree on September 2, 1999. Since this time, the proposed sale of the above assets to Republic Services, Inc. has been terminated and through press accounts, another sale to Superior Waste Services has been announced. Furthermore, the details of the proposed sale to Superior were not disclosed as to what assets in the Chicago metropolitan area are included or excluded.

In order for the Agency to provide comments to the Department on the potential impact, either negative or positive, on the solid waste market place that a potential sale would have, the details of the proposed sale or sales of these assets needs to be known.

In conclusion, we respectfully request that the Department inform the Agency of all pending sales of the before mentioned assets prior to the Department granting approval of these sales.

Sincerely,

C. Brooke Beal,

Executive Director.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

C. Brooke Beal,
Solid Waste Agency of Northern Cook County, 1616 East Gold Road, Des Plains, IL 60016.

Re Common on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999))

Dear Mr. Beal: This letter responds to your letters of September 2, 1999 and December 9, 1999, commenting on the Final Judgment in this case on behalf of Solid Waste Agency of Northern Cook County (''Agency''). The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, D.C., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your September 2nd letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The communities fear that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include

residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification of the proposed Final Judgment.

In your December 9th letter, you requested that the Agency be informed of all pending sales of the assets to be divested to the proposed Final Judgment. These assets include the two BFI landfills; five BFI transfer stations; and the BFI small container commercial routes in Cook, Lake, DuPage, McHenry and Will Counties, Illinois. You further state that the Agency would evaluate the potential impact the sales may have on its solid waste marketplace.

Under the terms of the Final Judgment, the defendants must sell all of the relevant disposal and hauling assets described in the Final Judgment to a purchaser or purchasers acceptable to the United States, in its sole discretion. In approving a purchase, we always consider the competitive impact in a local market of that purchaser's acquisition of the hauling or disposal assets.

The Orchard Hills and Zion landfills have been acquired by Superior Services, Inc. a purchaser approved by the United States. Superior has not current hauling or disposal operations in the greater Chicago metropolitan market. The five transfer stations have been divested with the approval of the United States—Superior has acquired four of the transfer stations; and Groot Industries has acquired one.

The BFI small container commercial routes in the five counties have been divested to Superior except for the municipal franchise contracts. These will be retained by Allied if the court approves a modification to the Final Judgment. The United States and Allied have filed a motion to have the court modify the Final Judgment to permit Allied to retain the franchise work which initially had to be divested.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Solid Waste Agency of Lake County, IL

September 1, 1999.

Mr. J. Robert Kramer II,

Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Dear Mr. Kramer: The Solid Waste Agency of Lake County (Agency) is a joint action municipal agency formed to manage solid waste in Lake County Illinois. The Agency is made up of 36 municipalities and Lake County. The Agency has contracts for waste disposal capacity in landfills owned by Browning Ferris Industries (BFI) and Waste Management. The landfills are located within Lake County and nearby in the state of Wisconsin. The Agency also works with its members to obtain solid waste collection services for residents and businesses. In the past, the Agency had contracts with BFI for recycling services provided to commercial accounts with the Village of Gurnee.

The Agency is located within one of the areas (Chicago) where it is alleged that the combination of BFI and Allied would lessen competition. Currently, BFI serves an estimated 42% of the residential population. Allied serves approximately 9% of the residential population. Waste Management and one independent private hauler serve the remaining residential population. It is my opinion that the commercial accounts in Lake County reflect a similar distribution of service.

The Agency reviewed the proposed Final Judgment regarding the merger between Allied Waste Industries (allied) and BFI. Within Lake County, the proposed final judgment will require BFI to divest the Zion Landfill and its commercial waste collection routes. In northern Cook County, BFI will divest transfer stations in Melrose Park, Rolling Meadows, Brooks-Northbrook and Active-Evanston. These transfer stations serve a portion of southern Lake County. Further, FBI will divest the DuKane transfer station in DuPage County which serves the Southwest portion of Lake County.

According to press reports and informal contacts between the Agency and BFI, these assets will be sold to Republic Waste Industries. As part of the sale, Allied will be allowed to use these divested facilities to dispose of waste for a period of two years. This agreement will enable Allied to maintain waste collection service to over 50% of Lake County residential customers. This represents a population of over 300,000 residents.

The divestiture brings to Lake County, a waste company with little operating experience in the County. It also places that company in a position to effectively replace the former Allied/BFI Company at the expiration of the two-year period. The newly merged Allied Company will be unable to retain its current level of service in Lake County without disposal and transfer assets. The economic conditions created by the Final Judgment will also affect the company's ability to add new customers because of the loss of these disposal assets. Allied will be required to develop new disposal assets in Lake County to remain competitive. A more likely scenario is that Allied will sell their remaining assets to Republic and cease competitive marketing in Lake County.

The realities of today's waste market lend itself to vertical integration of assets. Waste companies rely upon their assets to manage the waste collected. Optimization enables companies to deliver services at the lowest cost to the customer. A review of the waste disposal records, at the two landfills in Lake County, reveals little cross utilization of assets by competing companies. This means that companies ''drive by'' landfill sites owned by competitors to dispose of waste at their own disposal sites. Vehicles drive twenty to thirty additional roundtrip miles to use their facilities.

The Chicago market is unique to others within the U.S., because public participation in the market is facilitated through contractual arrangements solicited in a competitive bid process. Public entities, by in large, do not compete with the private sector for waste collection opportunities. Public entities cannot raise the capital necessary to develop, operate and maintain a waste collection system. Therefore, the industry consolidation represents a considerable threat to a competitive market. The new Allied Company will be unable to effectively participate in this process because of a lack of disposal/transfer capacity.

It is unfortunate that this Final Judgement requires the divesture of these assets by Allied. The Melrose Park, DuKane and Rolling Meadows transfer facilities were developed within the last two years. They represent, to BFI, the optimum collection and disposal configuration to serve their customer base. While Republic has control of these facilities, Lake County customers will lose a choice in waste collection service provided by the formerly independent BFI and Allied. The only other waste disposal or transfer site not controlled by Republic or Waste Management is located in Racine, Wisconsin, which is approximately 25 miles from Lake County. This facility cannot serve southern Lake County in any competitive situation without a transfer station asset located in either Lake or northern Cook Counties. The travel realities of the metropolitan Chicago area are that travel over 10 to 15 miles rarely can be achieved in an efficient manner.

It is noted that the Department of Justice (DOJ) took unusual pains to describe the impacts upon the commercial waste collection market. Yet, the DOJ gave little consideration to the residential collection routes which are serviced by essentially the same type of vehicles in terms of weight and size. The divestiture will inevitably result in these Allied assets being sold to Republic after the two year period. Municipalities, with contracts formerly with BFI or Allied, will be faced with renewing or extending those contracts or re-bidding those contracts in a competitive environment with one less competitor.

It is an unintended consequence that the Final Judgement will not foster a truly competitive environment. Allied must develop additional and controversial waste disposal assets within Lake County or northern Cook County. The cost of these new assets will be borne by Allied customers. The impact of the transfer vehicles and other assets will be borne by the host communities. As the Complaint for Injunctive Relief noted these facilities are expensive and difficult to site. Local public opposition can be strenuous and difficult to overcome.

It seems that a re-examination of the Final Judgement is needed to maintain a competitive environment. Allied should be able to maintain at least one or two of its transfer station assets to allow it to compete.

This will diminish the need to develop new transfer/disposal facilities and optimize its service to their customer base. Alternatively, the Final Judgement can be modified to require that Allied divest its Chicago assets to at least a third party (in addition to Republic) to foster competition. If the divestiture is maintained as proposed, Republic Waste Industries will effectively replace two solid waste companies. Therefore, the proposed settlement is not ''within the reaches of the public interest''.

This Agency will provide additional information upon request by the Department of Justice, Attached is a study of the divestiture, which was provided to the Agency Board of Directors on August 25, 1999.

Very truly yours,

Andrew H. Quigley,

Executive Director.

CC: Richard Durbin, U.S. Senator; Peter Fitzgerald, U.S. Senator; Philip Crane, U.S. Representative; John Porter, U.S. Representative; Henry Hyde, U.S. Representative; Dorothy R. Schofield, SWALCO Board Chairman, Lake Barrington; Marilyn Shineflug, SWALCO Executive Committee Chairman, Antioch; Bill Pailey, SWALCO Legislative Committee Chairman, Kildeer; Jim Labelle, Lake County Board Chairman; Larry Clark, SWALCO General Counsel.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Andrew H. Quigley,

Executive Director, Solid Waste Agency of Lake County, IL, 1300 N. Skokie Highway, Suite 103, Gurnee, IL 60031.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Quigley: This letter responds to your letter of September 1, 1999 commenting on the Final Judgment in this case on behalf of SWALCO. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the divestiture of the disposal assets in the greater Chicago metropolitan market required by the Final Judgment will lead to less competition. You state that the purchaser of these assets will not be competitive because of a lack of disposal assets—a landfill and/or a transfer station. You also express concern that municipalities, who have commercial franchise contracts with BFI or Allied will be placed in a less competitive environment if Allied is forced to divest these franchise contracts.

Divestiture of the landfills (Orchard Hills and Zion) that serve municipalities and customers in Lake County has been made to a purchaser approved by the United States—Superior Services Inc., a company with no current hauling or disposal operations in the greater Chicago metropolitan market. The five waste transfer stations have also been divested with the approval of the United States. Superior has acquired four of the transfer stations and Groot Industries has acquired one. The divestiture of these disposal assets should make the new purchasers major competitive forces in Lake County and the surrounding countries.

In light of the concern raised by you and others regarding the possible divestiture of municipal franchise contracts, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the propsoed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C.16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

House of Representatives

August 13, 1999.

Mr. J. Robert Kramer,

Antitrust Division, U.S. Department of Justice, 1401 H Street NW, Washington, DC 20005

Dear Mr. Kramer: I am writing on behalf of the Village of Fairview regarding the Department of Justice proposed rules that Allied Waste Industries must sell certain landfills in connection with its acquisition of Browning Ferris Industries (BFI). The Village of Fairview has expressed objections to the requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview.

Enclosed is a copy of a letter from the Village of Fairview regarding their concerns with the proposed Allied consent decree. I would appreciate the Department of Justice consideration and review of this issue.

Thank you for your assistance and attention to this matter.

Sincerely,

Lane Evans,

Member of Congress.

Enclosures.

Village of Fairview

August 9, 1999.

Mr. J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20005.

In re Allied/BFI Consent Decree, Case No. 1.99CV01962.

Dear Mr. Kramer: The purpose of this letter is to provide comment on the proposed consent decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically, the Village of Fairview strenuously objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Illinois.

In your analysis of the Chicago market, it is stated that Allied's divestiture of the Spoon Ridge Landfill would insure that the benefits of competition, lower prices and better service would be preserved. It is the opinion of the Village of Fairview that the Spoon Ridge Landfill is not an important waste disposal operation for the Chicago market. Requiring the divesture removes an important potential economic development opportunity for the Village of Fairview.

Fairview and Fulton County Overview

The Village of Fairview is a small west central Illinois community located in Fulton County, nearly 200 miles from Chicago. Fairview has a population of approximately 500 people.

At the turn of this century, Fulton County was a prosperous, dynamic area. Agriculture was productive and viable. A large number of underground coal mines were attracting immigrant to the area, increasing the population and wealth of Fulton County. International Harvester Company was growing in Canton, the largest city in the county.

A number of significant changes to the area occurred in the 1950's. Most were negative except for Caterpillar's expansion in Peoria, Illinois. The Mining operations changed from shaft to strip-mining. This mining method was much more efficient and used a much smaller work force. During this period, Caterpillar expanded in the Peoria area and many Fairview and Fulton County workers were able to secure work at Caterpillar. Through the 1960's and 1970's, about 2,500 people worked for International Harvester; about 1,000 people worked for several large strip mines in Fulton County; and about 1,700 people commuted to work for Caterpillar in Peoria.

The economic base of the area diminished in the period between 1980 and 1984. All of the large strip mines were closed. The International Harvester Plant in Canton closed in 1983. Caterpillar reduced employment by about 15,000 people in the 1980's. The net effect was that the number of Caterpillar employees in Fulton County

dropped from about 1,700 people to about 900 people. Consequently, there was a loss of over 4,000 well paid jobs in Fulton County in the 1980's.

The overall effect of these events was devastating to the area. The population declined, property values plummeted, young people moved away, and the Fairview and Fulton County area realized that the prosperity had ended.

Project Background

In 1989, Gallatin National Company received approval from the Village of the Fairview to site a landfill within the Village limits. A siting, or host community, agreement was signed which secured for the Village a tipping fee of $1.00 per ton of garbage disposed at the landfill. The landfill was sited on a 3,000 acre tract of derelict, unreclaimed strip-mine property which, at that time, generated a paltry $5,000.00 in property taxes. The landfill was permitted by the Illinois Environmental Protection Agency in 1991 and opened for business in May, 1993.

Gallatin planned to take advantage of the impending closure of Chicago area landfills and provide a large regional landfill for the Chicago market. This plan failed when some of the Chicago market landfills expanded, garbage volumes dropped due to recycling, and Gallatin had no market hauling presence. The failure to competitively transport waste from the Chicago market to Fairview led to the demise of Gallatin National Company and the sale of its landfill to BFI.

BFI purchased the landfill from Gallatin National Company in December, 1994. It was understood that BFI needed the landfill because its sole operating Chicago area landfill, Mallard Lake, was rapidly filling up. Further, BFI's two other Chicago market landfills located in Davis Junction and Zion were closed and having difficulty obtaining siting approval for expansion. The Spoon Ridge Landfill in Fairview was intended to be the long term Chicago market disposal site for BFI.

Chicago market changes occurred shortly after the purchase of the Spoon Ridge Landfill by BFI. It was determined that the Mallard Lake Landfill had more site life than previously predicted. Also, BFI's landfills located in Davis Junction and Zion both received expansion siting approval. Additionally, BFI's competitors obtained expansion siting approval for landfills close to the Chicago market. These changes resulted in a glut of landfill air space in the Chicago market and rendered Spoon Ridge Landfill unable to compete.

In June, 19998, BFI decided to close Spoon Ridge Landfill after reportedly losing millions of dollars and determining that the facility could not, at least in the short term, compete in the Chicago market.

New York City

In 1998, the Department of Sanitation of the City of New York solicited a request for proposals for the disposal of approximately 13,000 tons per day of residential garbage. This request for proposals was made pursuant to a court order to close the Fresh Kills Landfill in the borough of Staten Island in 2001. BFI responded to the request for proposals and named Spoon Ridge Landfill as one of the locations at which it would dispose of the New York waste. Included in the response to the request for proposals was an endorsement of the project by the Village of Fairview. A copy of the letter from the Village of Fairview to the New York Department of Sanitation supporting and endorsing the disposal of New York City waste at Spoon Ridge Landfill is attached.

The New York Department of Sanitation awarded BFI the opportunity to negotiate for the disposal of 3,900 tons per day of New York garbage. BFI hoped to secure a contract from the Department of Sanitation at the end of this year. As BFI further analyzed their New York proposal, they reported that the Spoon Ridge Landfill appeared to be the most efficient and logical location for the disposal of New York waste.

If New York waste were disposed at the Spoon Ridge Landfill, the economic benefits to the VIllage of Fairview and the surrounding area would be tremendous. The estimated host community tipping fees would be approximately $1,000,000.00 per year. Property taxes approaching $250,000.00 per year and approximately 40 good paying jobs would also be secured for the area. In order for Allied to executive the New York proposal which it inherited from BFI, Allied must retain ownership of Spoon Ridge Landfill.

Summary

The Village of Fairview strongly objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill. Two companies, Gallatin National and BFI, have failed to make the landfill competitive in the Chicago market. Therefore, Spoon Ridge Landfill should not be considered important in minimizing the Department of Justice anti-competitive concerns for the market.

The economic development opportunity for the Village of Fairview and surrounding area from the receipt of New York garbage at Spoon Ridge Landfill is staggering. With a population of just 500 in an economically depressed county, the millions of dollars in revenue realized from this project would provide a once in a lifetime financial boost to the area.

Therefore, it is respectfully requested that the Department of Justice reconsider and change its consent decree with regard to the requirement that Allied divest itself of the Spoon Ridge Landfill.

Sincerely,

Village of Fairview

Gerald R. Hilton,

President.

cc: U.S. Senator Richard J. Durbin; U.S. Senator Peter G. Fitzgerald; Congressman Lane Evans; Governor George H. Ryan; State Senator George P. Shadid; State Representative Michael K. Smith; Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Honorable Lane Evans,

U.S. House of Representatives, 2335 Rayburn Building, Washington, DC 20515–1317.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999)).

Dear Congressman Evans: This letter responds to your letter of August 13, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. You enclosed a letter from Gerald R. Hilton, president of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

I have responded directly to Mr. Hilton addressing his concerns. A copy of my response to Mr. Hilton is enclosed. Thank you for bringing the Village of Fairview's concerns to our attention. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and those of Mr. Hilton, and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Gerald R. Hilton,

President, Village of Fairview, P.O. Box 137, Fairview, IL 61432.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999)).

Dear Mr. Hilton: This letter responds to your letter of August 9, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for

effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of new York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibly to help alleviate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to complete for the contract to dispose of New York City's waste, and undermines the changes of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Village of Fairview

August 9, 1999.

Mr. J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20005.

In Re Allied/BFI Consent Decree Case No. 1.99CV01962

Dear Mr. Kramer: The purpose of this letter is to provide comment on the proposed consent decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically, the Village of Fairview strenuously objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Illinois.

In your analysis of the Chicago market, it is stated that Allied's divestiture of the Spoon Ridge Landfill would insure that the benefits of competition, lower prices and better service would be preserved. It is the opinion of the Village of Fairview that the Spoon Ridge Landfill is not an important waste disposal operation for the Chicago market. Requiring the divestiture of the Spoon Ridge Landfill will eliminate an opportunity for Allied to send waste from New York City to Spoon Ridge as planned by BFI. As such, the divestiture removes an important potential economic development opportunity for the Village of Fairview.

Fairview and Fulton County Overview

The Village of Fairview is a small west central Illinois community located in Fulton County, nearly 200 miles from Chicago. Fairview has a population of approximately 500 people.

At the turn of this century, Fulton County was a prosperous, dynamic area. Agriculture was productive and viable. A large number of underground coal mines were attracting immigrants to the area, increasing the population and wealth of Fulton County. International Harvester Company was growing in Canton, the largest city in the county.

A number of significant changes to the area occurred in the 1950's. Most were negative except for Caterpillar's expansion in Peoria, Illinois. The mining operations changed from shaft to strip-mining. This mining method was much more efficient and used a much smaller work force. During this period, Caterpillar expanded in the Peoria area and many Fairview and Fulton County workers were able to secure work at Caterpillar. Through the 1960's and 1970's, about 2,500 people worked for International Harvester; about 1,000 people worked for several large strip mines in Fulton County; and about 1,700 people commuted to work for Caterpillar in Peoria.

The economic base of the area diminished in the period between 1980 and 1984. All of the large strip mines were closed. The International Harvester Plant in Canton closed in 1983. Caterpillar reduced employment by about 15,000 people in the 1980's. The net effect was that the number of Caterpillar employees in Fulton County dropped from about 1,700 people to about 900 people. Consequently, there was a loss of over 4,000 well paid jobs in Fulton County in the 1980's.

The overall effect of these events was devastating to the area. The population declined, property values plummeted, young people moved away, and the Fairview and Fulton County area realized that the prosperity had ended.

Project Background

In 1989, Gallatin National Company received approval from the Village of Fairview to site a landfill within the Village limits. A siting, or host community, agreement was signed which secured for the Village a tipping fee of $1.00 per ton of garbage disposed at the landfill. The landfill was sited on a 3,000 acre tract of derelict, unreclaimed strip-mine property which, at that time, generated a paltry $5,000.00 in property taxes. The landfill was permitted by the Illinois Environmental Protection Agency in 1991 and opened for business in May, 1993.

Gallatin planned to take advantage of the impending closure of Chicago area landfills and provide a large regional landfill for the Chicago market. This plan failed when some of the Chicago market landfills expanded, garbage volumes dropped due to recycling, and Gallatin had no market hauling presence. The failure to competitively transport waste from the Chicago market to Fairview led to the demise of Gallatin National Company and the sale of its landfill to BFI.

BFI purchased the landfill from Gallatin National Company in December, 1994. It was understood that BFI needed the landfill because its sole operating Chicago area landfill, Mallard Lake, was rapidly filling up. Further, BFI's two other Chicago market landfills located in Davis Junction and Zion were closed and having difficulty obtaining siting approval for expansion. The Spoon Ridge Landfill in Fairview was intended to be the long term Chicago market disposal site for BFI.

Chicago market changes occurred shortly after the purchase of the Spoon Ridge Landfill by BFI. It was determined that the Mallard Lake Landfill had more site life than previously predicted. Also, BFI's landfills located in Davis Junction and Zion both received expansion siting approval. Additionally, BFI's competitors obtained expansion siting approval for landfills close to the Chicago market. These changes resulted in a glut of landfill air space in the Chicago market and rendered Spoon Ridge Landfill unable to compete.

In June, 1998, BFI decided to close Spoon Ridge Landfill after reportedly losing millions of dollars and determining that the facility could not, at least in the short term, compete in the Chicago market.

New York City

In 1998, the Department of Sanitation of the City of New York solicited a request for proposals for the disposal of approximately 13,000 tons per day of residential garbage. This request for proposals was made pursuant to a court order to close the Fresh Kills Landfill in the borough of Staten Island in 2001. BFI responded to the request for proposals and named Spoon Ridge Landfill as one of the locations at which it would dispose of the New York waste. Included in the response to the request for proposals was an endorsement of the project by the Village of Fairview. A copy of the letter from the Village of Fairview to the New York Department of Sanitation supporting and endorsing the disposal of New York City waste at Spoon Ridge Landfill is attached.

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New York proposal, they reported that the Spoon Ridge Landfill appeared to be the most efficient and logical location for the disposal of New York waste.

If New York waste were disposed at the Spoon Ridge Landfill, the economic benefits to the Village of Fairview and the surrounding area would be tremendous. The estimated host community tipping fees would be approximately $1,000,000.00 per year. Property taxes approaching $250,000.00 per year and approximately 40 good paying jobs would also be secured for the area. In order for Allied to execute the New York proposal which it inherited from BFI, Allied must retain ownership of Spoon Ridge Landfill.

Summary

The Village of Fairview strongly objects to the Department of Justice requirement that allied divest itself of the Spoon Ridge Landfill. Two companies, Gallatin National and BFI, have failed to make the landfill competitive in the Chicago market. Therefore, Spoon Ridge Landfill should not be considered important in minimizing the Department of Justice anti-competitive concerns for the market.

The economic development opportunity for the Village of Fairview and surrounding area from the receipt of New York garbage at Spoon Ridge Landfill is staggering. With a population of just 500 in an economically depressed county, the millions of dollars in revenue realized from this project would provide a once in a lifetime financial boost to the area.

Therefore, it is respectfully requested that the Department of Justice reconsider and change its consent decree with regard to the requirement that Allied divest itself of the Spoon Ridge Landfill.

Sincerely,

Village of Fairview,

Gerald R. Hilton,

President.

cc: U.S. Senator Richard J. Durbin, U.S. Senator Peter G. Fitzjerald, Congressman Lane Evans, Governor George H. Ryan, State Senator George P. Shadid, State Representative Michael K. Smith, Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Gerald R. Hilton,

President, Village of Fairview, P.O. Box 137, Fairview, IL 61432.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CA 1962 (D.D.C., July 21, 1999).,

Dear Mr. Hilton: This letter responds to your letter of August 9, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibily to help allievate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to compete for the contract to dispose of New York City's waste, and undermines the chances of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nealry 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Purusant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 169d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

United States Senate

October 22, 1999.

Mr. Joel Klein,

Assistant Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., #3109, Washington, DC 20530.

Dear Mr. Klein: Enclosed you will find a copy of a letter from a constituent who is concerned about an order issued by the Department of Justice that requires the sale of those Spoonridge landfill to Republic Waste. The order was issued in conjunction with the buyout of B.F.I. by Allied Waste.

Please provide an explanation of this decision to Mr. Taylor, and send a copy of your respond to David Lieber in my Washington office.

Thank you for your time and consideration.

Sincerely,

Richard J. Durbin,

United States Senator.

Barry Taylor

August 11, 1999.

Dear Sir: I am writing you in an effort to enlist your help in maintaining the financial stability of the village of Fariview Illinois. The United States Department of Justice has issued an order in the buyout of B.F.I. by Allied Waste which would require the sale of Spoonridge landfill to Republic Waste. They claim the retention of Spoonridge by Allied would create a monopoly situation in the Chicago market. This is not true, Spoonridge was originally built to service the Chicago metro area. But changes in the industry made this an unprofitable proposition.

B.F.I. then changed their strategy and decided to seek refuse from all over the country. This move was endorsed by both the village and county boards. As it began to look like the plan was working (B.F.I. hearing a contract with New York city) the sale took place and the justice department stepped in. It now appears Republic Waste will be purchasing Spoonridge. With Republic having ample landfill space in the Chicago market we believe Spoonridge will be indefinitely mothballed.

Fairview and B.F.I. had been participating in a public private partnership, which has been a great help to the village in providing needed services to the citizens. The fees paid by B.F.I have enabled the village to install a new water system. This was made necessary because the E.P.A. had determined our water to be unfit to drink. If the landfill is mothballed and the revenues to the village are lost it will cause a severe budge crisis.

We are against monopolies and the high prices they cause. But we feel that the Department of Justice has not gotten the correct picture in this case. If the order stands we feel the only ones to suffer will be the citizens of he Fairview area. The loss of the landfill revenue and the possible reduction in property taxes will endanger the village, school system and the other taxing bodies that depend on these funds. It is our hope that you will help persuade the Department of Justice to take a closer look at this situation. As a small village we are trying to provide quality of life without putting undo strain on the taxpayers. We hope you can help us achieve our goal.

Thank You,

Barry Taylor,

Fairview Village Trustee.

Barry Taylor

August 8, 1999.

Subject: J Robert Kramer re Allied/BFI consent decree.

Dear Sir: I am writing you to protest a ruling by your agency that was meant to prevent a monopoly from being formed in the Chicago area. As a small part of this order Allied is ordered to sell the Spoonridge landfill in Fairveiw Illinois. The result of this action will not effect the price of waste disposal in the Chicago area, but will instead devestate a small rural community in west central Illinois. The Spoonridge landfill was built to service the Chicago metro area, but this never became finacialy competitive. B.F.I. then changed their strategy to attract waste from other parts of the country. This move was endorsed by both the village and county boards. As this process was nearing completion with a contract from New York city we are derailed by a ruling from your agency. The sell of this facility to Republic Waste will, we fear this will leave the site mothballed and eliminate the finacial benefit to the villiage. These funds are being used to pay for a new water system for the villiage which was forced upon us by the E.P.A.

Your agency's ruling is going to force the village of Fairview into near bankruptcy, while in no way changing the balance of waste disposal in the Chicago area. I plead with you to have your people review and dig a little deeper into this issue, before they make the citizens of Fairview pay a high price for Spoonridge being lumped into the Chicago area without any basis in fact.

Thank You,

Barry Taylor,

Village Trustee, Fairview Il.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Barry Taylor,

Fairview Village Trustee, 580 Main Street, Box 261, Fairview, IL 61432..

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Taylor: This letter responds to your letters of August 8 and 11, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago are to make it viable. By closing the landfill. BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibly to help alleviate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to complete for the contract to dispose of New York City's waste, and undermines the chances of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit to landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

CC: Office of the Honorable Richard J. Durbin, ATTN.: David Lieber, United States Senate, 364 Russell Senate Office Building, Washington, DC 20510–1304.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

McHenry County Department of Planning and Development

December 14, 1999.

Mr. J. Robert Kramer, III, Esquire,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, Suite 3000, Washington, DC 20005.

Re Proposed Consent Decree in United States of America v. Allied Waste Industries, Inc. and Browning Ferris Industries, Inc. (Civil No. 1:99CVO1962).

Dear Mr. Kramer: We respectfully request that the Solid Waste Sector of the McHenry County Department of Planning & Development (Department) be informed of all pending sales of the following assets prior to your Division granting final approval of the sales. The details of the proposed sale or sales of these assets would be used by this Department to evaluate the potential impact the sales may have on our solid waste market place. If an impact has been determined, the Department would submit comments, either negative or positive, for your review prior to final approval. The assets of concern in the Chicago Metropolitan area are:

- Two (2) BFI Landfills;
- Five (5) Transfer Stations; and
- All BFI small container commercial collection routes in Cook, Lake, DuPage, McHenry, and Will counties, Illinois.

Thank you, in advance, for your assistance in this matter. I may be reached at (815) 334–4560 or by e-mail at Imbuckle@co.mchenry.il.us.

Sincerely,

Leonore Buckley,

CPG, Solid Waste Coordinator.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Leonore Buckley,

Solid Waste Coordinator, Department of Planning and Development, McHenry County Government Center, Annex Building A, 2200 North Seminary Avenue, Woodstock, IL 60098.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Ms. Buckley: This letter responds to your letter of December 14, 1999 commenting on the Final Judgment in this case on behalf of the Department of Planning and Development of McHenry County. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competition in this market for which relief was sought.

In your letter, you request that the Department of Planning and Development (''Department'') be informed of all pending sales of the assets to be divested pursuant to the proposed Final Judgment. These assets include the two BFI landfills; five BFI transfer stations; and the BFI small container commercial routes in Cook, Lake, DuPage, McHenry and Will Counties, Illinois. Your

further state that the Department would evaluate the potential impact the sales may have on its solid waste marketplace.

Under the terms of the Final Judgment, the defendants must sell all of the relevant disposal and hauling assets described in the Final Judgment to a purchaser or purchasers acceptable to the United States, in its sole discretion. In approving a purchase, we always consider the competitive impact in the local market of that purchaser's acquisition of the hauling or disposal assets.

The Orchard Hills and Zion landfills have been acquired by Superior Services, Inc. a purchaser approved by the United States. Superior has no current hauling or disposal operations in the greater Chicago metropolitan market. The five transfer stations have also been divested with the approval of the United States—Superior has acquired four of the transfer stations, and Groot Industries has acquired one.

The BFI small container commercial routes in the five counties have been divested to Superior except for the municipal franchise contracts. These will be retained by Allied if the court approves a modification to the Final Judgment. The United States and Allied have filed a motion to have the court modify the Final Judgment to permit Allied to retain the franchise work which initially had to be divested.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), as copy of your comments and this response will be published in the Federal Register and filed with the court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

[FR Doc. 00–13019 Filed 06–06–00; 8:45 am]

BILLING CODE 4410–11–M

Federal Register

Wednesday,
June 7, 2000

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 11 et al.
Type Certification Procedures for Changed Products; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, and 25

[Docket No. 28903; Amdt. No. 11–45, 21–77, 25–99]

RIN 2120–AF68

Type Certification Procedures for Changed Products

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document amends the procedural regulations for the certification of changes to type certificated products. These amendments affect changes accomplished through either an amended type certificate or a supplemental type certificate. The amendments are needed to address the trend toward fewer products that are of completely new design and more products with multiple changes to previously approved designs. This final rule action will enhance safety by applying the latest airworthiness standards, to the greatest extent practicable, for the certification of significant design changes of aircraft, aircraft engines, and propellers.

DATES: Effective June 7, 2000. Mandatory compliance dates are December 10, 2001 for transport category airplanes and restricted category airplanes that have been certified using transport category standards, and December 9, 2002 for all other category aircraft and engines and propellers. Comments on the information collection requirements and the Regulatory Evaluation section, which includes the regulatory flexibility analysis, must be submitted on or before August 7, 2000.

ADDRESSES: Comments for this final rule should be mailed or delivered, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 28903, Room 915G, 800 Independence Avenue, SW, Washington, DC 20591. Comments submitted must include the regulatory docket or amendment number. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed or examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Randall Petersen, Certification Procedures Branch (AIR–110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9583.

SUPPLEMENTARY INFORMATION:

Compliance Dates

This final rule requires that major changes to transport category airplanes and restricted category airplanes that have been certified using transport category standards, be evaluated under the new rules beginning 18 months from today's date of publication in the **Federal Register**. Major changes to all other category aircraft and engines and propellers are required to be evaluated under the new rules beginning 30 months from today's date of publication in the **Federal Register**.

Comments Invited

In the NPRM, the FAA certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA has revisited the question of the potential impact on small entities and has determined that an analysis under the Regulatory Flexibility Act of 1980, as amended, is required. This analysis and a complete analysis of potential costs and benefits are set out in the Regulatory Evaluation Summary portion of this preamble. As stated in this final rule document, the FAA determined that there could be a significant impact on a substantial number of small entities. Additionally, the cost analysis of the regulatory evaluation has undergone a substantial revision, and comments on the entire regulatory evaluation are requested.

Since this rule is being adopted without prior notice and prior public comment on the increased information collection requirements listed in the Paperwork Reduction Act section of this document, interested persons are also invited to submit such written data, views, or arguments, as they may desire, relating to the information collection requirements.

Pending the evaluation of the public comments, the FAA has decided to proceed with due diligence. This rule differs from the NPRM and has been revised to address the concerns of the majority of small entities likely to be affected by the rule. The FAA will consider and respond to comments on the Regulatory Flexibility Analysis and the information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 before the compliance dates published in this document.

The FAA will consider all comments received, and will publish in the **Federal Register** a summary of the disposition of those comments and, if appropriate, changes to the rule that may result from consideration of those comments.

Comments must include the regulatory docket or amendment number and must be submitted in triplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket and will be considered by the FAA. The docket is available for public inspection before and after the comment closing date.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. 28903.'' The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

An electronic copy of this final rule may be downloaded, by using a modem and suitable communications software, from: the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm, or the GPO's web page at http://www.access.gpo.gov/nara, for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to: FAA, Office of Rulemaking, Attention: ARM–1, 800 Independence Avenue, SW, Washington, DC 20591; or by telephoning (202) 267–9680. Individuals requesting a copy of this final rule should identify their request with the amendment number or docket number.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with

small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

Statement of the Problem

Under the regulations in effect prior to the early 1940's, an applicant for a changed product, such as an alternate engine installation, was required to apply for a new type certificate and comply with the standards current at the time of application. This did not present an unreasonable burden on the applicant then because the airworthiness standards did not change appreciably over short periods of time. That is, the standards current at the time of an application for a change were essentially the same as those with which the original product had to comply. Since the early 1940's, however, rapid changes in technology have resulted in significant changes in the airworthiness standards over relatively short periods of time. Therefore, an applicant for an extensive change to a type certificated product, which required a new type certificate, could be faced with complying with safety standards that varied considerably from the standards for the original product. To relieve this situation, the FAA's predecessor agency required an application for a new type certificate only if the change was quite extensive.

In recent years, a trend has developed towards fewer products that involve substantial design changes that would require a new type certificate. In many cases, over a period of time, a series of changes could permissively be made to a product by amending its original type certificate such that the resultant model is substantially different from the original model. Although each changed product in such a series of changes may differ little from its immediate predecessor, the changes could collectively result in a product with considerable differences from the original product. As a result, many changed aeronautical products have not been required to demonstrate compliance with all the recent airworthiness standards. This rule is intended to clarify under what conditions more recent airworthiness amendments need to be applied to changed products.

In order to achieve this goal, the FAA published a proposed rule (Notice No. 97–7; 62 FR 24288, May 2, 1997) to amend the procedural regulations for the certification of changes to type certificated products whether the change is accomplished through an amended type certificate or through a supplemental type certificate. The FAA's purpose in including supplemental type certificates (STC) was to ensure that all significant changes to a type certificated product would follow the same procedure. A related purpose was to avoid creating a loophole that would allow a type certificate (TC) applicant to choose the STC process thereby avoid complying with later amendments.

History of Type Certification

Title 49 U.S.C. 44701 authorizes the FAA Administrator to promote safety of flight of civil aircraft in air commerce by prescribing minimum standards governing the design and construction of aircraft, aircraft engines, and propellers as may be required in the interest of safety, and such minimum standards governing appliances as may be required in the interest of safety.

Under 49 U.S.C. 44704, the FAA may issue type certificates, including supplemental type certificates, for aircraft, aircraft engines, propellers, and certain appliances.

The general certification procedures for products (aircraft, aircraft engines, and propellers) and parts are set forth in 14 CFR part 21 (part 21). As described in §§ 21.13 and 21.15, any interested person may apply for a type certificate by submitting an application accompanied by the required documentation to the FAA. Sections 21.16 through 21.21, 21.101, and 21.115 specify certain regulations and designate the applicable airworthiness standards for type certification of both new and changed products. The term ''changed product'' is used throughout part 21 and throughout this preamble to include changes that are made through an amended type certificate, as well as those made under a supplemental type certificate. A person who is not the type certificate holder has only the STC option while the type certificate holder has the option of applying either for an amended type certificate or for an STC.

Section 21.17 designates the applicable regulations for the issuance of type certificates. In order to be issued a type certificate, the applicant must show that the product complies with the airworthiness standards contained in one of the following 14 CFR parts, as applicable: Part 23 for normal, utility, acrobatic, and commuter category airplanes; part 25 for transport category airplanes; part 27 for normal category rotorcraft; part 29 for transport category rotorcraft; part 31 for manned free balloons; part 33 for aircraft engines; part 35 for propellers; and part 21 (§ 21.17(b) and (f)) for special classes of aircraft and primary category aircraft, respectively.

The airworthiness standards in these parts of the regulations may be amended as needed to reflect continually changing technology, correct design deficiencies, and provide for safety enhancements. An applicant for a type certificate is required under current § 21.17, with certain exceptions, to show that the product meets the applicable airworthiness standards that are in effect on the date of the application. The exceptions include instances in which the Administrator specifies otherwise, or in which the applicant either elects or is required under specific circumstances to comply with later effective amendments. In addition, the Administrator may prescribe special conditions.

Under § 21.16, special conditions may be prescribed if the Administrator finds that the existing airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of the product to be type certificated relative to the design features considered in the applicable airworthiness standards. Also, under § 21.21(b)(1), if any applicable airworthiness standards are not complied with, an applicant may nevertheless be entitled to a type certificate if the Administrator finds that those standards not complied with are compensated for by factors that provide an equivalent level of safety. Such determinations are commonly referred to as ''equivalent safety findings'' and are made with respect to the level of safety intended by the applicable standard. In addition, under § 21.21(b)(2), an applicant may be denied a type certificate if the Administrator finds an unsafe feature or characteristic of the aircraft for the category in which type certification is requested, even though the aircraft may comply fully with the applicable airworthiness standards.

Taken together §§ 21.16, 21.17, and 21.21 designate the applicable airworthiness regulations for type certification and accommodate those circumstances when the airworthiness standards do not adequately cover the design features of a product. These sections recognize and balance the following four important considerations:

(1) The FAA is obligated, under 49 U.S.C. 44701, to keep the airworthiness standards required in the interest of safety, (i.e., parts 23, 25, 27, 29, 31, 33 and 35) as current as practicable.

(2) The type certificate applicant needs to know, early in a certification program, what the applicable airworthiness standards will be in order to finalize the detailed design of its product and to enable the applicant to make reasonable performance guarantees to its potential customers.

(3) In the interest of safety, rapid technological advances presently being made by the civil aircraft industry necessitate that the FAA be able to issue special conditions to address novel or unusual design features that it has not yet had an opportunity to address in the airworthiness standards through the general rulemaking process, or to address novel or unusual design features that were not considered by the appropriate airworthiness standards applicable to changes to type certificates.

(4) It is also important to allow flexibility in design. Wherever possible, the airworthiness standards of 14 CFR Chapter 1, subchapter C, are intentionally written as performance standards, and the procedural regulations permit design changes over the operational life of a product.

History of Type Certification of Changes

Part 21 designates the applicable airworthiness standards for changed products. Section 21.19 describes the circumstances in which an applicant for type certification of a changed product must apply for a new type certificate. As previously discussed, before the early 1940's, an applicant for a changed product, such as an airplane with an alternative engine installation, was required to apply for a new type certificate. For the reasons already described, by the early 1940's, an application for a new type certificate was required only if the change was quite extensive.

Under § 21.101, the original type certificate may be amended to include changes to the product when the applicant demonstrates that it complies with the same airworthiness standards as the original product plus appropriate special conditions, and the change does not warrant making a new application for a type certificate under § 21.19. Because § 21.101(a) and (b) are incorporated by reference in § 21.115, these procedures are equally applicable to persons applying for supplemental type certificates.

Section 21.101(a) requires that an applicant for a change to a type certificate must comply with either the regulations incorporated by reference in the type certificate or the applicable regulations in effect on the date of application, plus any other amendments the Administrator finds to be directly related. The ''regulations incorporated by reference'' are the regulations that were the certification basis for the original issuance of the type certificate or any later regulations that were the certification basis for any changes to the original type certificate.

If an applicant chooses to show compliance with the regulations in effect on the date of the application for the change, the applicant must also comply with any other amendments that are directly related. In some instances, a regulation may have been amended to become less stringent, while a related regulation has become more stringent. In this situation, an applicant must also comply with the related more stringent regulation. Current § 21.101(a) does not otherwise require compliance with later amendments and does not grant the Administrator the authority to require compliance with later regulations as a method to increase the level of safety of a product.

An applicant for a change to a type certificated product is responsible for showing that the product, as altered, not just the change itself, complies with the existing certification basis, because areas that have not been changed may be affected by the change. However, the applicant need not resubstantiate those areas of the product where the original substantiation has not been invalidated by the change.

Current § 21.101(b) pertains to changes for which the regulations incorporated by reference do not provide adequate standards. Such changes generally involve features that were not envisaged at the time the regulations incorporated by reference were adopted and are, therefore, novel or unusual with respect to those regulations. For these changes, the applicant must comply with regulations in effect on the date of application for the change as found necessary to provide a level of safety equal to that established by the regulations incorporated by reference. In this case, the applicant is not able to select any amendment of the regulation it chooses between those incorporated by reference and those in existence on the date of the application. When regulations in effect on the date of application for the change fail to provide adequate standards, the applicant must comply with special conditions to provide a level of safety equal to that established by the regulations incorporated by reference.

Trends in Type Certification of Changes

In recent years, a trend has developed toward fewer products that are of completely new designs, which would require new type certificates. Over a period of time, a series of changes to an original product may have been made so that the current model is considerably different from the original model. Although each changed product in such a series of changes may differ little from its immediate predecessor, the changes could result collectively in a product with substantial differences from the original product.

Another trend in manufacturing is to keep products in production over several decades. Some currently manufactured airplanes have, for example, evolved from airplane models originally type-certificated 25 years ago. This does not imply that those airplanes are ''unsafe,'' because they do, in practice, have features that address the intent of most of the current airworthiness standards. However, current procedural regulations (part 21) do not require that changed products demonstrate compliance with all the current airworthiness standards.

The basic premise behind the FAA's current policies for the procedures and airworthiness standards for type certification is that the highest possible degree of safety in the public interest should be achieved by products being certificated at any given time. In dealing with this premise, the FAA has had to continually weigh the desire for the highest level of safety with the cost to the manufacturers, operators, and traveling public for achieving the highest possible degree of safety in the public interest. This balance between safety and cost has been exacerbated by the introduction of highly sophisticated products whose development and manufacture have become enormously expensive. As already stated, this is one reason manufacturers choose to produce more and more changed products that, by the FAA regulations, are not required to have new type certificates.

The FAA maintains that the issue should not be whether a product is produced under a new type certificate or a changed one. The issue is whether or not the level of safety of the product, embodied in the airworthiness standards it complies with, is as high as practicable. In addition, to require areas unaffected by the change to comply with the later standards could not only be unreasonably costly but could reduce the level of safety of the product due to unforeseen developmental problems. The manufacturers are constantly issuing service information that

describes approved alterations that users may make to improve the level of safety of the product.

When establishing the highest practicable level of safety for a changed product, the FAA has determined that it is appropriate to assess the service history of a product, as well as the later airworthiness standards. It makes little sense to mandate changes to well understood designs, whose service experience has been acceptable, merely to comply with new standards. The clear exception to this premise is if the new standards were issued to address a deficiency in the design in question, or if the service experience is not applicable to the new standards. This consideration of airworthiness standards and service experience should form the basis for developing the certification basis for a change in a product.

While it can be argued that, for consistency, new airworthiness standards should apply across-the-board to the entire aircraft fleet, application of new standards would not be practical in every case. Although newly designed aircraft are required to meet all applicable current airworthiness standards, in many cases a product being changed, for which only an amended type certificate is needed, is required to meet only the standards referenced in the original type certificate or in an amended type certificate. Thus, there may be a considerable difference between the standards required for a new product and for a product undergoing change. A product undergoing change that met the applicable standards at the time of original or amended type certification is not currently required to meet more current airworthiness standards, except in those instances where retroactive regulations have been issued or the applicant elects to comply with later amendments.

In recent rulemakings, the FAA has carefully considered whether corresponding retroactive action is warranted whenever a change to the airworthiness standards for type certification was proposed. In those cases where it has been determined that an across-the-board safety benefit commensurate with the cost could be achieved, the rulemaking has also included a proposal to change the relevant operating regulations to require newly manufactured airplanes or airplanes in service, or both, to comply with the new standards, regardless of whether such compliance would be required as a condition of type certification. For instance, some of the regulations implemented in recent revisions to part 25 for newly designed airplanes were required for the existing fleet and were implemented in the operating regulations, such as part 121.

Recent FAA Actions

In addition to the safety considerations previously described, there has also been a growing international concern that some changed products are given an unfair competitive advantage over those that are of new design and must comply with later standards.

Because of these concerns, beginning in 1989 the FAA participated in an ad hoc committee sponsored by the Aerospace Industries Association of America, known as the International Certification Procedures Task Force (ICPTF). In addition to the FAA, this task force included representatives of the European Joint Aviation Authorities, Transport Canada Civil Aviation Authority (TCCAA), Aerospace Industries Association of America, Air Transport Association of America, General Aviation Manufacturers Association, International Air Transport Association, The European Association of Aerospace Industries (AECMA), Aerospace Industries Association of Canada, Air Line Pilots Association, and Association of European Airlines.

The ICPTF was organized to develop the philosophy and the necessary regulatory text and advisory material that would provide for the implementation of later regulatory amendments applicable to aeronautical products undergoing change, products in production, and products in service. The specific tasks of the ICPTF were: (1) develop the type certification philosophy for changes to aeronautical products, including revisions to the regulations and associated advisory material; (2) develop the necessary guidance information on the use of ''service experience'' in the type certification process; and (3) develop a method to evaluate the safety impact and cost effectiveness of revisions to the airworthiness standards.

In order to develop future proposed safety standards by using a system-type analysis, the FAA chartered a committee of safety experts, known as the Aviation Rulemaking Advisory Committee (ARAC), on February 5, 1991. This committee established the International Certification Procedures Working Group, which consisted of the original ad hoc committee formerly known as the ICPTF. The task assigned to this working group was to present to ARAC various proposals pursuant to its area of expertise. ARAC then had the option to submit these recommendations to the FAA, and the FAA would decide whether or not to issue a proposal based on the ARAC recommendations.

The working group presented to ARAC a recommended NPRM and associated advisory material concerning the type certification procedures for changes to aeronautical products, changed products, and products already in service. ARAC, in turn, submitted these documents, dated October 14, 1994, as recommendations to the FAA.

The rulemaking proposed by the FAA in Notice No. 97–7 reflects the ARAC recommendations in the type certification procedures for changed products with mostly minor changes in the preamble to the proposed rule. The Joint Aviation Authorities (JAA) have published similar proposed changes. That document was circulated for public comment on June 10, 1996, in NPA 21–7.

At the same time the FAA issued Notice No. 97–7, the FAA announced the availability of a proposed companion advisory circular (AC) for public comment. While the FAA's proposed AC was based on a draft submitted by the ARAC, the FAA's version was significantly reorganized and rewritten except for the proposed appendices which were identical to those recommended by the ARAC. Also, the FAA stated in Notice No. 97–7 that while the ARAC recommended that the safety benefit resource evaluation guide included in the proposed AC (Appendix 2) be considered an acceptable means of showing compliance with the exceptions of proposed § 21.101(b), the FAA included this guide for information purposes only. The FAA stated, ''The safety benefit resource guide does describe some of the kinds of issues that the applicant would address, and the FAA would consider, in determining the certification basis in accordance with the proposed rule.''

After the comment period on Notice No. 97–7 closed, the FAA tasked the ARAC to review the public comments and to recommend to the FAA a disposition of the comments and a draft final rule document. This final rule reflects most of the work of the ARAC under this task. This work was accomplished largely through a series of ARAC working group meetings held between August of 1997 and July of 1998. Because of an FAA imposed deadline date of September 1, 1998, the working group members submitted their comments to the ARAC based on a draft final rule dated August 4, 1998. The August 4, 1998, draft was based on the working group's previous recommended disposition of comments and on discussions and agreements reached at

the final working group meeting held on July 7–8, 1998. The ARAC, at FAA's request, forwarded a report that included this draft and the comments to the FAA at the August 24, 1998, issues meeting. At the time of the report, consensus had not been reached on the draft final rule. Because many of the comments received from working group members and from the full ARAC members before and at the August 24 meeting duplicated comments that were made on the NPRM, the FAA has not attempted to deal separately and repetitively in this preamble with these post-comment period ARAC comments.

FAA Rulemaking on Changed Products

This rulemaking amends the type certification procedures for changes to type certificated products to bring the certification basis for significantly changed products (whether the change is by amended type certificate, supplemental type certificate, or amended supplemental type certificate) closer to the current regulations. The intent is to ensure that when an essentially new product is developed through a series of changes, the final product achieves a level of safety similar to that of a comparable new product.

By this rulemaking, the FAA requires all proposed changes for all type-certificated products to comply with the latest amendments of the airworthiness standards, unless one of the stated exceptions applies. The long term result of this rule change will be that a changed product will have a certification basis that provides a similar level of safety to that provided by the certification basis of a new type certificate for the same product, except as provided in the rule.

As discussed more fully later in this preamble, the final rule contains an approach that was not discussed in the NPRM. This approach should help minimize the procedural burden for applicants for amended type certificates and STC's for aircraft (other than a rotorcraft) with a maximum weight of 6,000 pounds or less and for non-turbine rotorcraft with a maximum weight of 3,000 pounds or less.

As stated, the FAA will issue an advisory circular based on this rulemaking. This advisory circular will provide guidance on determining the certification basis for changed aeronautical products, including identifying the conditions under which it will be necessary to apply for a new type certificate. For the reasons discussed below, this final advisory circular will follow the draft AC originally proposed by the ARAC, with changes as necessary to conform to the final rule language and to international harmonization.

Discussion of Comments Received on the NPRM

The FAA received over 90 comments on the NPRM. Commenters included aircraft manufacturers and operators, organizations representing these groups, foreign entities, and individuals.

More than half of the comments focus on the issue of applicability of the proposed rule changes to supplemental type certificates (STC's) and type certification amendments for small part 23 airplanes, particularly older airplanes. Virtually all of these commenters state that the proposed rule and advisory circular were designed for transport category aircraft by persons involved in manufacturing or using transport category aircraft. These commenters urge that non-transport category aircraft not be included in the final rule. Several request an extension of, or reopening of, the comment period, stating that the in-service modifier community was not involved in the development of the NPRM and asserting that much of this community was not even aware of the NPRM until after the comment period closed. (For further detail, see discussion of comments under the heading ''Applicability to General Aviation Aircraft and to Supplemental Type Certificates.'')

Many of the commenters request that the preamble and advisory circular be rewritten to reflect more closely the recommendations by the Aviation Rulemaking Advisory Committee (ARAC). Many of these commenters state that one of the main purposes of this NPRM was to achieve harmonization with the Joint Aviation Authorities (JAA) and that to the extent the FAA departed from the ARAC recommendation, harmonization was lost because the JAA Notice of Proposed Amendment (NPA) was very closely aligned with the ARAC recommended document. (For further detail, see discussion of comments under ''ARAC Recommendation and Harmonization'' and ''Rewrite of AC from ARAC Draft.'') Comments that suggest specific substantive changes to the proposed rule language are summarized and addressed under the section-by-section portion of this preamble.

Many commenters made specific comments on the proposed advisory circular. These comments are not discussed in this document but are being considered by the FAA.

In view of the harmonization goal of this rulemaking and the intended close relationship between the FAA's Notice No. 97–7 and the JAA's NPA 21–7, the FAA included the comments received by the JAA in the FAA public docket and the ARAC reviewed the relevant comments on NPA 21–7. Except for the issue of applicability to aircraft modifiers, the comments on NPA 21–7 were mostly from the same entities that commented on this rulemaking and these comments did not differ significantly from the comments on FAA's Notice No. 97–7. Therefore, this document does not separately address the comments received on NPA 21–7.

General and Miscellaneous Comments

Comments: One commenter, in reference to the preamble section ''Recent FAA Actions,'' says that the FAA's mandate, under 49 U.S.C. § 44701, is to promote safety and safety regulations. This commenter says that the FAA has no mandate or legal basis for ''making regulations designed to manipulate competitive forces or marketplace decisions.''

Fairchild Aircraft Inc. (Dornier) also states its concern that the real problem being addressed by the FAA is not a safety problem, but rather the potential for an unfair trade advantage.

Hiller Aircraft expresses opposition to the proposal and states that current §§ 21.16, 21.19, and 39.1 already provide the FAA with ''the regulatory flexibility to prescribe applicable rules for any newly proposed design, any design being considered for change and any design found to be unsafe through field experience.'' Hiller says that the proposal would be administratively burdensome on the FAA and manufacturers, while not providing the FAA with any additional regulatory power. Fairchild also concludes that the proposed rule would only create more bureaucratic paperwork, and increase the cost of the certificated product without compensating increases in safety.

FAA Response: While international concern over potential unfair competitive advantages that could result if different standards are applied to similar changed products, was cited as one of the triggering events for this rulemaking, that concern was not the basis for justifying the changes proposed in Notice No. 97–7. As the NPRM preamble described at some length, and as summarized in the Background section of this preamble, the FAA's justification for the proposed change was a safety justification, namely, to ensure that significantly changed products comply with later requirements that apply to new products to the maximum extent practicable.

With respect to the possible increased administrative burden on the FAA, this rule will, to some extent, decrease the FAA's administrative burden. Under the present rule, the FAA must demonstrate that the regulations incorporated by reference in the type certificate are not adequate to achieve the established level of safety when an applicant applies for a change to a type certificate. Under the proposed and final rule language, except for certain specified smaller aircraft, the initial burden will be on the applicant to show that it should not be required to comply with the regulations in effect on the date of the application because it meets one of the stated exceptions. As stated in the NPRM, compliance with the regulations in effect on the date of application where required by this rule will enhance the level of safety for the changed product. The burdens on the applicants are unavoidable if the objectives of the rule are to be achieved. Advisory Circular 21.101–XX that will be issued prior to the mandatory compliance dates of this rule will contain guidance intended to reduce the administrative burden on both the applicant and the FAA.

Retroactive and Retrofit Requirements

Comments: The European Association of Aerospace Industries (AECMA) states that the ''key point in ensuring steps forward in safety is to clearly define the applicability of the new standards at the time of the rule elaboration.'' Applicability to changed, newly manufactured or in-service aircraft may be mandated through appropriate amendments to CFR §§ 23.2, 25.2, 27.2 and 29.2 (special retroactive requirements), or to the operational regulations (for instance part 121, subpart J).

AECMA also states that the methodology used to assess possible retroactive applicability of new standards should follow the principles of AC 21.101–XX, Appendix 2, with the necessary adjustments for each category of product. In addition, the harmonization process should be extended to the retroactive requirements. While promoting the implementation of the real safety improvements, this approach would allow the manufacturers to clearly anticipate the requirements applicable to their products, instead of entering into case by case non-public discussions with possible unequal treatment.

FAA Response: Whenever the FAA adopts a new design requirement, it determines whether to apply that requirement to previously type certificated, but changed products, through a retroactive design requirement, or to previously manufactured aircraft through an operating rule. However, that determination is not the same as the determination that must be made when the FAA receives an application for a changed product. The determination of which amendments should be applied depends on the safety benefits to be realized from the proposed change, and the design, operational, and other cost burdens. Therefore, the FAA does not agree that the generalized normal retroactive and retrofit determinations are sufficient for dealing with specific changed products.

Consistency of Application within FAA

Comments: Raytheon suggests that in conjunction with the implementation of this rule the FAA should consider an Aircraft Certification Office (ACO) oversight program that would include (1) annual review of ACO's and new changes to type certificated products; (2) quarterly report submittal from ACO's stating amendment level of rules mandated for incremental changes; and (3) feedback from the FAA Directorate if it sees a consistent pattern from one ACO where the later rule amendments are not being imposed. Raytheon's recommendations are intended to ensure more equitable compliance requirements to avoid giving some region or manufacturer an economic advantage. Raytheon also recommends that the FAA implement an appeal process for an applicant who strongly disagrees with an ACO decision.

FAA Response: One of the tasks assigned to the ARAC was to assist the FAA in developing follow-up training for both government and industry to facilitate implementation of this final rule. It is the FAA's intent that all FAA employees called on to implement this final rule will receive appropriate training and implementation documents, such as internal orders and handbooks. The FAA will also implement other appropriate follow-up actions to ensure that the rule is being implemented uniformly throughout the FAA.

The ability of an applicant to appeal an ACO certification decision would not be changed by this rule. If not sooner resolved by the FAA appeals process (through the accountable Directorate), such a decision would be, ultimately, adjudicated as part of a certificate denial. A certificate denial is a ''final order of the Administrator,'' appealable to a U.S. Court of Appeals pursuant to 49 U.S.C. § 46110.

Potential for Adverse Safety Effect

Comments: One commenter predicts that the likely effect of enacting the proposed rule will be that no changes to existing aircraft designs will be incorporated due to the increased cost of certification. As a result, no safety improvements would occur.

Representatives of the in-service modifier community make the same point with respect to safety improvements that would require an STC. (See discussion under ''Applicability to General Aviation Aircraft and to Supplemental Type Certificates'').

FAA Response: The FAA does not agree that this rule will be a disincentive. The FAA recognizes the impact on airlines and independent modification companies of the requirement to have the data in order to determine significance. However, the FAA needs, in the interest of safety, to ensure that all significant changes move to the latest certification basis for affected areas when the change would contribute materially to the level basis of safety of the changed product and would be practical.

ARAC Recommendation and Harmonization

Comments: The most common issue discussed by the commenters (who were not focused on the in-service modifier/STC issue) related to the differences between the FAA NPRM and accompanying draft AC and the ARAC documents, and the resulting lack of harmonization with the JAA NPA which the commenters state is closer to the ARAC recommendation.

The United Kingdom's Civil Aviation Authority (CAA) states that in the NPRM the FAA policy appears to be moving towards accepting previously certificated products with a greater level of change before requiring certification as a new product. CAA comments support the need to positively limit the extent to which manufacturers should be allowed to change products without being required to certificate a product to the latest airworthiness standards. CAA suggests that the harmonization of FAA and JAA requirements remains incomplete until it is clearly understood by both FAA and JAA the extent to which the criteria for a changed product is to be applied in a particular instance.

The General Aviation Manufacturers Association (GAMA) submitted the complete ARAC recommendation dated October 14, 1994, with its comment and requests that the FAA reconsider the original ARAC recommendation in developing the final rule. Other

commenters that state their concern that the FAA's NPRM and draft advisory circular were significantly different from the original ARAC recommendation (and therefore different from JAA's NPA 21–7) are the European Association of Aerospace Industries (AECMA), Pratt and Whitney Canada, Bombardier, and the Aerospace Industries Association.

FAA Response: A number of the commenters suggest rewording of the NPRM preamble to make it consistent with the document submitted by the ARAC to the FAA. The FAA has considered the substance of these comments and where appropriate, they are addressed in this final rule preamble. In general, the differences between Notice No. 97–7 and the document submitted to the FAA by the ARAC involved additional preamble language included by the FAA to clarify the intent of the proposed changes. With one exception the proposed rule language in Notice No. 97–7 was identical to the rule language recommended by the ARAC. The draft AC, which is a non-binding tool to aid compliance, is discussed later in this preamble.

Applicability to General Aviation Aircraft and to Supplemental Type Certificates

Comments: Over half of the comments received focus exclusively on the question of the applicability of the proposed changes to aircraft that are not certificated under part 25 (i.e., to non-transport category aircraft, frequently referred to by commenters as ''general aviation aircraft'') and the applicability to supplemental type certificates in general. Most of these commenters state that part 23 aircraft should be entirely excluded from this rulemaking. The specific substantive statements are summarized below.

The thrust of the comments from the general aviation and in-service modifier communities received in the public docket fell into one or more of the following categories:

1. The in-service modifier community was not aware until late in the comment period that the ARAC recommendation and the resulting FAA Notice No. 97–7 would affect it at all. Several request an extension of the comment period.

2. The basis for Notice No. 97–7 was developed and recommended by an ARAC working group composed entirely of representatives of manufacturers of transport category aircraft and their counterparts in the represented civil aviation authorities. The in-service modifier community believed that the ICPTF/ARAC working group was focused on a problem involving the manufacture of transport category aircraft, not the alteration of general aviation aircraft. The in-service modifier community argues that the older the aircraft, the more the burden would increase on STC applicants and the less relevant would be the problems and examples used to justify the rule change.

3. Notice No. 97–7 gave no indication that it would affect applicants for supplemental type certificates and none of the stated justification warranted changing the rules for STC's.

4. Nowhere in Notice No. 97–7 is there any statement to indicate a problem with STC's. The entire discussion of the problem, the regulatory history, and recent FAA actions used aircraft manufacturing examples and mostly examples involving transport category airplanes.

5. Little or no consideration was given to the potential impact of the proposed rule and associated advisory material on general aviation aircraft production or on the STC process. For example, the finding under the Regulatory Flexibility Act that the proposed amendments would not have a significant economic impact on a substantial number of small entities ignores the potential impact on persons seeking STC's for general aviation aircraft.

6. Substantively, and therefore of most significance, the proposed change would shift the burden from the FAA to the applicant to prove whether a proposed change should comply with type design amendments that have occurred after the original type certificate was issued. The in-service modifier comments and representatives state that this change in burden from a ''bottom up'' approach to a ''top down'' approach would add significant costs to numerous small businesses which apply for the majority of current STC's. The in-service modifiers also dispute the relevance of FAA Order 8110.4 that established a top-down approach as a matter of policy in 1990. The in-service modifiers state that this order cannot be used to justify the rule changes proposed in Notice No. 97–7 because it was not enforceable since the rule was not changed and further because the FAA has not previously sought to apply this policy to STC's. For these reasons, this community was not even aware of its existence.

Specific written comments on the STC issue can be summarized as follows:

GAMA, EAA, NATA, and AOPA state that the proposal would be burdensome for older general aviation airplanes that would have to undergo significant and costly changes each time the in-service product is upgraded under STC procedures. GAMA adds that the re-entry into production of airplanes with older type certificates would be prevented because ''product changes dictated by the FAA would be so extensive that changed products would not be cost effective due to the expense of such changes.'' EAA states that the change ''will block safety improvements in general aviation aircraft by creating such a difficult barrier to approving Supplemental Type Certificates (STC's) that few improvements will be attempted on older aircraft designs.'' These commenters believe that the rule could have exactly the opposite of the intended effect by discouraging general aviation aircraft owners from improving their aircraft.

GAMA and AOPA state that, if present type certificate holders were prevented from resuming production due to economic reasons, the result would be a lack of spare parts and technical assistance needed by current airplane owners for the continued airworthiness of their airplanes.

GAMA says that the proposal would, in effect, ''render the type certificates for older out-of-production airplanes valueless due to the extensiveness of mandated FAA product changes. . . .'' AOPA states that the ''proposed changes would have a tremendous negative impact on the fledgling revitalization of the general aviation industry in this country by rendering nearly all existing out of production type certificates virtually valueless.''

NATA states that the NPRM fails to specifically limit the application of the rule and expresses concern that the rule requirements could be applied to unintended areas such as maintenance.

FAA Response: The ARAC recommended an exception from the most burdensome impact of this rulemaking for a significant segment of aircraft that are mostly used in general aviation operations. The FAA has adopted, in this final rule, a process that will apply to changes to these aircraft. Therefore, as is more fully discussed and explained in the section by section discussion of § 21.101, changes to aircraft (other than rotorcraft) with a maximum weight of 6,000 pounds or less and non-turbine powered rotorcraft with a maximum weight of 3,000 pounds or less, will be evaluated starting with the latest certification basis for changes to a type certificate (whether through an amendment or an STC). This exception should address the concerns of most of the in-service modifiers listed above. Reduction of the potential costs from this change are discussed in the

Regulatory Evaluation Summary portion of this preamble.

While it is unfortunate that the in-service modifier community may not have recognized the potential impact on it of this rulemaking, the in-service modifier community had full opportunity to participate in the ARAC process from the date that the FAA tasked the ARAC. The fact that in-service modifier interests may not have been fully represented in the ARAC working group is not because in-service modifiers were excluded but because they elected not to participate until after the NPRM was issued.

The working group distributed its draft NPRM and AC to all ARAC members on August 30, 1994, for review and consideration. The ARAC met on October 13 and unanimously passed the proposals as written, with no substantive comments or changes. Among the organizations present at the October 13 meeting were several in-service modifier community representatives, such as, Aviation Repair Station Association (ARSA), National Air Transportation Association (NATA), Experimental Aircraft Association (EAA), General Aviation Manufacturers Association (GAMA), and the Airline Suppliers Association (ASA).

Furthermore, while the FAA decided not to extend or reopen the comment period, as previously noted, representatives of the ARAC working group and the FAA met with representatives of in-service modifiers on several occasions during the ARAC working group meetings to dispose of the comments to the NPRM. Additionally, representatives from the General Aviation community met with the Associate and the Deputy Associate Administrators for Regulation and Certification to express their concern with the conduct of the working group meetings. Their concerns were addressed and a record of these meetings are reflected in the docket.

The STC issue and potential applicability to non-transport category airplanes were addressed in Notice No. 97–7. Section 21.1(a) of part 21 prescribes procedural requirements ''for the issue of type certificates *and changes to those certificates;* the issue of production certificates; the issue of airworthiness certificates; and the issue of export airworthiness approvals.'' (Emphasis added.) Supplemental type certificates are not mentioned in § 21.1 or throughout part 21 because the word ''changes'' is clearly used to cover all possible changes to a type certificated product whether made by the type certificate holder, the aircraft owner, or a third party. Section 21.19 states that certain changes will require a new type certificate. Subpart D of part 21 prescribes ''procedural requirements for the approval of changes to type certificates.'' Subpart E covers supplemental type certificates, which § 21.113 states must be applied for by any person ''who alters a product by introducing a major change in type design, not great enough to require a new application for a type certificate under § 21.19 . . . except that the holder of a type certificate for the product may apply for amendment of the original type certificate.'' Section 21.115, which Notice No. 97–7 proposed to amend, states that an applicant for an STC must ''show that the altered product meets applicable airworthiness requirements'' of § 21.101, that is, the same requirements that would apply to the holder of the type certificate. Thus, persons familiar with part 21, as are the representatives of the major in-service modifiers that commented on Notice No. 97–7, know that each proposed rule that affects ''changes'' under part 21 has potential broad application.

Notice No. 97–7 contained numerous statements that made it clear that the proposed amendments to existing regulations would affect persons other than transport category type certificate holders. For example:

1. Section 21.115, which applies to all applicants for an STC, is referenced early in the ''History of Type Certification'' section of the preamble.

2. In the ''History of Type Certification of Changes'' section of the preamble the following sentence appears:

> Because § 21.101(a) and (b) are incorporated by reference in § 21.115 these procedures are equally applicable to persons applying for supplemental type certificates.

3. In the ''Recent FAA Actions'' portion of the preamble the following sentences appear:

> The ICPTF was organized to develop the philosophy and the necessary regulatory text and advisory material that would provide for the implementation of later regulatory amendments applicable to aeronautical products undergoing change, products in production, and *products in service.* (Emphasis added.)
>
> The working group presented to ARAC an NPRM and associated advisory material concerning the type certification procedures for changes to aeronautical products, changed products, and products *already in service.* (Emphasis added.)

4. In the section by section discussion of § 21.115 the following sentence appeared:

> There should not be a difference in the certification basis for a change to a type-certificated product between these two methods of approval, amended type certificate, or supplemental type certificate.

5. In the Regulatory Evaluation Summary the following sentence appears:

> The formalization of this policy by regulation would expedite decisions about the certification basis of proposed changed products and, therefore, would provide manufacturers and modifiers with earlier and more dependable information on which to base their product development decisions.

In view of the opportunity provided by the ARAC process before and after issuance of Notice No. 97–7 and the number of references to STC's and modifiers throughout the NPRM preamble, the in-service modifier community had adequate notice of the potential impact of Notice No. 97–7 and adequate opportunity to participate. In the Regulatory Evaluation Summary portion of this preamble the FAA has revisited the question of the potential impact on small entities and has determined that an analysis under The Regulatory Flexibility Act of 1980, as amended, is required. This analysis and a complete analysis of potential costs and benefits are set out in the Regulatory Evaluation Summary portion of this preamble.

Transport Category Aircraft STC's

Comments: ATA says that the proposal's requirement for an applicant to prove that a proposed change to be accomplished under an STC does not invoke a new safety standard will consume time and resources without improving airworthiness. ATA says that the current STC process is effective in ensuring that changes to an aircraft design are airworthy and recommends that the FAA exclude STC's from the proposed rule.

FAA Response: As discussed in the preamble to the NPRM Notice No. 97–7, the FAA has determined that an application for a design change through the STC process should be certificated to the same level of safety as an application for the same change through an amended type certificate. The FAA's intent is to establish an airworthiness certification basis that is not dependent on whether the applicant is applying for an amended or a supplemental type certificate.

Section-by-Section Discussion

Section 11.11

Current § 11.11 lists special conditions required as prescribed under § 21.101(b)(2) as an FAA record that is

maintained in current docket form in the Office of the Chief Counsel. To remain consistent with the changes to § 21.101, described later, the NPRM proposed to amend § 11.11 to refer to § 21.101(c) (now § 21.101(d)) instead of § 21.101(b)(2). The NPRM also proposed revisions to make the section read easier.

There were no substantive comments on this section and it is adopted as proposed with the cross-reference change described above.

Section 21.19

Current § 21.19(a) states that any person who proposes to change a product must make a new application for a type certificate if the Administrator finds that the proposed change in design, configuration, power, power limitations (engines), speed limitations (engines), or weight is so extensive that a substantially complete investigation of compliance with the applicable regulations is required. In addition, current paragraphs (b), (c), and (d) list other specific types of changes that mandate a new application for a type certificate. Notice No. 97–7 proposed to include only the general language of current paragraph (a) into the new § 21.19, while the previously listed specific changes would be subject to case-specific evaluations to determine whether they are substantial.

Current § 21.19(b) describes specific changes for which the applicant must apply for a new aircraft type certificate. These include (1) changes in the number of engines or rotors; and (2) changes to engines or rotors using different principles of propulsion, or to rotors using different principles of operation. Historically, these types of changes have fallen into one of two categories—those that were not extensive enough to require a new application for a type certificate, as evidenced by the large number of exemptions that have been granted over the past quarter century, or those that were so extensive that a new application was required because a complete investigation of compliance was required. Accordingly, as was discussed in the NPRM preamble, the provisions of current § 21.19(b) are not needed and were not included in the proposal.

Recently, the FAA considered a petition for exemption from 14 CFR § 21.19(b)(2), to replace turbopropeller engines with turbofan engines on a transport category airplane. The petitioner argued that the certification basis for the changed airplane should be developed using the approach proposed in the NPRM. In responding to the petition, the FAA pointed out that while the NPRM proposed to eliminate the specific reference to a change to engines using different principles of propulsion, that kind of change normally would be considered so extensive that a substantially complete investigation of compliance would be required. Thus, it should be noted that new § 21.19 does not necessarily change how one would evaluate ''extensive'' in each case. Instead, new § 21.19 eliminates the legal presumption that certain changes are automatically ''extensive.''

Current § 21.19(c) describes another specific change in which the applicant must apply for a new aircraft engine type certificate. This change is in the principle of operation. In addition, current § 21.19(d) describes specific changes in which the applicant must apply for a new propeller type certificate. The NPRM proposed to delete these types of changes from § 21.19. Under proposed § 21.101, with certain exceptions, these types of changes and all areas, systems, components, equipment, and appliances affected by the changes would have to comply with the regulations in effect on the date of application for the change to the type certificate.

Comments: CAA recommends that this section (§ 21.19) be cross-referenced in § 21.101(a).

One commenter recommends that wing modifications be added to the list of design changes listed in the preamble. This would be written as: ''New wing (external geometry, structure, and performance.)''

FAA Response: The CAA comment is discussed under § 21.101(a). The list of design changes typically regarded as substantial that were referenced in the NPRM preamble have not been included in this document. However, they will be addressed in the forthcoming Advisory Circular. Section 21.19 is adopted as proposed.

Section 21.101(a)

Current § 21.101(a) states that if a person applies for a change in a type certificate, the product must comply with either the regulations referenced in the type certificate or the applicable regulations in effect on the date of the application for the change, if elected by the applicant, plus any other amendments the Administrator finds to be directly related.

In Notice No. 97–7, the FAA proposed to amend § 21.101(a) to require an applicant for a change to a type certificate to comply with the applicable regulations in effect on the date of the application for the change and with parts 34 and 36, unless the applicant falls within one of the exceptions that would allow compliance with an earlier amendment. The primary purpose of this proposed change was to ensure that products being changed in a significant manner meet the latest airworthiness standards wherever practicable.

Under this approach, the starting basis is the applicable regulations in effect on the date of the application for the change. The burden is on the applicant to prove that compliance with earlier regulations would provide an acceptable safety level. Under the current regulation, the starting basis is the regulations incorporated by reference in the type certificate. In this case, the burden is on the FAA to find that later amendments are directly related to the proposed change, or that there are other reasons (e.g., the regulations incorporated in the type certificate do not provide adequate standards with respect to the proposed change) for requiring compliance with later amendments.

The FAA points out that current part 21 and amendments resulting from this rulemaking, only address ''major'' type design changes under § 21.93. ''Minor'' design changes are ''approved'' under § 21.95, and are not considered to be the changes to a type certificate that are covered under § 21.101.

Comments: The comments that address the substantive issue of the safety justification for, and potential cost of, changing from an original or previously amended certification basis approach to a current amendments approach were addressed earlier in the General and Miscellaneous Comments section of this preamble.

The CAA says that § 21.101(a) should be amended to cross reference § 21.19 to clarify that this section applies only when a new type certificate is not required under § 21.19. The CAA suggested rewording the paragraph to read as follows:

> Where the Administrator finds that an application for a new type certificate is not required under § 21.19 and except as provided in paragraph (b). . . .

Raytheon recommends that proposed paragraph (a)(1) of § 21.101 be rewritten so that the word ''and'' after the term ''changed product'' is deleted.

FAA Response: The FAA does not agree with the CAA's suggested rewording as § 21.19 stands on its own and there is no need for a cross-reference to it in § 21.101. As rewritten, the ''and'' in § 21.101(a)(1) is not included. The general phrase, ''airworthiness requirements applicable to the category of product'' has been substituted for the references to parts 23, 25, 27, 29, 31, 33, and 35. As

adopted, § 21.101(a), with minor revisions for clarification, replaces proposed § 21.101(a)(1) and (2) without substantive changes.

Section 21.101(b)

Proposed § 21.101(b) provided exceptions to the regulation in proposed paragraph (a), that, when met, would allow the applicant to comply with earlier amendments to the regulations. When choosing the amendment level of a regulation, all regulations associated with any relevant paragraphs in that amendment level would have to be included. The amendment level chosen may not predate either the latest certification basis or anything required by the retroactive sections, that is, §§ 23.2, 25.2, 27.2, or 29.2.

The intent of the proposed change was to apply the applicable regulations in effect on the date of the application to those areas, systems, components, equipment, and appliances significantly affected by the change, unless the Administrator finds that compliance with a regulation would not, (1) contribute materially to the level of safety of the changed product, or (2) would be impractical. For those areas, systems, components, equipment, and appliances not significantly affected by the change, or otherwise excepted, continued compliance with the regulations incorporated by reference in the type certificate would be considered acceptable.

Proposed paragraph (b)(1) stated that the applicant would be allowed to demonstrate compliance with earlier regulations, but not earlier than the regulations incorporated in the latest certification basis, if the effect of the proposed change is not significant, taking into account earlier design changes and previous updating of the type certification basis.

Proposed paragraph (b)(2) stated that the applicant may show compliance with earlier regulations for those areas, systems, components, equipment, and appliances that are not affected by the change.

Proposed paragraph (b)(3) stated that, if compliance with a regulation in effect on the date of the application for the change would not contribute materially to the level of safety of the product to be changed, or would be impractical, the applicant may demonstrate compliance with an earlier amendment of a regulation provided that the amended regulation does not precede either the corresponding regulation in §§ 23.2, 25.2, 27.2, or 29.2 of this chapter, or the corresponding regulation incorporated by reference in the type certificate.

A proposed advisory circular contained a safety benefit resource evaluation guide, which was recommended by the ARAC to be an acceptable means of compliance with the ''impractical'' exception of proposed § 21.101(b)(3), but which was included by the FAA for purposes of information only.

For the reasons discussed in more detail below, proposed § 21.101(b) is adopted with minor clarification changes, but without substantive changes.

Comments: Erickson Air-Crane Co. recommended a change in the wording of the rule to make it clearer that ''You don't comply with the amendment alone, but rather the entire regulation at a given amendment level.''

FAA Response: The FAA does not agree that an applicant would always have to comply with an entire amendment level. The proposal was to require compliance only with the relevant portions of a particular amendment level.

Comments: CAA states that the objective of the certification policy for changed products should be to ensure, as far as is practicable, that a changed product will achieve the same level of safety as a new product introduced concurrently. CAA states that the proposal, Notice No. 97–7, will not achieve this objective for the following reasons:

(a) The proposed § 21.101(b)(2) allows areas not affected by the change being considered to continue to use superseded airworthiness requirements, some of which may have been amended with the objective of improving the general level of safety. The fact that a product is a changed product, rather than a new product, should not be the reason for allowing it to continue to use outdated safety standards indefinitely. Even for areas not affected by the changes there needs to be a point beyond which a changed product is required to comply with the latest standards where amendments have been made as part of an initiative to improve general safety levels in such areas.

(b) The proposed § 21.101(b)(3) allows the continued use of superseded airworthiness requirements where compliance ''would not contribute materially to the safety of the changed product.'' Although NPRM 97–7 acknowledges the need to assess the accumulative effect of a number of small changes on the level of safety, the text of Paragraph (b)(3) is written in terms of the effect of a single change . . . there is a need to establish the datum as the original design standard of the product originally certificated.

CAA believes that § 21.101(b) is difficult to understand and should be re-drafted and cross-referenced to paragraphs (b)(1), (b)(2), and (b)(3).

CAA comments, as it did on the JAA proposal that the phrase ''For each area, system, component, equipment, or appliance'' should be replaced with ''For each feature of the product.'' CAA acknowledges that this change, if adopted, would require extensive interpretive material to clarify what the word ''feature'' means.

FAA Response: There is very little language difference, and no substantive difference, between the FAA's proposed rule language and the language in JAA's NPA 21–7. Nonetheless, for reasons discussed below, § 21.101(b) has been rewritten for clarification. The ARAC working group had numerous discussions as to the meaning of ''nonsignificant'' in the proposed rule. The working group focused particularly on the draft Advisory Circular (AC) circulated for public comment at the same time as Notice No. 97–7 because the draft AC contained language explaining ''nonsignificant.'' The ARAC recommended that some of the proposed AC language be included in the final rule to make it clear, in determining whether a change would be nonsignificant, that an applicant would go back to the latest certification basis and not the original certification basis. The draft AC provided that the following are nonsignificant:

''Changes that do not modify the general characteristics of the product in that: (1) The general configuration and principles of construction are retained; and (2) The assumptions used for certification of the basic product remain valid and the results can be extrapolated to cover the changed product.''

In view of the ARAC discussions, the FAA has decided that it would be helpful to use the affirmative term ''significant'' rather than the negative term, ''nonsignificant'' and to more fully explain in the rule itself the term ''significant.'' As adopted § 21.101(b)(1) reads as follows:

(b) If paragraphs (b)(1), (2), or (3) of this section apply, an applicant may show that the changed product complies with an earlier amendment of a regulation required by paragraph (a) of this section, and of any other regulation the Administrator finds is directly related. However, the earlier amended regulation may not precede either the corresponding regulation incorporated by reference in the type certificate, or any regulation in §§ 23.2, 25.2, 27.2, or 29.2 of this chapter that is related to the change. The applicant may show compliance with an earlier amendment of a regulation for any of the following:

(1) A change that the Administrator finds not to be significant. In determining whether a specific change is significant, the Administrator considers the change in context with all previous relevant design

changes and all related revisions to the applicable regulations incorporated in the type certificate for the product. Changes that meet one of the following criteria are automatically considered significant:

(i) The general configuration and the principles of construction are not retained; and

(ii) The assumptions used for certification of the product to be changed do not remain valid.

This language should help both the applicant and the FAA reviewer to determine whether the effect of a change is significant, when considered in context with all previous changes to the design and all related changes to the latest ''certification basis.'' Again, the overall intent of this rulemaking is to ensure that products developed through a series of changes, achieve a level of safety similar to that of a comparable new product. The final rule language makes it clear that, in determining whether a change is significant, the FAA will consider the latest amendments to the airworthiness standards adopted after the most recent type certification basis.

This is particularly important because a subsequent amendment of a regulation can indicate an important change in the emphasis in an area of the regulations. For example, if the regulations have been amended in an affected area, then the assumptions used for certification of the product may no longer be valid. The FAA considers these changes in the rule language to be clarifying since they are consistent with the intent of Notice 97–7 and with the explanations given in the accompanying draft Advisory Circular.

Comments: One commenter states that the FAA should reconsider its proposal to delete the existing § 21.101(b)(1) that allows the FAA to apply later regulations without regard to the exceptions in proposed § 21.101(b)(1), (2), and (3). This commenter provides an example of a transport category airplane with an early certification basis built with independent round dial instruments. The commenter notes that a number of rules were added that applied to replacing independent round dial instruments with a multifunction display or an electronic flight instrument system. The commenter suggests that the proposed rule would preclude compliance with the added rules for that kind of design change.

This commenter suggests that proposed § 21.101(b)(3) is not an improvement over the issue paper process, where that applicant would have an opportunity to apply for an exemption from the rule, which the applicant did not agree with, through a public notice process.

This commenter also expressed concerns regarding the use of the service history of an already changed product when analyzing the ''impractical'' exception to application of the latest regulations to a change of that product. Specifically, the commenter is concerned that, when a later rule addresses hazards or failures in very small probabilities and a product change is certificated using that later amendment, the older version of that product may have not yet reached the total exposure to the hazard or failure addressed by the later rule. In this case, the service history of the older version of the product would ''bask in the glow'' of the uneventful service history of the newer version that complies with the later amendment, making it appear that compliance with the latest amendments would be unwarranted.

Additionally, this commenter states that the preamble discussion of ''impractical'' mentions both a cost analysis and a benefit-resource evaluation and states that the applicant will only be able to provide a cost analysis and that there would not be enough data to make a comparison.

This commenter does not believe the use of a cost/benefit analysis to be practical as a tool to determine if a later rule should be applied under the proposed § 21.101. The commenter states that if such an approach is used then the FAA should at least eliminate the proposed AC Appendix 2 as it appears biased and without justification.

The ARAC working group had numerous discussions on the limited applicability of the data in Appendix 2 of the draft AC because this data was drawn from, and therefore only applicable to, transport category airplanes. The ARAC recommended that data be developed for other airplanes and for rotorcraft. The ARAC also recommended delayed compliance dates to allow time for development of this data.

FAA Response: The FAA construes the first comment to mean that the exceptions in proposed § 21.101(b)(1), (2), and (3) are too broad, so as to overly limit FAA discretion to impose later requirements. With respect to the example, the FAA notes that such a design change would be significant, and that it would be difficult, if not impossible, for the applicant to demonstrate that one of the exceptions applies. Therefore, compliance with the later regulations would most likely be required. The FAA has found that the public interest is satisfied by limiting the situations of required compliance with the latest airworthiness standards to each significant change, each area affected by the change, and each instance where compliance would contribute materially to the level of safety of the product and would be practical. In addition, special conditions may be required in accordance with the existing regulations. Nothing more is necessary for the safety enhancement of changed products.

Regarding the second comment, proposed § 21.101(b)(3) was not intended to replace the issue paper process, but to change the standards of certification, allowing an applicant to use earlier regulations if compliance with the latest regulation has been determined to be impractical or would not contribute to the level of safety. An individual's right to request an exemption from any rule has not been eliminated. As a result of the issue paper process, the applicant may still decide to petition for an exemption. This final rule does not change the applicant's ability to apply for that exemption.

The commenter's concerns with respect to service history are unwarranted. First, as was noted in the preamble to the NPRM, the service history that would be considered in deciding whether to invoke an exception to compliance with a later amendment would be the applicable service experience. In the case cited by the commenter, the relevant, service experience applicable to a change to the later version of the product would be the service experience of that later version, which complies with the later amendment. The relevant, service experience applicable to a change to the older version of the product would be the service experience of that older version, which doesn't comply with the later amendment. Second, as explained in this preamble and the preamble to the NPRM, the starting point of the analysis in determining whether the latest amendments should be applied to an already changed product is the changed product's latest certification basis.

In response to the last comment, the preamble to Notice No. 97–7 referenced a safety benefit resource evaluation guide as part of the draft advisory circular. The guide was developed by the Aviation Rulemaking Advisory Committee, and was included in the draft circular for information purposes only. In consideration of comments received and after further discussion with the ARAC, the FAA has determined that, in theory, a safety benefit resource evaluation guide could be used by the applicant to demonstrate that compliance with the later amendment would be impractical. An

applicant who elects to make a showing using this guide would be required to submit data on potential benefits and costs that would justify compliance with an amendment level in effect before the date of the application for a change. As mentioned earlier, the burden of the initial showing of costs and benefits rests with the applicant. The FAA will consider the analysis along with other factors in its assessment and determination of the appropriate amendment level. A safety benefit resource evaluation guide, therefore, will likely be retained in the final advisory circular as a tool to assist the applicant in developing arguments as to the appropriate certification basis.

The safety benefit resource evaluation guide recommended by the ARAC could not be endorsed as a sole means of determining the amendment level because the process cannot be proven through any rational financial analysis determination. In addition, the guide includes factors that are not relevant in determining applicable regulations. For example, the guide suggested a change to a single production item could be certificated differently than the same change to multiple production items. In determining whether a regulation should apply, the FAA considers the level of safety, not the quantity of production items as the basis.

Comments: AECMA states that few of the changes proposed during the life of a product are really significant and that therefore, it is an administrative burden to require elaboration and documentation of a justification for application of one of the exceptions in § 21.101(b) for each change. This commenter emphasized an established procedure described in the Action Notice A8110.23, ''requiring application of the latest requirements only for changed parts of the product and affected area warranted equivalent results with less bureaucratic burden.''

FAA Response: FAA's Action Notice 8110.23, which was replaced by Order 8110.4, was an interim action intended to move applicants in the direction of the regulations in effect on the date of the application for a change. Neither document has, nor were they intended to have, the regulatory impact of the rule language proposed in Notice No. 97–7. These documents were, however, directed at all derivative aircraft, engines, and propellers where a change is significant, but not so extensive as to require a new type certificate. The action notice and subsequent order applied to all changed products whether the approval method was an amended type certificate or an STC.

Comments: Raytheon states that the intent of the word ''impractical'' in proposed § 21.101(b)(3) ''should be defined as not providing added value (perceived or actual) to the operator, manufacturer, or traveling public, or not achieving the desired effect, as in non-meritorious or ineffectual.'' Raytheon suggests, ''Perhaps impractical could be defined as 'without value enhancement,' to stress that any change required as a result of a new regulation which doesn't result in a value enhancement may, with analytical substantiation, be exempted from compliance.''

FAA Response: There is little, if any, difference between the FAA's explanation of compliance that would not contribute materially to the level of safety and Raytheon's understanding of compliance that would be ''impractical.'' The question of whether compliance with a later regulation would be impractical arises only after it has been determined that compliance with the later regulation would ''contribute materially to the level of safety of the changed product. . . .'' The cost burden introduced by impracticality is considered in relation to the potential safety benefit. In order to show impracticality the applicant considers whether the cost to incorporate the change, plus the cost of the subsequent operation of the changed product, would not be commensurate with the potential increase in safety.

Comments: One commenter states that if an applicant is granted an exception under proposed § 21.101(b)(2) (unaffected areas) it should be subject to mandatory periodic FAA reviews of safety related issues for airplanes that continue in production under the same type certificate. This commenter states that for airplanes that have continued in production for many years and at substantial quantities, the claim of excessive economic burden may be invalid and that a reasonable time period for periodic reviews would be ten years, starting from the date the exception was first granted. The commenter recommends that mandated changes should be incorporated in newly produced airplanes within three years after the review. Furthermore, the FAA should consider expected size of the future market when considering granting an exception for production airplanes.

On the topic of ''impractical'' this commenter believes the concept is acceptable, although balancing safety with economics is not something readily acceptable to the public at large. The commenter states ''cost-effective/not cost-effective'' should be used instead of ''practical/impractical'' since the latter terms are too broad and not descriptive of the concept.

FAA Response: Since the basis for an exception under proposed § 21.101(b)(2) is a finding that the area, system, component, etc. is not affected by the change, the FAA does not agree that there is a need for a periodic review of the ground for the exception, nor does the FAA agree that economic burden is a factor in this determination. With respect to whether compliance with the later regulation would be impractical, the FAA cannot agree that the terms ''cost effective/not cost effective'' would be more descriptive. While costs and benefits stated in dollar terms are essential ingredients, a safety benefit resource analysis involves more than costs.

The benefit-resource analysis is a composite evaluation of four elements that are key to determining the contribution to safety made by meeting a particular rule. The four critical elements are:

(1) The frequency of occurrence of the hazard the rule is intended to mitigate.

(2) The potential severity of the hazard.

(3) How well the configuration being certificated will mitigate the hazard by meeting the rule.

(4) What resources are required if the design must meet the rule. While cost is one element of this evaluation, all four elements must be considered in evaluating the application of a rule. Furthermore, because application of the rule will set appropriate standards for the product design and the design change, the concern of the comment regarding length of production where no design change is proposed is beyond the scope of this rulemaking.

Section 21.101(c) (New)

Section 21.101(c) in this final rule contains the previously mentioned exceptions for aircraft (other than rotorcraft) of 6,000 pounds or less maximum weight, as defined in § 23.25(a), and non-turbine rotorcraft of 3,000 pounds or less maximum weight, as defined in § 27.25(a). Inclusion of these exceptions will address some of the concerns expressed by the aircraft modifiers who commented on Notice No. 97–7.

The primary impact of the exception language in § 21.101(c) will be that the starting point for determining the applicable regulations for a changed product will continue to be, as in current § 21.101, the regulations incorporated by reference in the type certificate, rather than the regulations in effect on the date of application for the change. To ensure that later regulations

are applied when appropriate, § 21.101(c) contains language that allows the administrator ''to designate an amendment to the regulation incorporated by reference that applies to the change and any regulation that the Administrator finds is directly related, unless the Administrator also finds that compliance with that amendment or regulation would not contribute materially to the level of safety of the changed product or would be impractical.''

Thus, as adopted, for the excepted aircraft the starting point for determining the applicable regulations will be the latest certification basis rather than those regulations in effect on the date of application for the change. In this case, the FAA would make the finding that applying later amendments is necessary. The later amendments would not be applied, however, if the Administrator also finds that one of the exceptions applies. This part of the rule, like other regulations, leaves the burden on the applicant to demonstrate that compliance with those later amendments would not contribute materially to the level of safety, or would be impractical. For example, the burden is on an applicant for a pilot certificate to provide the evidence on which the Administrator finds that he or she is qualified to hold a certificate.

Historically FAA and its predecessor agencies have treated light airplanes and small non-turbine rotorcraft differently from other classes of aircraft. Aircraft of 6,000 pounds or less maximum weight and non-turbine rotorcraft of 3,000 pounds or less maximum weight are usually of less complex design than the larger aircraft. In addition design changes to these aircraft usually are of less complexity. Furthermore, the certification requirements for these aircraft are many times less complex than those for larger aircraft. Examples of this are simplified design load criteria and performance requirements.

The exception in § 21.101(c) is premised on the assumption that the lesser complexity of design, design changes, and requirements will allow the FAA Aircraft Certification Office (ACO) to more easily identify the current airworthiness standards appropriate for the areas of the product affected by the proposed change. Nonetheless, § 21.101(c) also allows the applicant to submit data on which the ACO could decide to allow one or more of the exceptions to requiring the latest airworthiness standards.

Most importantly, although the process for determining the appropriate level of safety for these aircraft and rotorcraft will be different from the more complex large aircraft, the final result should be the same. The level of safety for both types will be enhanced because the most appropriate airworthiness standards will be used.

Section 21.101(d)

Section 21.101(d) (proposed § 21.101(c)) retains the provisions of current § 21.101(b)(2) concerning special conditions. This paragraph addresses novel or unusual design features where the Administrator finds that the regulations incorporated by reference in the type certificate do not provide adequate standards. For a product that has a novel or unusual design feature, the applicant must comply with the regulations in effect on the date of the application for the change and any necessary special conditions ''to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate for the product.'' For consistency with the other proposed changes to § 21.101, this proposed paragraph stated that an applicant for a change must comply with any special conditions, and amendments to those special conditions, if any, that provide a level of safety equal to that established by the regulations in effect on the date of the application for the change.

The provisions of current § 21.101(c), concerning the replacement of reciprocating engines with turbopropeller engines, have been removed because a change of this nature would usually be considered a significant change, and compliance with the regulations in effect on the date of application of the change would, therefore, be required.

Comments: CAA recommends that the words ''established by the regulations'' be replaced with the words ''intended by the regulations.''

FAA Response: The phrase ''intended by the regulations'' is not appropriate rule language. Except for the change from paragraph (c) to paragraph (d) this section is adopted as proposed.

Section 21.101(e)

Section 21.101(e) (proposed § 21.101(d)) sets a limit of five years on an application for a change to a type certificate for a transport category aircraft, and sets a limit of three years on an application for a change to a type certificate for all other products. The durations for these amended or supplemental type certificate applications are the same as those for applications for the corresponding type certificates. If an application for a design change expires, an applicant may file a new application or apply for an extension of the original application as provided in § 21.17(c) and (d).

This section is adopted as proposed, except that paragraph (e)(2) has been clarified. New paragraph (e)(2) allows the applicant to select a new date. The new application date may not precede the date the change is approved by more than the time period established under paragraph (e). For example, a person applies for a change to a transport category airplane in 2000. In 2003, the applicant decides that the project cannot be completed by 2005 (the time period required by paragraph (e)). The applicant, however, decides that the project can be completed by 2007. Under paragraph (e)(2), the applicant may elect 2002 (2007 minus 5 years equals 2002) as the new certification basis date.

Section 21.101(f)

Section 21.101(f) (proposed §§ 21.101(e)(1) and (2)) requires the certification basis for a change to a product certificated under predecessor regulations be established in the same manner as that for a change to a certification basis for a product certificated under parts 23, 25, 27, 29, 31, 33, or 35.

Changes to products type certificated under §§ 21.21 and 21.29 and changes to aircraft type certificated under §§ 21.24, 21.25, 21.27, as well as special classes of aircraft (where regulations from the airworthiness standards listed in Chapter 1 are a part of the certification basis) would be required to comply with the requirements of § 21.101(a).

Comments: Pratt & Whitney Canada states that neither the proposed Canadian regulation nor the related JAA NPA 21–7 contain requirements similar to this proposal and recommends that the FAA consider tasking ARAC to address this issue in the interest of harmonization, if a safety concern exists.

Bombardier and Transport Canada believe extending the applicability of this requirement to restricted category aircraft (§ 21.25) would be contrary to the ARAC recommendation. Bombardier advises that the ARAC proposal excluded this category of aircraft because ''compliance with the 'applicable' regulations (whether earlier or latest) was not required for the original model when justified with the regulating Authority.''

The Aerospace Industries Association (AIA) asserts that § 21.101(f) (proposed § 21.101(e)) contains the same requirements as § 21.101(a). AIA believes these sections ''make no exception for products originally certificated to regulations that existed

prior to the codification of the applicable part(s) of 14 CFR nor for products certificated as restricted, surplus military, or other unique types.'' AIA recommends this proposal be eliminated.

Transport Canada recommends the paragraph be revised in a manner similar to proposed § 21.101(a)(1), which specifically states ''each regulation that is applicable to the changed product.''

FAA Response: The intent of proposed paragraph (e)(1) was to ensure that the predecessor regulations (former CAR's, etc.) would continue to be the starting basis for aircraft that were originally type certificated under earlier regulations. The recodification of the regulations did not remove airworthiness requirements under which products were type certificated. Therefore, the FAA agrees, in part, with AIA in that proposed paragraph (e)(1) is redundant. Proposed paragraph (e)(1) has not been adopted.

However, § 21.101(f)(proposed § 21.101(e)(2)) is still needed to address aircraft type certificated under §§ 21.24, 21.25, 21.27, and special classes of aircraft covered by § 21.17(b). The airworthiness requirements applicable to the category of aircraft in effect on the date of the application for the change must include any airworthiness requirements that the Administrator finds to be appropriate for the type certification of the aircraft in accordance with those sections.

The FAA has determined that some restricted category aircraft should comply with the requirements of this rulemaking action and the reference to § 21.25 has been retained. Although Transport Canada has somewhat comparable ''restricted category'' provisions in their regulations, the JAA have no comparable provisions in their regulations. However, the FAA does certificate some restricted category aircraft using airworthiness standards and has determined that this requirement is needed to ensure that the aircraft certificated using regulations from parts 23, 25, 27, and 29 are included in the rule. The requirements of proposed § 21.101(e)(2) have been revised and retained as § 21.101(f) in the final rule. Due to the revision of § 21.101(f), the language to which Transport Canada referred is no longer in the paragraph.

Section 21.115

A type certificate holder may obtain approval for a change by amending the original type certificate under § 21.101, or by obtaining a supplemental type certificate under § 21.115. Other modifiers must obtain supplemental type certificates under § 21.115. Because the provisions of § 21.115 incorporate by reference the provisions of current § 21.101(a) and (b), the provisions to amend the type certificate are essentially the same as the provisions for supplemental type certificates. To align the provisions of proposed changes to § 21.101 and appropriate references to those changes in proposed § 21.115, the paragraph designators (a) and (b) have been removed.

By deleting the paragraph designators the FAA, in effect, proposed to require applicants for a supplemental type certificate to show that the modified product complies with the applicable regulations in effect on the date of the application for the STC is met.

Comments: Virtually all of the commenters who commented on proposed § 21.115 (including the oral comments from the in-service modifiers represented at the ARAC working group meetings) opposed this proposal and the substantive change proposed in § 21.101(a) that requires that STC applicants make a finding of compliance with later applicable regulations. These commenters recommend no changes to the current requirements for an STC.

FAA Response: As mentioned earlier under the discussions in § 21.101(b), the FAA has provided an exception, in § 21.101(c), for aircraft of 6,000 pounds or less maximum weight and non-turbine rotorcraft of 3,000 pounds or less maximum weight. The primary impact of this exception will be that the starting point for determining the applicable regulations for a changed product will continue to be the regulations incorporated by reference in the type certificate. The administrator may designate an amendment to the regulation incorporated by reference that applies to the change and any regulation that the Administrator finds is directly related, unless the Administrator also finds that compliance with that amendment or regulation would not contribute materially to the level of safety of the changed product or would be impractical.

The exception applies to both amended and supplemental type certificates. This is because there is no legal difference between the number of products that can be modified using an amended type certificate versus using supplemental type certificates.

Section 25.2

Current § 25.2(c) incorporates by reference the provisions of current §§ 21.101(a) and (b) concerning special retroactive requirements applicable to airplanes for which the regulations referenced in the type certificate predate subsequent amendments. Section 25.2(c) has been revised consistent with the changes to § 21.101(a).

Comments: Raytheon believes that §§ 23.2, 27.2, and 29.2 should be amended to use the same language as § 25.2.

FAA Response: Current §§ 23.2, 27.2, and 29.2 do not contain references to § 21.101 no change is needed in these sections.

Paperwork Reduction Act

This rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)). As previously stated, comments on the information were not invited at the proposed rule stage and therefore are being invited in this final rule document. The Department of Transportation has submitted the information requirements associated with this rule to the Office of Management and Budget (OMB) for its review. The title, description, and number of respondents, frequency of the collection, and estimate of the annual total reporting and recordkeeping burden are shown below.

Title: Type Certification Procedures for Changed Products.

Summary: This rule will constitute a reporting burden for applicants seeking an amended Type Certificate or a Supplemental Type Certificate for changes to aeronautical products. This rule requires applicants, with some exceptions, to comply with the latest regulations in effect on the date of the application for the design changes of aircraft, aircraft engines, and propellers. Compliance with the latest regulations will not be required:

(1) if the change is not significant,

(2) for those areas or components not affected by the change,

(3) if such compliance would not contribute materially to the level of safety, or

(4) if such compliance would be impractical.

The applicant for most product changes now will incur an additional incremental administrative cost to document an analysis based on the latest certification basis and identify to the FAA those regulations they will or will not be complying with, based on the above four criteria. This analysis is part of the applicant's compliance review document.

Applicants for product changes to non-turbine rotorcraft of 3,000 pounds or less maximum weight, or other aircraft of 6,000 pounds or less would

not necessarily be required to perform this analysis. For such applications, the FAA would make an initial finding to require compliance with appropriate regulations. In that case, the applicant may decide to demonstrate compliance with those regulations, or may perform the analysis to demonstrate that compliance is not warranted.

Use of: Because the rule shifts most of the responsibility from the FAA to the applicant to evaluate and demonstrate the applicable certification basis for product changes, the applicant must produce additional documentation when submitting an application to the FAA. The FAA will review all documentation provided with the amended TC or STC application and determine the certification basis for the changed product.

Respondents: Any individual or business entity desiring to submit an application for a change to a TC or an STC; i.e., a current TC or STC holder, a manufacturer, or a modifier of aeronautical products.

Frequency: Approximately 2,860 applications are received by the FAA annually. Of these, an average of 1,649 applications per year result in certificates being issued. The difference of 1,211 applications per year represents an estimate of the applications that are initiated but are never completed; e.g., withdrawn, canceled, or inactive. The sum of the 1,649 annual applications completed for certification, and 75 percent of the 1,211 applications not completed, equals the administrative equivalent of 2,557 applications per year.

Annual Burden Estimate: The full regulatory evaluation forecasts costs over a 20-year period, beginning in the year 2000, and assumes a 3 percent annual increase in applications. For all applicants, the first year administrative costs of the rule are projected to equal $1,975,530 (1998 present value $1,725,504) divided by an overhead rate of $105 an hour, which equals 18,815 total annual hours.

Using the 1500-employee size standard, small firms are projected to incur 56.6 percent of those costs, equaling $1,118,679 with a 1998 present value of $977,098. The small business proportion of expected administrative costs (56.6 percent) is lower than the proportion of applications expected from small business (62.1 percent) because a significantly higher proportion of the administrative exceptions under the rule are projected for small business applicants. This disproportionate exception rate also causes the average increased administrative cost per small business application ($664) to be smaller than the average for all applicants ($728.)

For the 20-year study period, incremental small business administrative costs under the rule are projected to total $30,059,321 with a 1998 present value of $13,938,179.

The agency solicits public comment on the information collection requirements to:

(1) evaluate whether the 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 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 responses).

Individuals and organizations may submit comments on this information collection requirements by August 7, 2000, and should direct them to the address listed in the **ADDRESSES** section of this document.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The burden associated with this rule has been submitted to OMB for review. The FAA will publish a notice in the **Federal Register** notifying the public of the approval number.

Information collection requirements to other sections of part 21 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0018.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable.

The FAA has reviewed corresponding ICAO Standards and Recommended Practices and Joint Aviation Airworthiness Authorities regulations, where they exist, and has identified and discussed similarities and differences in these proposed amendments and foreign regulations.

The final rule results, primarily, from a recommendation harmonized with the aviation authorities of Canada and Europe. Transport Canada and the Joint Aviation Authorities have proposed similar corresponding changes to regulations governing type certification procedures for changed products.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the U.S. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, 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 $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rule: (1) would generate benefits that justify its costs; and is ''a significant regulatory action'' under Executive Order 12866 and under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979), (2) would have a significant economic impact on a substantial number of small entities; (3) would not constitute a barrier to international trade; and (4) does not contain a significant intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

Response to Economic Comments

Comment: The Air Transport Association (ATA) and a private aircraft owner both raise due process concerns based on the failure of the FAA to quantify the costs and benefits of the proposal in the Notice of Proposed Rulemaking (NPRM). While the NPRM stated that the FAA was not able to quantify the costs and benefits of this

proposal, the NPRM also stated that the benefits would exceed the costs. In previous rulemakings the FAA was able to justify part 25 amendments applicable to new type designs, but failed to satisfy reasonable cost-benefit criteria essential to making them applicable to derivatives, new production units, or the existing fleet. Based on this, ATA doubts that the benefits of the proposal exceed the costs, and, in general, holds that government should not adopt regulations for which the costs and benefits have not been quantified.

FAA Response: The FAA's assessment that the proposed rule would be cost-beneficial was, and is, based on the provision of the rule that, in the final instance, compliance with later regulations will not be required if such compliance ''. . .would not contribute materially to the level of safety of the changed product or would be impractical.'' In the discussion of this provision, the NPRM further explained that ''compliance with a later amendment would be considered 'impractical' when the applicant can establish that the cost of the design change and related changes necessary to demonstrate compliance with the amendment would not be commensurate with the resultant safety benefit.''

Executive Order 12866, which is the basis for federal regulatory evaluation, explicitly recognizes that costs and benefits may not always be quantifiable. The Order states that, ''costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider.''

Discussion of Costs and Benefits

The costs imposed by the final rule will be incurred by future applicants for amended and supplemental type certificates for aeronautical products. Two categories of costs may be imposed: (1) administrative costs, and (2) the costs of compliance with later regulations.

The final rule will require applicants to comply with the regulations in effect on the date of the application for the change, as compared to the latest certification basis of the product to be changed, unless one of several conditions is met. Compliance with the later set of regulations will not be required:

(1) if the change is not significant,

(2) for those areas or components not affected by the change,

(3) if such compliance would not contribute materially to the level of safety of the changed product, or

(4) if such compliance would be impractical; i.e., would result in costs that would not be commensurate with the safety benefit that would be derived.

Applicants for changes to most products would incur the incremental administrative cost of evaluating and demonstrating to the FAA the applicability of these four conditions to their product changes. The final rule, unlike the proposed rule, would make an exception to this administrative responsibility for applicants for changes to either: (1) non-turbine rotorcraft of 3,000 pounds or less maximum weight, or (2) other aircraft of 6,000 pounds or less. For such applications, the FAA would maintain the administrative responsibility of demonstrating that the certification basis for a changed product should incorporate the latest airworthiness standards.

Survey Methodology

The evaluation of this rule was based on a sample of records from the FAA's Aircraft Certification Office Subsystem (ACOS) database. The ACOS system is used to track FAA certification projects at the individual certification office level. All pertinent (amended and supplemental) certification actions, where the date of application was 1994 or later, were selected and combined into a single database. That filter resulted in a set of 13,448 project records, from which, a random sample of 250 project records were selected for detailed review and analysis. These sample project records were then used to forecast the expected distribution of characteristics for future amended and supplemental certification actions under the final rule.

The 250 sample project records were evaluated by a team of field-experienced FAA certification employees. Based on the data provided for each project in the sample, the review team assessed the following five areas for each sample record:

1. Categorized the number of employees in the firm submitting each application. This information was used to evaluate the potential effects of the rule on small entities.

2. Assessed the weight and type of the affected aeronautical product in order to estimate the proportion of applications that would fall within the final rule's specified exceptions for certain small aircraft.

3. Estimated the existing administrative effort for each application under current procedures.

4. Estimated the incremental administrative work that would be caused by the final rule. The review team also estimated the additional administrative work for those applications that would actually be excepted by the rule's small-aircraft provision. These estimates were needed to measure the amount of relief that would be afforded by this exception.

5. Estimated the proportional split between the certification projects that would and would not be required to meet later regulations. For those projects that would not be required to meet later requirements, the responses were used to measure the distribution of conditions that would lead to that determination. Conversely, for those projects that would be required to meet later regulations, these responses were used to categorize the relative cost impact of meeting those regulations.

For 227 of the 250 sample project applications, the ACOS data system contained sufficient information for the FAA review team to estimate answers for the five-part evaluations described above. Insufficient data were available to assess the remaining 23 project records, which were removed and were not considered further.

Costs

The following procedure was used to estimate the administrative costs of the rule. First, the sample data were tabulated to determine the proportional distributions of results for each item area in the sample. This distribution for the sample project applications was then expanded to represent the characteristics that would be expected for all affected applications in a year. The ACOS data show that an average of 2,860 applications for amended or supplemental type certificates are received into the system each year. Of these, an average of 1,649 applications per year result in certificates being issued. The difference of 1,211 applications per year represents an estimate of the applications that are initiated but are never completed; e.g., withdrawn, canceled, or inactive.

The regulatory evaluation assumes that the additional administrative efforts caused by the final rule would apply to all projects that are completed, and that 75 percent of that additional administrative effort would actually take place for the ''never completed'' projects. The sum of the 1,649 annual applications completed for certification, and 75 percent of the 1,211 applications not completed, equals the administrative equivalent of 2,557 applications per year. The projected numbers of applications, by category,

were then computed by multiplying the percentage distributions of the sample data by this administrative equivalent of 2,557 applications per year.

Next, the annual increased hours of administrative work that will be caused by the rule was computed by multiplying the matrix of 2,557 applications by the respective average increases in administrative hours per application, as determined from the review team evaluations of Item 4. This methodology projects that the rule will impose a total additional 17,218 applicant hours of administrative work per year. By comparison, the rule's exception provision for small aircraft applications is projected to preclude an additional 3,985 hours of applicant administration from being imposed.

The increased annual administrative costs of the rule were then computed by multiplying the incremental administrative hours, from above, by a unit cost factor of $105 per hour. This factor is intended to be a representative, fully burdened labor rate for the highest skill level necessary to make and support the determinations called for under the rule. These calculations project a base annual administrative burden of approximately $1.8 million.

The administrative costs of the rule were then projected over a 20-year study period. For computational simplicity, all administrative costs were assumed to begin in the year 2000, even though the effective date of the rule will vary by product type. The computations assumed an annual 3 percent increase in certification applications, and accordingly, a 3 percent annual increase in attributable costs. The initial year 2000 cost was computed from the $1.8 million base annual administrative burden described above and inflated at 3 percent annually from 1997 to the year 2000. These calculations predict that the 20-year administrative costs of the rule will total $53.1 million, with a 1998 present value of $24.6 million. Parallel calculations were made for the costs that will be excepted under the rule's provision for certain small aircraft. This exception will preclude an estimated $12.3 million in applicant administrative costs over the study period, with a 1998 present value of $5.7 million.

In addition to the administrative costs detailed above, additional costs will be imposed by the rule's conditional requirements for compliance with later certification regulations. It is important to note that the final rule's exception for small aircraft only applies to the administrative burden of proof under the rule. Accordingly, applications that are excepted from the rule's incremental administrative costs may still incur the incremental costs of complying with later, and likely more stringent, regulations.

A second important difference between the calculations for administrative costs versus compliance costs concerns the base number of affected applications. The previous computations of administrative costs included a proportion (75 percent) of those applications that were never finalized, and where no amended or supplemental type certificate was issued. By comparison, any additional compliance requirements resulting from this rule would only apply in situations where an amended or supplemental type certificate is actually issued. As such, the compliance cost calculations are based on the average 1,649 amended and supplemental certificates issued each year, as reported from the ACOS data. Using this base number, the annual numbers of certifications that would be subject to the rule over the 20-year study period were forecast, based on a 3 percent growth rate.

The expected annual numbers of certification projects that would have to meet later regulations were estimated from the sample results. Item 5 from the team evaluation areas assessed the simulated effect of the rule on the certification basis of each sample project. The percentage distribution of that assessment follows.

	Percent of samples
Rule would not invoke later regulations:	
Change would be not significant	49.3
Change would not contribute materially to safety or would be impractical	9.7
Rule would invoke later regulations:	
Compliance costs would increase less than 10%	36.1
Compliance costs would increase 10%–25%	3.5
Compliance costs would increase over 25%	1.3
Total	100.0

This regulatory evaluation uses the three compliance impact level percentages to project the annual numbers of applications where later regulations would be invoked and additional compliance costs could result. Separate estimates were made for each of the three ranges of compliance impact. This procedure projected that, in the first year, cost increases of less than 10 percent would result from applying later regulations to 651 certification projects. Similarly, 64 projects were projected to incur cost increases of 11 to 25 percent, and 24 projects would have cost increases of over 25 percent. Annual impact estimates were projected over the entire study period through the year 2019, again assuming a 3 percent growth.

It would be informative to have more detailed compliance impact estimates than the broad categorizations of relative percentages that were possible using the sample review methodology employed in this evaluation. However, the scope of projects that will be affected by this rule is wide, and reliable measures of the sample project production levels were not available for this evaluation. Therefore, in an effort to provide useful information, without portraying a higher degree of confidence than is supportable, estimates were made of the future annual compliance cost impacts of the rule per assumed $100,000 unit of project size. This assumed average project size is a direct factor to the resulting projected compliance costs, and alternate assumptions are readily calculable.

While this analysis uses a compliance cost of $100,000 for a single project, the FAA believes there is a wide range of compliance costs. For example:

1. *A $100 thousand dollar project.* An emergency medical service system for a helicopter over 3,000 pounds. This modification includes a litter/restraint system, medical equipment (oxygen, ventilator, air pump, defibrillator, etc.), and an auxiliary electrical system.

2. *A $20 to $50 thousand dollar project.* An improved stainless steel exhaust system for a twin-engine general aviation aircraft.

3. *A $15 thousand dollar project.* The purchase and installation of an avionics instrument system. For a simple sensitivity test, the compliance cost estimate is directly related to changes in the assumed $100,000 compliance cost per project. If, for example, the project cost for small business is better represented by $20,000, then the compliance cost estimates should be reduced by 80 percent.

The unit-project-size cost estimates were computed as the product of: (1) the relevant number of annually affected projects described above, (2) an assumed median value for the percentage impact ranges at each of the three impact levels, and (3) the assumed $100,000 unit project size. For example, the year 2000 cost estimate for projects in the less-than-10-percent cost impact category was computed as the product of:

(1) the projected 651 affected projects from Table 7,

(2) an assumed mid-range cost impact of 5 percent, and

(3) the assumed unit project level of $100,000.

This subcalculation produces a cost impact estimate of $3,255,000 for projects in the ''less-than-10-percent'' cost impact category in the year 2000, as shown in Table 8. When applied to all 3 cost impact categories, and summed, this methodology produces an annual compliance cost impact of $4.8 million in the year 2000. Total twenty-year compliance costs, at the $100,000 unit project level, are projected to equal $128.0 million, with a 1998 present value of $59.4 million.

In summary, the 20-year administrative costs of the rule are projected to total $53.1 million, with a 1998 present value of $24.6 million. Parallel compliance costs, assuming a $100,000 unit project level, equal $128.0 million, with a 1998 present value of $59.4 million. An additional $12.3 million ($5.7 million, 1998 present value) in applicant administration costs will be averted by the small-aircraft exception provision in the rule.

Benefits

The directly attributable benefit of this final rule is the augmented safety that will result in those cases where future changed products will be required to comply with later, more stringent airworthiness standards than those that would be required in the absence of this rule. These benefits cannot be accurately predicted and quantified, but the rule includes provisions to assure that any actions taken pursuant to it will be cost-beneficial.

The benefits of amendments to the airworthiness standards are evaluated at the time of those amendments. Some amendments are based on the FAA's evaluation of accidents or incidents; other amendments are based on the FAA's evaluation of probable or likely safety problems that may not be attributable to a specific accident. The changed products rule is FAA's proactive approach to addressing safety issues before they arise. The FAA does not have to wait for an accident to justify a rule.

As noted previously, the rule will require compliance with all later regulations where such compliance will contribute materially to the level of safety. The rule will not require compliance with later regulations: (1) if the change in the aeronautical product is not significant, (2) for those areas or components of the product not affected by the change, (3) if such compliance would not contribute materially to the level of safety of the changed product, (4) or in the final analysis, if such compliance would be impractical. Compliance with later regulations will be considered impractical if the applicant can show that such compliance would result in costs that are not consistent with the possible safety benefits. Since each action taken under the rule will be cost-beneficial, the FAA has determined that the benefits of the rule will justify its costs.

Smaller Aircraft Exception Provision

The exception in § 21.101 for non-turbine rotorcraft under 3000 pounds and for other aircraft under 6000 pounds places the burden on the FAA to make an initial determination whether or not to require the applicant to demonstrate compliance with a later airworthiness standard. The certification basis for the change could be approved in several ways:

(a) If the FAA determines that no later regulation is to be applied, the applicant would demonstrate compliance with the existing certification basis, and there would be *no administrative or compliance costs* associated with application of this changed products rule.

(b) If the FAA determines that a later regulation is to be applied, the applicant can accept that determination, and, while there would be *compliance costs* associated with accepting the FAA determination, there would be *no administrative costs.*

(c) If the FAA determines that a later regulation is to be applied, the applicant could submit a technical analysis to demonstrate that, for example, compliance with the later regulation would be impractical or would not contribute materially to the level of safety of the product. In that case—

(1) If the FAA agrees with the applicant's technical analysis, the applicant would demonstrate compliance with the existing certification basis, and, while there would be *no compliance costs,* there would be *administrative costs.*

(2) If the FAA does not agree with the applicant's technical analysis, the applicant would demonstrate compliance with the later regulation, and there would be resultant *administrative and compliance costs.*

Thus, in practice, the total costs to applicants for changes to the smaller aircraft could be a combination of ''no costs'' (scenario ''(a)'' above), compliance costs only (scenario ''(b)'' above), administrative costs only (scenario ''(c)(1)'' above), and compliance and administrative costs (scenario ''(c)(2)'' above). The calculations in this regulatory analysis are based on the assumption that, if the FAA determines that a later regulation should apply, the applicant will demonstrate compliance with the later regulation, and will not attempt to demonstrate that one of the exceptions in § 21.101 applies, e.g., that compliance with the later regulation would be impractical or would not contribute materially to the level of safety.

However, one needs to consider the following. The applicant will make their own educated determination as to the applicability of the later regulation, and will decide to accept compliance with that regulation only when they are relatively certain that the administrative costs of demonstrating that one of the § 21.101 exceptions applies and will exceed the costs of demonstrating compliance with the later regulation. Thus, this regulatory analysis somewhat over-estimates total compliance costs in that it assumes that applicants will *always* forego their opportunities to convince the FAA that compliance with the later regulation would be impractical or would not contribute materially to the level of safety. By the same token, that assumption results, somewhat, in an under-estimation of the total administrative costs. Only when an applicant has decided that compliance costs are likely to actually exceed administrative costs, will the applicant choose to expend the resources to make the ''impracticality,'' ''contribution to safety,'' or other arguments. Furthermore, an applicant is more likely to choose to make those arguments when there is a persuasive technical foundation for them. Therefore, this regulatory analysis over-estimates compliance costs by including those costs that would tend to be avoided by the more efficient expenditure of administrative resources. And, by the same token, the administrative costs that are ''unaccounted for'' due to the above under-estimation are more likely to be spent in realistic efforts to avoid even higher compliance costs. The net effect is that this regulatory evaluation over-estimates total costs.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) establishes, ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle,

the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination finds that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify, and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Recently, the Office of Advocacy of the Small Business Administration (SBA) published new guidance for Federal agencies responding to the requirements of the Small Business Regulatory Enforcement Act of 1996. Following the SBA guidance, the FAA conducted the required review of this rule and determined that, based on the cost assumptions described above, it will have a significant impact on a substantial number of small entities. Accordingly, a full regulatory flexibility analysis was conducted and is summarized as follows.

1. A Description of The Reasons Why Action By The Agency Is Being Considered

In recent years, a trend has developed toward fewer products that are of completely new designs, which would require new type certificates. Over a period of time, a series of changes to an original product may have been made so that the current model is considerably different from the original model. Although each changed product in such a series of changes may differ little from its immediate predecessor, the collective changes can result in a product with substantial differences from the original product.

Another trend in manufacturing is to keep products in production over several decades. Some currently manufactured airplanes have evolved from airplane models originally type-certificated 25 years ago. This does not imply that those airplanes are unsafe, because they do, in practice, have features that address the intent of most of the current airworthiness standards. However, current procedural regulations (part 21) do not require that changed products demonstrate compliance with all current airworthiness standards.

The FAA maintains that the issue should not be whether a product is produced under a new type certificate or an amended one, or changed under a supplemental type certificate. Nor should the certification basis of a changed product turn on the fact that the product is to be modified or initially operated by a small (as opposed to a large) entity. The issue is whether or not the level of safety of the product, embodied in the airworthiness standards it complies with, is as high as practical.

2. A Succinct Statement of The Objectives Of, and Legal Basis For, The Proposed Rule

The objective of this rule is to enhance safety by applying the latest airworthiness standards, to the greatest extent practical, for the certification of significant design changes to aircraft, aircraft engines, and propellers.

The legal basis for the rule derives from Title 49, U.S.C. 44701 which authorizes the FAA Administrator to promote safety of flight of civil aircraft in air commerce by prescribing, in part, minimum standards governing the design and construction of aircraft, aircraft engines, and propellers, as may be required in the interest of safety. Under 49 U.S.C. § 44704, the FAA may issue type certificates, including supplemental type certificates, for aircraft, aircraft engines, and propellers.

3. A Description of The Projected Reporting, Recordkeeping and Other Compliance Requirements of The Proposed Rule, Including an Estimate of The Classes or Types of Small Entities That Will Be Subject to The Requirement and The Type of Professional Skills Necessary For Preparation of The Report or Record

As detailed previously in the regulatory evaluation, the requirements imposed by this rule will affect future applicants for amended and supplemental type certificates for changed aeronautical products. The rule will impose both administrative requirements (with certain exceptions) and compliance requirements. It will require applicants to comply with the regulations in effect on the date of the application for the change, as compared to the latest certification basis of the product to be changed, unless one of several conditions is met. Compliance with the later set of regulations will not be required: (1) if the change is not significant, (2) for those areas or components not affected by the change, (3) if such compliance would not contribute materially to the level of safety of the changed product, or (4) if such compliance would be impractical; i.e., would result in costs that would not be commensurate with the safety benefit that would be derived.

Applicants for changes to most products would need to evaluate and demonstrate to the FAA the applicability of these four conditions to their product changes, if compliance to regulations other than the most current is to be required. The skill level necessary to make these determinations will vary widely with the scale and engineering complexity of the individual product change involved. In general, these skills would include a working knowledge of the pertinent aviation regulations, the ability to evaluate and approve technical data, and a combination of training and responsible experience in the field or fields of engineering pertinent to the product change. In assessing the administrative costs of this rule, the regulatory evaluation assumes a fully burdened labor rate of $105 per hour for the highest skill level necessary to make and support the determinations called for under the rule.

4. An Identification, to The Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With The Rule

The FAA is unaware of any federal rules that would duplicate, overlap, or conflict with the final rule.

5. A Description and An Estimate of The Number of Small Entities To Which The Rule Will Apply

This rule will apply to future applicants for amended and supplemental type certificates for changed aeronautical products. FAA regulations are typically directed toward some closely identified industry or occupation; such as domestic air carriers or private pilots. By comparison, the applicants under this rule are not uniquely defined, and may be found in a wide variety of industries. In assessing this rule, the FAA identified 63 industry groups in 19 different four-digit standard industrial classifications (SIC) that would reasonably include applicants for certifications to changed aeronautical products. These industries are listed as Table 9 of the appendix to the full regulatory evaluation.

The Small Business Administration (SBA) provides descriptive national data for the year 1995 on U.S. firms, aggregated at the four-digit SIC level.

These data include the numbers of firms, numbers of establishments, employment, annual payroll, and estimated receipts by employment size of firm. Information for the 19 industry classifications identified under this rule were combined to produce the following distributions.

Number of employees	Percent of firms	Annual receipts per employee ($1,000's)
1—99	83.2	148.0
100—499	8.0	163.9
500 or more	8.8	207.6
Total	100.0	Avg: 200.1

The SBA also provides small business size standards for each industry. The 19 industry groups that could include firms affected under this rule fall into four separate SBA standards for small business definition: 500, 750, 1000, or 1500 employees. As part of the evaluation for this rule, the FAA analyzed the employment size of firms for a random sample of 227 supplemental and amended type certification projects. The size distribution of these samples is presented below.

Number of employees	Percent of samples	Cumulative percent of samples
1—100	44.1	44.1
101—500	12.3	56.4
501—750	2.6	59.0
751—1000	1.8	60.8
1001—1500	1.3	62.1
1501 or more ..	37.9	100.0
Total	100.00	.....

As presented in the table, depending on which size standard is applied, between 56.4 percent to 62.1 percent of the changed-product applications that would be affected by this rule will be submitted by small businesses. To simplify discussion, the remainder of this analysis is based on the 62.1 percent proportion and uses the under 1500-employee size standard. As estimated in the full regulatory evaluation, the FAA expects the administrative equivalent of 2,557 applications will be submitted each year, and 1,588 of those would be from small firms.

The final rule, unlike the original rule, includes an administrative exception for applications related to certain small aircraft. Based on the sample of projects that were analyzed for this rule, 16.7 percent of all applications would fall under this exception, and 97.4 percent of the excepted applications would be submitted by small firms. An estimated 417 of the total annual 1,588 small-business applications would qualify for this exception, and the remaining 1,171 would not.

In addition to the administrative requirements for applications that are submitted, the rule will also invoke certain regulatory compliance requirements for the proportion of applications that are completed and certificated. Some 1,649 of the total applications are completed annually as amended or supplemental type certificates and would be subject to the rule's compliance provisions. Of these, an estimated 1,024 will be from small firms.

Regulatory Flexibility Cost Analysis

The full regulatory evaluation forecasted costs over a 20-year period, beginning in the year 2000, and assumed a three-percent annual increase in applications. For all applicants, the first year administrative costs of the rule are projected to equal $1,975,530 (1998 present value $1,725,504). Using the 1500-employee size standard, small firms are projected to incur 56.6 percent of those costs, equaling $1,118,679 with a 1998 present value of $977,098. The small business proportion of expected administrative costs (56.6 percent) is lower than the proportion of applications expected from small business (62.1 percent) because a significantly higher proportion of the administrative exceptions under the rule are projected for small business applicants. This disproportionate exception rate also causes the average increased administrative cost per small business application ($664) [1] to be smaller than the average for all applicants ($728.) For the 20-year study period, incremental small business administrative costs under the rule are projected to total $30,059,321 with a 1998 present value of $13,938,179.

The regulatory evaluation also details the incremental costs expected under the rule for compliance with later regulations. Based on the evaluation of sample applications, 48 percent of the future certifications from small business firms would be required to meet some measure of additional later regulations. This proportion is higher than the parallel figure of 41 per cent for applications from all firms.[2] In turn, this higher incidence rate also produces higher small business costs per certification action *if it* is assumed that the scale and complexity of small business and large business certification projects are the same. In the absence of reliable project size estimates, the regulatory evaluation has employed a uniform $100,000 project size as a unit factor to facilitate decision-making. However, the FAA does not believe that the projects submitted by small and large businesses are typically equal in scale and complexity.

While this analysis uses a compliance cost of $100,000 for a single project, the FAA believes there is a wide range of compliance costs. For example:

1. *A $100 thousand dollar project.* An emergency medical service system for a helicopter over 3,000 pounds. This modification includes a litter/restraint system, medical equipment (oxygen, ventilator, air pump, defibrillator, etc.), and an auxiliary electrical system.

2. *A $20 to $50 thousand dollar project.* An improved stainless steel exhaust system for a twin-engine general aviation aircraft.

3. *A $15 thousand dollar project.* The purchase and installation of an avionics instrument system. For a simple sensitivity test, the compliance cost estimate is directly related to changes in the assumed $100,000 compliance cost per project. If, for example, the project cost for small business is better represented by $20,000, then the compliance cost estimates should be reduced by 80 percent.

With the above sensitivity test in mind and using the $100,000 project size cost, small business applications are expected to incur a year 2000 compliance cost of $3,582,317 (with a 1998 present value of $3,128,934).[3] This represents an average increase of $3,198 per project, assuming a unit $100,000 base project size.[4] Over the twenty-year study period, small business compliance costs under this scenario are projected to total $96,006,280 (with a 1998 present value of $44,532,108).

Affordability Analysis

If the assumed $100,000 unit of project size is also assumed to be the average size for a small-business project,

[1] Note that these are average costs per application, not per affected application. Based on the sample, 36 percent of all small business applications would meet the ''small aircraft'' exception under the rule and incur no incremental administrative costs.

[2] Note that the ''small aircraft'' exception under the rule will not alter compliance decisions nor alleviate their costs.

[3] For computational simplicity, the regulatory evaluation overstates initial annual compliance costs by assuming that all such costs would occur in the year that the project is approved. In reality, they would occur over several years.

[4] Aircraft operators or modifiers typically do not amortize the incremental cost of $3,200 for a modification totaling $100,000 or more.

the increased administrative cost per project ($664) can be added to the increased compliance cost per project ($3,198) to provide an expected average increase of $3,862 per project. The relative effect of these costs per small firm is a function of: (1) the size (receipts) of that firm, and (2) the number of project applications that a firm submits/completes per year.[5] The following table presents the average impact of the rule as a percentage of a firm's annual receipts, for various assumptions on firm size and annual number of projects. For example, a firm with 5 projects per year would incur additional costs of 5 times $3,862; or $19,310 for the year. If that firm employs 10 people, with each employee producing an average $148,000 of receipts per year (from the ''annual receipts per employee'' factors reported above in paragraph 5) the firm's total receipts would equal $1.48 million. For this example combination of employees and projects, the $19,310 one-year impact of the rule would equal 1.30 percent of the $1.48 million estimated annual receipts of the firm. As a matter of context, it should be noted that FAA analysis of the ACOS data shows that 52 percent of applications were submitted by firms that only submitted one application in that year.

AVERAGE IMPACT OF RULE AS A PERCENTAGE OF ANNUAL RECEIPTS

Employees	Annual No. of projects		
	1	5	10
10	0.26%	1.30%	2.61%
100	0.02%	0.12%	0.24%
1000	0.00%	0.01%	0.02%

Disproportionality Analysis

As discussed in the cost and affordability analyses above, a higher proportion of total certification applications is received from small businesses (62.1 percent) than from large businesses (37.9 percent). This is not surprising given the relative proportions of numbers of small and large businesses. By comparison, the small business proportion of expected administrative costs (56.6 percent) will be lower than the proportion of applications expected from small businesses (62.1 percent) because a significantly higher proportion of the administrative exceptions under the rule are projected for small business applicants. By comparison, the sample survey assessment predicts that small business applicants will disproportionately incur the additional costs of complying with later regulations as a result of the rule. The sample survey predicts that the rule will require 48 percent of small business applications, as compared to 29 percent of large business applications, to comply with later regulations.

Competitiveness Analysis

As discussed above, it appears that there will be proportionally higher compliance costs imposed by the rule on small than on large businesses. This information is not sufficient, however, to determine the impact of the competitiveness of small business vis-a-vis large entities. There is a wide divergence in the characteristics and ultimate consumer of products. There is a fundamental difference among large, fixed-wing commercial aviation, general aviation, and rotorcraft. Also, the products that are produced by the companies that are subject to the rule are not homogeneous. The wide range of products that would be certificated under this rule includes major aircraft components such as wings, diversely unique avionics, and small subassemblies such as seat fasteners. Also, many of the larger companies in this field are assemblers of products that often are produced by small companies. As such, the large companies may be customers rather than competitors to the affected small companies.

Business Closure Analysis

The FAA believes that the average impact of the rule gauged by the cost of the rule per year relative to an affected firm's average annual receipts is likely to be low. In cases where the potential costs would be prohibitive, firms may decide not to proceed with the intended change. This would prevent cash flow problems, losses, and business closure in the short run. However, a series of decisions not to certify new products could affect long run business viability. Based on the sample of 250 applications analyzed by the FAA, the agency believes that the vast majority of applications would not impose high enough compliance costs to threaten business closure of small business.

Description of Alternatives

Three primary alternatives were considered in crafting this rule. The first would be to take no new rulemaking action and to retain the changed-product certification process as it now exists. The FAA opposes this alternative because it would not address the problem whereby a series of cumulative changes can result in a model that is substantially different from the original model, yet that product is not required to demonstrate compliance with all the recent airworthiness standards.

The second evident alternative would be to retain the existing certification process for changes to small aircraft, since the bulk of these applications are submitted by small firms. Again, the FAA opposes this alternative since it would leave the existing problem for a segment of the industry and would create an unacceptable inequity across aircraft model sizes.

As an alternative to full exclusion from the rule, the FAA has included a small-aircraft exception for the administrative responsibilities of the final rule, but not for its compliance provisions. This exception was specifically added to address small business concerns that arose from the proposed rule. The exception will apply to applicants for changes to either: (1) non-turbine rotorcraft of 3,000 pounds or less maximum weight, or (2) other aircraft of 6,000 pounds or less. For changes to such products, the FAA (i.e., the Aircraft Certification Office (ACO) processing the application) may make an initial determination that one or more later airworthiness standards should be part of the certification basis of the changed product. If the ACO makes that determination, the applicant may submit technical analyses to convince the ACO that compliance with the later regulation(s) would be impractical or would not contribute materially to the level of safety of the product. However, as discussed previously in this summary, the regulatory analysis makes the conservative assumption that the applicant will forgo the administrative costs of those technical analyses and incur the compliance costs (estimated to be twice that of administrative costs) attributable to the later regulation(s).

Based on the sample survey, 16.7 percent of all project applications would qualify for this exception, and 97.4 percent of the excepted applications would come from small firms (fewer than 1500 employees). In point of fact, 81.6 percent of the exceptions would go to firms with less than 100 employees.

The value of applicant costs that will be averted by the small-aircraft exception is detailed in the full regulatory evaluation. The expected value of all exceptions in the first year of the rule (year 2000) is calculated at $457,224. Over the 20-year study period, the value of exceptions totals to $12.3 million with a 1998 present value of $5.7 million. Again, over 97 percent of this relief will go to small businesses.

[5] FAA analysis of the ACOS data shows that 52% of applications were submitted by firms that only submitted one application in that year.

The small-aircraft exception provision is predicted to reduce the rule's administrative burden on small businesses by 27.6 percent from the level that would exist without it. The total small business cost burden (administrative and compliance costs) will be 6 percent lower as a result of this exception.

Other alternatives were considered, but were determined not to be practicable. These included (1) requiring applicants for changes to comply with the latest regulations, with no exceptions; and (2) requiring a complete recertification at certain intervals (10 years).

Compliance Assistance

The FAA will issue an advisory circular based on this rulemaking. The circular will provide examples and guidance for determining the certification basis of changed aeronautical products. Small businesses and other applicants may follow this guidance in developing their own arguments as to the appropriate certification basis of their changed products. The circular will be available from the FAA's aircraft certification offices and through the FAA website.

The agency intends to use a variety of additional mechanisms to inform applicants and industry trade associations of the rule change and to explain the new procedures. The FAA will serve copies of this final rule document, with the Regulatory Evaluation Summary, on trade associations that represent most of the small entities affected by this rule. The FAA also will utilize its directorate newsletters to inform industry. The agency will present information on the new rule at industry and FAA designee meetings. In addition, a training video and instructional materials are being developed that will introduce the new rule and explain the respective roles of applicants and FAA personnel. These products will also be available to small businesses through the aircraft certification offices.

International Trade Impact Assessment

The provisions of this rule promote international trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States. The final rule results, primarily, from a recommendation harmonized with the aviation authorities of Canada and Europe. Transport Canada and the Joint Aviation Authorities have proposed similar corresponding changes to regulations governing type certification procedures for changed products.

The Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the U.S. This final rule imposes additional safety requirements for aviation products that are registered in the U.S. Thus, this final rule does not create any unnecessary obstacles to the foreign commerce of the U.S.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year.

This rule does not meet the thresholds of the Act. Therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would 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. Therefore, we determined that this notice does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 11

Administrative practices and procedures reporting

14 CFR Part 21

Aircraft, Aviation safety, Safety, Type certification

14 CFR Part 25

Aircraft, Aviation safety, Safety, Type certification

Adoption of Amendments

Accordingly, the FAA amends parts 11, 21, and 25, Chapter 1 of Title 14, Code of Federal Regulations, as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, 46102.

2. Section 11.11 is amended by removing the first sentence and adding two sentences, in its place, to read as follows:

§ 11.11 Docket.

Official FAA records relating to rulemaking actions are maintained in current docket form in the Office of the Chief Counsel. These records include: Proposals, notices of proposed rulemaking, written material received in response to notices, petitions for rulemaking and exemptions, written material received in response to summaries of petitions for rulemaking and exemptions, petitions for rehearing or reconsideration, petitions for modification or revocation, notices denying petitions for rulemaking, notices granting or denying exemptions, summaries required to be published under § 11.27, special conditions required as prescribed under §§ 21.16 or 21.101(d) of this chapter, written material received in response to published special conditions, reports of proceedings conducted under § 11.47, notices denying proposals, and final rules or orders. * * *

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

3. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

4. Section 21.19 is revised to read as follows:

§ 21.19 Changes requiring a new type certificate.

Each person who proposes to change a product must apply for a new type certificate if the Administrator finds that

the proposed change in design, power, thrust, or weight is so extensive that a substantially complete investigation of compliance with the applicable regulations is required.

5. Section 21.101 is revised to read as follows:

§ 21.101 Designation of applicable regulations.

(a) An applicant for a change to a type certificate must show that the changed product complies with the airworthiness requirements applicable to the category of the product in effect on the date of the application for the change and with parts 34 and 36 of this chapter. Exceptions are detailed in paragraphs (b) and (c) of this section.

(b) If paragraphs (b)(1), (2), or (3) of this section apply, an applicant may show that the changed product complies with an earlier amendment of a regulation required by paragraph (a) of this section, and of any other regulation the Administrator finds is directly related. However, the earlier amended regulation may not precede either the corresponding regulation incorporated by reference in the type certificate, or any regulation in §§ 23.2, 25.2, 27.2, or 29.2 of this chapter that is related to the change. The applicant may show compliance with an earlier amendment of a regulation for any of the following:

(1) A change that the Administrator finds not to be significant. In determining whether a specific change is significant, the Administrator considers the change in context with all previous relevant design changes and all related revisions to the applicable regulations incorporated in the type certificate for the product. Changes that meet one of the following criteria are automatically considered significant:

(i) The general configuration or the principles of construction are not retained.

(ii) The assumptions used for certification of the product to be changed do not remain valid.

(2) Each area, system, component, equipment, or appliance that the Administrator finds is not affected by the change.

(3) Each area, system, component, equipment, or appliance that is affected by the change, for which the Administrator finds that compliance with a regulation described in paragraph (a) of this section would not contribute materially to the level of safety of the changed product or would be impractical.

(c) An applicant for a change to an aircraft (other than a rotorcraft) of 6,000 pounds or less maximum weight, or to a non-turbine rotorcraft of 3,000 pounds or less maximum weight may show that the changed product complies with the regulations incorporated by reference in the type certificate. However, if the Administrator finds that the change is significant in an area, the Administrator may designate compliance with an amendment to the regulation incorporated by reference in the type certificate that applies to the change and any regulation that the Administrator finds is directly related, unless the Administrator also finds that compliance with that amendment or regulation would not contribute materially to the level of safety of the changed product or would be impractical.

(d) If the Administrator finds that the regulations in effect on the date of the application for the change do not provide adequate standards with respect to the proposed change because of a novel or unusual design feature, the applicant must also comply with special conditions, and amendments to those special conditions, prescribed under the provisions of § 21.16, to provide a level of safety equal to that established by the regulations in effect on the date of the application for the change.

(e) An application for a change to a type certificate for a transport category aircraft is effective for 5 years, and an application for a change to any other type certificate is effective for 3 years. If the change has not been approved, or if it is clear that it will not be approved under the time limit established under this paragraph, the applicant may do either of the following:

(1) File a new application for a change to the type certificate and comply with all the provisions of paragraph (a) of this section applicable to an original application for a change.

(2) File for an extension of the original application and comply with the provisions of paragraph (a) of this section. The applicant must then select a new application date. The new application date may not precede the date the change is approved by more than the time period established under this paragraph (e).

(f) For aircraft certificated under §§ 21.17(b), 21.24, 21.25, and 21.27 the airworthiness requirements applicable to the category of the product in effect on the date of the application for the change include each airworthiness requirement that the Administrator finds to be appropriate for the type certification of the aircraft in accordance with those sections.

6. Section 21.115 is amended by revising paragraph (a) to read as follows:

§ 21.115 Applicable requirements.

(a) Each applicant for a supplemental type certificate must show that the altered product meets applicable requirements specified in § 21.101 and, in the case of an acoustical change described in § 21.93(b), show compliance with the applicable noise requirements of part 36 of this chapter and, in the case of an emissions change described in § 21.93(c), show compliance with the applicable fuel venting and exhaust emissions requirements of part 34 of this chapter.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

7. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

8. Section 25.2 is amended by revising paragraph (c) to read as follows:

§ 25.2 Special retroactive requirements.

* * * * *

(c) Compliance with subsequent revisions to the sections specified in paragraph (a) or (b) of this section may be elected or may be required in accordance with § 21.101(a) of this chapter.

Issued in Washington, DC, on May 31, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–14052 Filed 6–2–00; 10:13 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
June 7, 2000

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 2001; Request for Proposals and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 2001; Request for Proposals and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Availability of Program Solicitation and Request for Proposals for Fiscal Year 2001 Small Business Innovation Research Grants Program and Request for Input.

SUMMARY: Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law Number 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through phase I of its Small Business Innovation Research (SBIR) Grants Program.

By this notice, the Cooperative State Research, Education, and Extension Service (CSREES) additionally solicits stakeholder input from any interested party regarding the Fiscal Year 2001 SBIR Grants Program Request for Proposals for use in the development of the next request for proposals for this program.

DATES: All phase I proposals must be received at USDA on or before August 31, 2000. Proposals not received on or before this date will not be considered for funding.

ADDRESSES: All proposals must be submitted to the following address: Small Business Innovation Research Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245.

Note: The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Small Business Innovation Research Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW.; Washington, D.C. 20024. Telephone: (202) 401–5048.

Written user input comments should be submitted by mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; Stop 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding.

FOR FURTHER INFORMATION CONTACT: Dr. Charles F. Cleland; Director, SBIR Program; Cooperative State Research, Education, and Extension Service; STOP 2243; 1400 Independence Avenue, SW.; Washington, DC 20250–2243. Telephone: (202) 401–4002. Facsimile: (202) 401–6070.

SUPPLEMENTARY INFORMATION: This program will be administered by the Cooperative State Research, Education, and Extension Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for phase I of the SBIR Program in fiscal year (FY) 2001 is approximately $5,500,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of August 31, 2000. The research to be supported is in the following topic areas:

1. Forests and Related Resources.
2. Plant Production and Protection.
3. Animal Production and Protection.
4. Air, Water and Soils.
5. Food Science and Nutrition.
6. Rural and Community Development.
7. Aquaculture.
8. Industrial Applications.
9. Marketing and Trade.

The award of any grants under the provisions of this program is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations (7 CFR part 3015), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) regulations (7 CFR part 3017), Restrictions on Lobbying regulations (7 CFR part 3018), and Debt Management regulations (7 CFR part 3) apply to this program. Copies of 7 CFR parts 3403, 3015, 3017, 3018, and 3 may be obtained by writing or calling the office indicated below.

The program solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the following office: Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245. Telephone: (202) 401–5048. Application materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov which states that you wish to receive a copy of the application materials for the FY 2001 Small Business Innovation Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible. Please note that applicants who submitted SBIR proposals for FY 2000 or who have recently requested placement on the list for FY 2001 will automatically receive a copy of the FY 2001 program solicitation.

Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of the next request for proposals for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). Written comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA-CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. (This e-

mail address is intended only for receiving stakeholder input comments regarding this RFP, and not for requesting information or forms.)

In your comments, please indicate that you are responding to the FY 2001 Small Business Innovation Research Grants Program. Comments are requested within six months from the issuance of the solicitation of applications. Comments received after that date will be considered to the extent practicable.

Done at Washington, DC, this 30th day of May, 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–14237 Filed 6–6–00; 8:45 am]

BILLING CODE 3410–22–P

Federal Register

Wednesday,
June 7, 2000

Part V

Department of Housing and Urban Development

24 CFR Part 245
Tenant Participation in Multifamily Housing Projects; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR–4403–F–02]

RIN 2502–AH32

Tenant Participation in Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule enhances and expands the rights of tenants in HUD-insured and assisted housing to organize and participate in project operation. Pursuant to statutory changes enacted in 1998, the rule expands the assistance programs in which tenants have rights to organize. The rule also defines general characteristics of a legitimate tenant organization, such as regularity of meeting and democratic organization, while leaving the specific organizational structures and procedures to local decisionmaking by the tenants themselves. The rule outlines examples of appropriate tenant organization activities that housing owners and managers must allow, and requires that tenants have input on certain management decisions. The rule sets parameters as well for the conditions under which tenant organizers may operate. Finally, in response to public comments, the rule clarifies that existing administrative enforcement mechanisms apply.

DATES: *Effective Date:* July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The June 17, 1999 Proposed Rule

The proposed rule of June 17, 1999 (see 64 FR 32782) amended the tenant participation rules in 24 CFR part 245. Implementing the statutory mandate of section 599 of the Public Housing Reform Act, Pub. L. 105–276 (approved October 21, 1998), codified at 12 U.S.C. 1715z–1b, the proposed rule expanded the categories of multifamily housing projects covered by part 245. The proposed rule sought to clarify the reasonable tenant organizing activities that the owner of a covered multifamily housing project must allow, and set forth extremely detailed requirements for establishing, operating, and structuring a tenant organization. In addition, the proposed rule established policies regarding outside tenant organizers, the establishment of more than one tenant organization, and the right of tenants to replace the leadership of existing tenant organizations. A discussion of the specific provisions is found in the preamble of the proposed rule at 64 FR 32782–32783 (June 17, 1999).

II. This Final Rule

This final rule adopts certain of the provisions of the proposed rule, while adding certain provisions and eliminating others in response to public comments. Specifically, this final rule significantly revises proposed § 245.110, and eliminates proposed §§ 245.115—245.135 (this final rule renumbers proposed §§ 245.140–160 as §§ 245.115—245.135). A large number of commenters stated that these sections, which proposed specific requirements for the structure, voting procedures, and governing boards of tenant organizations, tended to be overly prescriptive and that tenants should be allowed to decide these matters for themselves based on their particular situations and the best arrangements for their housing complexes. While HUD would like tenant organizations to move toward some sort of formal structures, HUD has decided to adopt this ''grassroots'' approach in arriving at those structures. Thus, rather than defining in detail what constitutes a properly established tenant organization, the final rule establishes basic general principles for legitimate tenant organizations. For similar reasons, the final rule eliminates proposed § 245.160, related to additional tenant organizations and recall elections.

The final rule revises the purpose statement in § 245.100 to more fully implement the purpose of the statute. In addition, the revision responds to commenters who noted that the proposed language defined the purpose of tenant organizations too narrowly.

One of the basic principles is that a tenant organization should be independent of management. In order to insure the independence of tenant organizations from owners and managers, the final rule revises proposed § 245.140 (now § 245.115) to clarify that management representatives may not attend organization meetings unless invited by the organization to attend specific meetings to discuss particular issues.

The final rule has made a change to the provisions regarding non-tenants who seek to organize the tenants at a complex, in order to conform this rule to the requirements of the mark-to-market program. Specifically, persons who have received HUD grants to inform tenants regarding mark-to-market, and who are acting pursuant to the terms of such grant, may enter the property and speak to tenants without being accompanied.

In response to comments regarding tenants with disabilities, the rule has been slightly revised to take into account the fact that, if a building, for whatever reason, does not have or has not been retrofitted with accessible common areas, the tenant organization may have to work with management to find a cooperative solution so that disabled tenants may attend.

Finally, numerous commenters stated that HUD should include an enforcement scheme. The rule adds a new § 245.135 to clarify that the administrative enforcement mechanisms in 24 CFR part 24 apply.

The public comment period on this proposed rule closed on August 16, 1999. HUD received 73 comments from a wide variety of commenters, including individual tenants, tenant organizations, public housing authorities, legal aid organizations, public interest advocacy groups, building industry representatives, multifamily management representatives, and one member of Congress. It should be noted that a number of commenters were organizations and associations whose comments were supported by a large number of other commenters. Because the commenters commented on a wide variety of topics related to the proposed rule, the following summary groups the comments by subject.

III. Summary of Public Comments

1. General Comments

Comment: The applicability of the rule should be curtailed. Tenant participation in rental housing is not essential to the operation of housing, and the final rule should not provide tenants with day to day input into management decisions.

Nonprofit elderly projects should be excluded from the rule.

Response. The rule implements a statutory requirement that project owners not impede the reasonable efforts of tenants to organize and represent their members (see 12 U.S.C. 1715z–1b(b)(4)). In addition, elderly projects are included in the tenant

management provisions of the statute, and hence cannot be excluded from the rule. Therefore, HUD has made no change to the rule as a result of these comments.

Comments: Certain technical changes should be made. The term ''resident'' should be used in place of ''tenant.''

The final rule should include a statement that it preempts local law with respect to tenant organization, because owners may claim that state laws allow them to bar one or more protected activities.

The regulations should be made consistent with the public housing tenant participation regulations at 24 CFR part 964.

Response. Regarding the use of the term ''tenant,'' this is the appropriate term based on the language in the statute, which extends the right to organize to ''tenants'' (see section 202(a) of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z–1b(a)).

Regarding the suggestion that the regulation contain an explicit statement that it preempts State law, HUD has concluded that regulatory preemption is not necessary for HUD to fully implement the tenant participation statute.

Regarding consistency with the public housing regulations, there are important differences between public housing and housing with mortgages insured or assisted under other HUD programs. In public housing, the operation of the housing itself is much more pervasively regulated than the private assisted housing that this regulation affects. The tenant participation guidelines in this rule are designed to fit the characteristics of assisted housing programs other than public housing.

For these reasons, HUD has not made any changes to this rule as a result of these comments.

Comment: Sensitivity training is necessary. HUD should provide sensitivity training in tenants' rights to HUD field office staff and property owners and management.

Response. Any sensitivity issues will be addressed via handbook revisions, rather than implementing sensitivity training as part of this rule.

Comment: Cooperation by HUD field offices is necessary. HUD's Washington Headquarters must enforce cooperation from local HUD offices, since not all local HUD offices support tenant organization.

Response. All HUD offices will be required to comply with this regulation. No further change in this regulation is required as a result of this comment.

Comment: Notices to tenants. The rule should directly implement the policies regarding tenant organizations contained in the HUD publication entitled ''Tenants' Rights and Responsibilities.''

Owners and managers should be required to issue to tenants a notice regarding tenants' rights to organize.

Once a tenant organization has been formed at a particular housing complex, all local notices regarding building code violations and all Federal notices concerning programmatic regulations should be formally transmitted to the tenant organization.

Response. Regarding implementation of the policies concerning tenant organizations in the HUD publication (which is entitled ''Resident Rights and Responsibilities''), the publication reiterates in a user-friendly manner the policies relating to tenant organizations that are incorporated in the rule itself. Therefore, it is not necessary to separately implement the policies stated in the brochure as a rule.

Regarding the suggestion that project owners be required to notify tenants of their rights to organize, however, HUD does plan to require affected property owners and managers to provide information on tenants' rights to tenants and tenant organizations through changes to the model lease, Use Agreement and Regulatory Agreement.

Regarding the formal transmission to tenant organizations of notices of local building code violations and all Federal notices regarding new program regulations, while HUD is sympathetic to the need for information, HUD does not believe that the best way to accomplish this goal is through a generally applicable regulation. Local code violations are a matter governed by local law, and individual tenant organizations can negotiate information sharing with management on this subject, in accordance with procedures and policies for their area. Certainly, HUD expects assisted housing owners to comply with HUD's Uniform Physical Conditions Standards as set forth in regulations.

As to new program regulations, such regulations are published in the **Federal Register**, which is publicly accessible (see HUD World Wide Web site instructions in the following paragraph). To the extent that HUD sends notices to assisted housing providers regarding HUD policies, these notices are also available from HUD's World Wide Web site or by calling the local HUD field office or HUD's Multifamily Housing Clearinghouse (800–685–8470).

Accessing HUD's World Wide Web: if you have a computer with Internet access, you can access HUD notices and rules. From the HUD home page - (http://www.hud.gov) select ''Reading Room'' from the left hand side of the HUD home page. On the next screen, select ''Bookshelf 12: Legal Information.'' On the next screen, scroll down to ''HUD Handbooks, Regulations and Notices.'' Click on that link. On the next page, click on ''Search HUDCLIPS databases.'' Alternatively, you can go directly to HUDCLIPS at http://www.hudclips.org. HUDCLIPS provides tools to search or browse through various HUD materials, including **Federal Register** publications, handbooks and notices (please keep in mind that these instructions are current as of this date, and WWW pages may change from time to time).

2. Comments on Section 245.10, the Applicability of Part 245

Comment: Exemption from coverage should be omitted. The exception in § 245.10(a)(3), which exempts from the coverage of ''Subpart B '' Tenant Organizations'' all State or local housing finance agency projects receiving assistance under section 236 of the National Housing Act (see 12 U.S.C. 1715z–1) but without FHA-insured or HUD-held mortgages, should be dropped.

Response: HUD is currently investigating whether the exclusion of the State-financed Section 236 projects is appropriate, and is strongly considering proposing a rule that would reverse this exclusion. However, that change will have to be part of a separate rulemaking, as notice of coverage of State-financed section 236 projects was not given in the proposed rule.

Comment: ''Enhanced'' vouchers should not be included. Projects receiving enhanced vouchers should not be included in the rule because doing so would segregate tenants paying market rent from those receiving rental assistance, and also because it may deter owners from accepting enhanced vouchers.

Some commenters questioned how the rule could be enforced as to enhanced vouchers in the absence of a regulatory agreement with HUD.

Other commenters took a contrary view and asserted that the rule should clearly state that it applies to housing with ''enhanced'' or ''preservation'' vouchers.

Response. Section 599 of the Public Housing Reform Act, Pub. L. 105–276 (approved October 21, 1998) expressly includes in the coverage of section 202 ''* * * a project which receives * * * enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990,

the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.'' Section 245.10(a)(5) implements this express legal requirement. Section 538 of the FY 2000 Department of Veteran's Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 106–74, approved October 20, 1999), unified the various enhanced voucher authorities. This section is codified at 42 U.S.C. 1437f(t).

As to the issue of enforcement, payments of the non-tenant portion of rent on enhanced vouchers are made to the owner by the PHA via a Housing Assistance Payment contract. Such a contract is a lower-tier covered transaction for the purposes of the enforcement mechanisms at 24 CFR part 24, which include Limited Denials of Participation, Suspension and Debarment. Therefore, the enforceability of this rule in the case of enhanced vouchers is clear.

Comment: Definition of ''project.''. The final rule should include a definition of the term ''project'' to make clear that an entire development or complex is encompassed in the rule.

Response. The term ''project'' is generally understood. For example, see the definition of project under HUD's part 200 regulations at 24 CFR 200.3. A further definition of ''project'' for part 245 is not required.

3. Comments on Section 245.100, the Right of Tenants To Organize

Comment: Purpose clause is too narrow. The proposed purpose for organizing and operating a tenant organization, that is, ''for the purpose of addressing the terms and conditions of their tenancy,'' is too narrow. Tenant organizations can be involved in a variety of community activities, such as related to job training, neighborhood improvements, Crime Watch, Meals on Wheels, and other activities.

This section should be broadly phrased to protect tenants' First Amendment right to organize for any lawful purpose.

Response. The purpose of the underlying legislation includes a recognition of the benefits of tenant participation in ''creating a suitable living environment in multifamily housing projects'' (*see* 12 U.S.C. 1715z-1b(a)). Indeed, as commenters point out, tenant organizations have been involved in a variety of activities that enhance their living environment beyond merely the terms and conditions of their tenancy, including the examples mentioned by the commenters listed above. Therefore, HUD agrees that the purpose of addressing ''terms and conditions of tenancy'' should be revised. HUD has revised § 245.100 to read: ''The tenants of a multifamily housing project covered under § 245.10 have the right to establish and operate a tenant organization for the purpose of addressing issues related to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development.''

Regarding the suggestion that the rule should be as broad as the tenants' First Amendment right to organize for any purpose, HUD strongly supports the First Amendment rights of all assisted housing tenants, and expects assisted housing owners and managers to respect those rights. This statute and rule, however, are specifically addressed to tenant organizing for the purpose of enhancing the tenants'' living environment.

Comment: Clarify independence from owners. Tenants have the right to operate tenant organizations independently of the owner and the owner's agents. To accomplish this, the final rule should add a provision that permits a tenant organization to exclude from its governing board, its membership, and its meetings any employee or agent of the owner, including one who is a tenant.

Response. HUD agrees that tenant organizations should be independent of owners and management. Therefore, this final rule revises § 245.110 to state in part that a legitimate tenant organization ''meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives.'' The final rule also specifies that, in order to preserve independence, tenant organization meetings should take place without the presence of management representatives, unless the organization has invited them to specific meetings to discuss specific issues.

4. Section 245.105, Recognition of Tenant Organizations

Comment: Preamble language undercuts rule. One commenter stated that language in the preamble that states that ''[w]hile HUD encourages owners to take these responses into consideration, the proposed rule would not require that owners modify or abandon their proposals based on the recommendations made by the tenant organization'' weakens the assumption that tenant opinions will be given any reasonable consideration, and calls into question the purpose of the rule.

Response. HUD believes that the rule as crafted strikes the right balance between the rights of tenants and project owners and managers. The language in the preamble does nothing more than recognize, in the context of a discussion of the impact of the rule on small business, that the rule does not grant tenant organizations the right to force management to alter its proposals. On the other hand, the rule requires management ''to give reasonable consideration'' to concerns raised by tenant organizations and requires multifamily housing owners to allow tenants to formulate responses to owners' requests for rent increases, partial payment of insurance claims, reduction in tenant utility allowances, and other matters stated in § 245.115(a)(9). HUD fully expects owners to consider the comments and input of tenant organizations. Since HUD believes that the existing regulatory language strikes the appropriate balance, HUD has adopted no change as a result of this comment.

Comment: Rights of individual tenants. The proposed rule will negatively affect the rights of individual tenants outside of organizations. The rule implies that the owner is not required to give consideration to the concerns of individual tenants.

The rule should clarify that it does not supersede subparts D and E.

Response. HUD has carefully reviewed the rule, and determined that nothing in the rule purports to deprive individual tenants of any existing legal rights, or supersede subparts D and E (indeed, the rule only purports to revise a portion of subpart A, and subpart B). Therefore, HUD concludes that no further clarification of the regulation is needed.

5. Section 245.110, ''Properly Established'' Tenant Organization; Cross-References to Sections 245.115 (Constitution or By-Laws); 245.120 (Governing Board); 245.125 (Qualified Voting Member); 245.130 (Number of Votes); 245.135 (Election Notices)

Comments: The proposed rule micro-manages the structure of tenant organizations. A ''properly established'' tenant organization should not be defined in terms of its compliance with proposed § 245.110 and the other particular proposed organizational requirements that section cross-referenced, but rather, HUD should use the definition in its Management Agent Handbook 4381.5 REV–2, which states that legitimate tenant organizations are groups that meet regularly, operate democratically, are representative of all residents in the development, and are

independent of non-resident owners and management agents. In addition, a legitimate tenant organization should be completely independent of management and the owner.

The ''properly established'' concept as proposed undermines the right of tenants to establish and operate tenant organizations.

The following proposed sections represent inappropriate and unnecessary intrusions into the rights of tenants to determine the structure of their organizations: §§ 245.115(b), 115(c); 245.120(a)(2), 120(b)(2), 120(c); 125; 130; and 135.

Proposed §§ 245.110–245.135 may be appropriate in the public housing context, but for privately owned housing, they are unreasonable, unworkable, unduly burdensome, and serve no useful purpose. HUD should adopt the definition from the Management Agent Handbook.

The proposed requirements would interfere with existing functional tenant organizations. Such organizations should be allowed to continue operating as they have.

A tenant organization's legitimacy is not derived from written by-laws, staggered terms, and term limits. Rather, it is derived from the respect tenants accord the organization. The organizational proposals are not based on reality and should be dropped.

Response. While HUD believes that tenant organizations should have formal organizational structures, HUD recognizes that, given the wide variety of possible structures that tenant organizations could use, depending on their particular needs and membership, it is appropriate to allow tenants to determine their organizations' structures and procedures based on their needs. Therefore, HUD has accepted the suggestion of a number of commenters to incorporate the guidance for tenant organizations from the Management Agent Handbook in place of the detailed organizational requirements of proposed §§ 245.110–245.135. Tenant organizations will be able to establish their procedures and structures within those basic requirements of meeting regularly, being democratically operated, representing all the residents of the development, and being completely independent of owners and management and their representatives.

6. Section 245.115, Constitution or By-Laws

Comment: Elections every three years. The rule should require that elections be held at least every three years. The rule should require that an independent third party oversee the elections.

Response. As stated above, given the multiplicity of different types of tenant organizations and the large number of comments opposed to HUD imposing specific organizational requirements by regulation, HUD has revised the rule to require that tenant organizations, inter alia, operate democratically and represent all the residents. Thus, tenant organizations will have flexibility to set their own election procedures within those guidelines.

7. Section 245.120, Governing Board

Comment: Independence from owners. The final rule should clarify that owners and management employees may not run for elected office or serve on a tenant organization's board of directors.

Response. The provision in § 245.110 that tenant organizations are completely independent of owners, management and their representatives implies that management personnel may not serve on a tenant organization's board of directors or as officers, and adequately addresses this issue.

Comment: Procedures for electing governing board. The governing board should be democratically elected by qualified voting members.

The issue of staggered terms (see proposed § 245.120(a)(2)) should be decided by the tenant organization.

The proposed three year term limit for members of the governing board should be removed because it will undermine the effectiveness of tenant organizations by depriving them of their best leaders after three years.

The requirement that governing board members be in compliance with their leases should be dropped. First, there are tenant confidentiality concerns. Secondly, the requirement gives the owner too much control over the membership of the governing board. The appropriate sanction for lease noncompliance is eviction.

Response. HUD agrees not to include the governing board regulations in the final rule, but rather, in accordance with the approach taken regarding other portions of the rule, to allow tenant organizations to select their own organizational structures. Any governing boards would be covered by the overall requirements that the tenant organization must operate democratically and be representative of the residents.

8. Section 245.125, Qualified Voting Member

Comment: Conformance with public housing requirements. This section should be revised to conform with 24 CFR 964.115(c), the public housing resident council requirements.

Response. The requirements of the public housing program are not necessarily appropriate for other assisted housing, which is privately owned and operated. Furthermore, considering the numerous comments that HUD received that the proposed rule was overly prescriptive as to the nature of tenant organizations, HUD has decided to allow the tenants themselves to decide this issue rather than closely regulating this area.

9. Section 245.130, Number of Votes

Comment: There should be more than one vote per unit. Commenters stated that there should be one vote per resident rather than one vote per unit. One suggestion was that each member of a tenant family whose income is counted toward rent should be allowed to vote. Other commenters stated that any resident who is at least 18 years of age and whose name appears on the unit lease should be allowed to vote, as in public housing.

Response. Considering the numerous comments that HUD received that the proposed rule was overly prescriptive as to the structure and procedures of tenant organizations, HUD has decided to allow the tenants themselves to decide this issue.

10. Section 245.135, Election Notices

Comment: 30 day notice. This section should require at least thirty days' notice of nominations, as does 24 CFR 964.115(c), relating to public housing resident councils.

Response. Considering this comment along with other comments stating that HUD's proposals, including this section, were too prescriptive in view of the varying needs of different tenant organizations, HUD has eliminated proposed § 245.135. Tenant organizations can establish their own procedures within the parameters of democratic operation.

11. 24 CFR 245.140, Protected Activities

Comment: Prior permission not required. The final rule should include additional language that makes it clear that no prior notice to or permission from owners and managers of a project is needed prior to the tenant organization undertaking the activities permitted by this section.

Response. Upon consideration of this comment, HUD agrees that a management requirement of prior permission before conducting activities permitted by the regulation could constitute a significant impediment to tenants' enjoyment of the right to

organize and to the organization's independence, contrary to the purpose of the underlying statute. Therefore, HUD has revised the final rule to clarify this point. However, HUD believes that it is good practice for tenant organizations to communicate with management about their activities, and doing so supports a spirit of partnership in maintaining a positive living environment.

Comment: Certain permitted tenant activities should be omitted. HUD should remove from the list of permitted activities certain matters under § 245.140(a)(9) (§ 245.115(a)(9) in this final rule), including partial payment of claims; conversion from project-based paid utilities to tenant paid utilities; converting residential units to non-residential use, cooperative housing, or condominiums; major capital improvements; and prepayment of loans. Including these items in the list may give a false impression that an owner must do what the tenant organization recommends. These decisions are best determined by individuals who have specialized training, not tenants.

Requiring an owner to receive tenant comments on proposed capital improvements is unreasonable and unwarranted. Similarly, it is inappropriate for tenants to be involved in property financing decisions, such as prepayment of loans.

Response. The commenters' concern that the list of examples of permitted activities may give a false impression that owners have to comply with tenant recommendations is not supported by the text of the rule, which only requires that owners and their agents give ''reasonable consideration'' to concerns that tenant organizations raise. Therefore, HUD does not believe that the commenters' fears in this regard warrant a revision of the proposed rule. Furthermore, the list of areas on which tenant organizations may comment can affect the living conditions of tenants. Thus, permitting tenant comment in these areas is both reasonable and within the parameters of the underlying statute.

Comment: Permitting leaflets will permit offensive materials. Giving blanket protection to leaflet and post information on bulletin boards would strip the owners of the ability to control offensive materials, particularly in culturally diverse environments.

Response. Tenant activities, including distributing leaflets and posting on bulletin boards, are protected by this rule insofar as they are ''related to the establishment or operation of a tenant organization'' (see proposed § 245.140(a)). The purpose of a tenant organization is to address matters relating to the tenants' living environment. Activities outside of those parameters are not protected by this rule (although there may be other general legal protections, such as broader First Amendment rights). For this reason, HUD does not adopt the suggestion to eliminate leaflets and posting from the tenant organizations' permitted activities.

Comment: Additional facilities. One commenter asked whether the rule would require the installation of additional facilities, such as a bulletin board if the housing complex had none.

Response. The rule does not require housing complexes to add additional facilities.

Comment: The list of permitted activities is not exhaustive. The rule should make clear that the list of permitted activities in proposed § 245.140(a) is not exhaustive.

Response. Section 245.115(b) (proposed as § 245.140(b)) makes sufficiently clear that the list is not exhaustive.

Comment: Right of tenants to conduct door to door contact. The right of tenants to contact other tenants door to door should not be limited to an initial survey to solicit interest (see proposed § 245.140(a)(5)).

Response. While the list in proposed § 245.140(a) does not purport to be exhaustive, HUD agrees, for the sake of improved clarity, to amend proposed § 245.140(a)(5) as suggested (see § 245.115(a)(5) of this final rule). In accordance with the comment below regarding use of the word ''solicit,'' HUD is substituting other language for that term in this section as well.

Comment: Remove the term ''solicit'' from the rule. Use of the term ''solicit'' inaccurately describes the work done by tenant organizers and will support attempts by management to prevent tenant organizers from conducting legitimate outreach activities.

Response. HUD agrees that the term ''solicit'' has negative connotations unrelated to tenant organizing, and will use other terms in the final rule.

Comment: The term ''reasonable'' should be removed from proposed § 245.140(b). Section 245.140(b) provides that tenant organizations may conduct other ''reasonable'' activities related to the establishment or operation of a tenant organization. Owners could use this language to attempt to intimidate tenants or tenant organizers by claiming they are not acting ''reasonably.'' Alternatively, the rule could alter the wording to ''activities reasonably related * * *''.

Response. ''Reasonableness'' is a common, generally understood legal principle, which is also used in the underlying statute. The list of activities in proposed § 245.140(a) (§ 245.115(a) in this final rule) provides examples of the sorts of activities that might be considered ''reasonable.'' Since the activities of tenant organizations do, in fact, have to be reasonable, HUD has made no changes to the rule as a result of this comment.

Comment: Support for proposed § 245.140. Proposed § 245.140 should not be ''watered down.''

Response: HUD is not making any change to § 245.140 that would ''water it down.''

Comment: There should be specific instructions regarding leaflets. Placing leaflets at tenants' doors creates a potential safety hazard. The rule should require that leaflets either be placed under doors, attached to doors, or placed in an orderly fashion in a public location.

Response. HUD has considered this comment, but does not believe that a rule concerned with general policies regarding tenant organizations is the appropriate venue for instructions on distributing leaflets. If HUD were to provide any such guidance, it would most likely be in the form of handbook revisions or informational brochures.

12. Section 245.145, Meeting Space

Comment: The rule should clarify that tenants have a right to meet without representatives of owners and management. A new paragraph should be added to this section clarifying this principle and further stating that tenants who are not management representatives should have the option to exclude tenants who are management representatives from their meetings.

Response. The final rule provides that legitimate tenant organizations are ''completely independent of owners, management, and their representatives'' (see § 245.110). In order to preserve this independence, while organizations can certainly choose to invite management representatives to attend specific meetings on specific issues, as a general practice, absent such invitation, meetings should be without the presence of management representatives or agents. This rule makes a clarifying change to § 245.115(a)(8) (redesignated from proposed § 245.140(a)(8)).

Comment: Persons with disabilities. The rule should require tenant organizations only to make ''reasonable efforts'' to make their meetings accessible to persons with disabilities. Under the proposed rule, a tenant organization may be effectively

prohibited from holding meetings if the only reasonable place to hold a meeting is in a project's community room and the room is inaccessible to persons with disabilities.

Response. Under section 804(f)(3)(C) of the Fair Housing Amendments Act of 1988, 42 U.S.C. 3604(f)(3)(C), multifamily dwellings built for initial occupancy after March 13, 1991 are generally required to have accessible common areas. In addition, section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, prohibits discrimination against disabled individuals by recipients of federal financial assistance, which includes housing complexes receiving HUD assistance through the Section 8 and other programs. Pursuant to these legal requirements, HUD expects that many of the complexes at which tenant organizations have been or will be formed under this regulation would have accessible common areas, including meeting rooms. For those complexes which do not have accessible common areas, because, for example, they predate the legal requirement to have them and have not been retrofitted, HUD expects tenant organizations and management to work together to find a solution so that all tenants who wish to do so may participate in organizational meetings.

Comment: Owners should not be allowed to charge fees for meeting space. Through the charging of fees, deposits or amounts to cover additional insurance, owners could effectively deny tenants the right to use community rooms. As an alternative, the regulation could provide that the costs of providing meeting space are eligible project expenses.

Response. The proposed rule simply continues HUD's current policy of allowing reasonable, customary and usual fees, as approved by HUD, that owners would normally charge for the use of such facilities. Under this approach, owners may not charge fees for tenant organizations to use meeting space where they do not charge such fees for other uses of the space, and they may not single out tenant groups for higher fees. HUD believes that this approach reasonably balances the tenant organizations' needs against the owner's costs.

The alternative suggestion of charging the fees to project costs does not necessarily resolve the issue of owner's costs. While some owners may be willing to waive fees altogether and use their project accounts to defray the costs, others may not be in a financial position to do so because of other costs of operating the project.

13. Section 245.150, Tenant Organizers

Comment: Independence from owners. The rule should make clear that tenant organizers cannot be affiliated with current or prospective owners or management.

Response. In order to further the intent of the rule that tenant organizations be independent from owners and management, HUD has revised proposed § 245.150 as suggested. That section is renumbered as § 245.125 in this final rule.

Comment: Tenant organizers should be held to standards. Tenant organizers should be held to the same standards as agents and owners. Outside organizers should be required to disclose background qualifications, experience and potential conflicts of interest.

The final rule should establish qualifications for non-resident tenant organizers, who otherwise could potentially serve as agents for outside influences with no stake in the ultimate impact on the tenant community.

Response. HUD believes that the proposed disclosures and requirements would overly restrict tenant organizing activity. It should be up to the tenants themselves to assess whether to speak to tenant organizers and make their own judgments about the organizers' presentation and potential agenda.

Comment: Advance notification. Owners should be notified in advance when a non-resident tenant organizer plans to visit a property, and be permitted to have a representative monitor the organizer while he or she conducts organizing activities.

Response. While HUD believes it is good practice for tenants to provide information to owners regarding their organizing activities, the intent of this regulation is to ensure that tenant organizations are independent from owners and management. Thus, for example, § 245.115 (proposed § 245.140) does not require permission from owners to conduct organizing activities. Requiring advance notice of a non-resident tenant organizer would make such independence more difficult and could have the effect of impeding organizational efforts, contrary to section 202(b)(4) of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-1b. Therefore, HUD has adopted no change to the rule as a result of this comment.

Comment: Owner's policies regarding door to door canvassing. With respect to non-resident tenant organizers, the proposed rule differentiates between a situation where the owner has a ''consistently enforced'' policy against door to door canvassing, and where the owner does not have such a policy. One comment inquires who will make the determination of whether the owner has such a policy. A number of comments stated that the policy should be required to be in writing to avoid disputes.

Response. In order to avoid disputes and selective enforcement of anti-canvassing rules, HUD has revised the proposed regulation to require that policies be in writing, in addition to being consistently enforced as the proposed rule stated. HUD hopes that these criteria are sufficiently objective so as to avoid most disputes, but in the event disputes arise the HUD field office can assist in resolving the issue.

Comment: New policies. The final rule should clarify that owners and management may not initiate a new policy against contacting residents door to door in response to, or to prevent tenant organizing.

Response. Under the system set forth in the rule, a policy against door to door canvassing would not serve to prevent tenant organizing. Rather, it would simply require non-resident tenant organizers to be accompanied by a tenant. Furthermore, the rule requires the policy to be both ''consistently enforced'' and ''written.'' A written policy solely applied against tenant organizers and not other door to door canvassers would not meet the standards of the rule for a consistently enforced policy. Also, it is contrary to law and regulation for an owner to impede the reasonable efforts of tenants to organize. HUD can enforce this regulation by proceedings under 24 CFR part 24, including Limited Denials of Participation, suspension, and debarment. Thus, HUD believes there are sufficient protections in the rule and statute to guard against contrived or bad faith uses of anti-canvassing policies.

Comment: There should be no restrictions on tenant organizers. Tenants should not be required to accompany non-tenant organizers because tenants are often not willing to take on this role because of fears of retaliation by management.

The rule requiring that organizers be accompanied by a tenant when canvassing door to door if management has a consistently enforced policy against canvassing will likely lead to a proliferation of non-solicitation policies. It will be difficult to prove if the policies have been consistently enforced. There is a long tradition in this country of door to door outreach of this kind in buildings that are not subsidized by the Federal government. Supreme Court decisions have supported the right of organizers to go door to door.

The final rule should provide that organizers may contact tenants door to door if either accompanied by a resident or acting at the request of one.

It would be preferable to omit any limitation on non-resident tenant organizers from the rule. However, if retained, § 245.150(c) should be revised as follows:

§ 245.150(c)(1): ''If a multifamily project covered under § 245.10 has a consistently enforced pre-existing, written policy against contacting residents door-to-door that is not otherwise prohibited by law, then a non-tenant tenant organizer conducting door-to-door contact while on any property or building of the project may do so if either accompanied by or acting at the request of a tenant of the property.''

§ 245.150(c)(2): Change the word ''solicitation'' to ''door-to-door contact.''

§ 245.150(c)(3): ''Where a pre-existing, written policy against contacting residents door-to-door does not exist as of the date of publication of these regulations, an owner or management agent may not initiate a new policy against contacting residents door-to-door in response to or to prevent tenant organization activities.''

§ 245.150(c)(4): ''The limitation on door-to-door contact by non-tenant tenant organizers in paragraph (c)(1) shall not be construed to prohibit or limit any other protected activities by non-tenant tenant organizers enumerated in § 245.140 or to prohibit or limit the right of tenant of the covered project to contact other residents door-to-door or otherwise assert their rights under § 245.140.''

§ 245.150(c)(5): ''Where a pre-existing, written policy against contacting residents door-to-door already exists, a non-tenant tenant organizer may conduct an initial door-to-door contact without an invitation by a resident.''

§ 245.150(c)(6:) ''Non-tenant tenant organizers funded through HUD's Outreach and Training Grant or Intermediary Technical Assistant Grant program or through VISTA Volunteer positions provided by the Corporation for National Service (CNS) and funded by HUD through a contract with CNS to provide outreach and training assistance to residents of covered projects may conduct initial or on-going door-to-door contact with residents without an invitation by a resident.''

Response. HUD believes that the issue of non-resident tenant organizers requires balancing of an owner's property rights with tenants' right to organize. There are a variety of forums by which non-residents can contact residents, including mail or meeting them in a public area outside the project property. In addition, HUD agrees that in cases where management has a *bona fide* policy against contacting residents door-to-door, it is reasonable to require outside organizers to be accompanied by a tenant to ensure that at least one tenant has invited the organizer onto the property. However, HUD also agrees that the activities of certain grant recipients whose purpose is to provide education and outreach to tenants concerning restructuring of assistance under the mark-to-market program, should not be so conditioned. HUD has therefore made a change to the proposed rule at § 245.150(c), codified in this final rule as § 245.125(c).

Comment: Section 245.150(c) violates the First Amendment. This section will have a chilling effect on tenants' rights of association, and as such is unconstitutional under *Laird* v. *Tatum,* 408 U.S. 1, 11 (1972). Therefore, the section should be omitted entirely.

Response. The proposed regulation permitting outside organizers to canvass on private property despite non-soliciting policies serves to protect tenants' organizational rights as well as the property interests of owners. HUD disagrees that this regulatory accommodation violates the holding of *Laird* v. *Tatum* or any case law concerning First Amendment rights that applies in this situation.

14. Section 245.155, Re-solicitation

Comment: Proposed § 245.155 should be omitted from rule. The section is not necessary, because any tenant can simply refuse to speak to tenant organizers and choose not to attend meetings of the tenant organization. On the other hand, the section can be used by owners to keep tenant organizers from the property. Owners can seek out dissenters as a means to undermine legitimate tenant organizations.

Response. HUD has considered this comment and believes that the rule should respect the wishes of tenants, having been made aware of their rights, not to be repeatedly solicited. Since the right not to be re-solicited only applies to ''a tenant,'' that is, on an individual basis, HUD does not believe management can use this section as a mechanism to keep tenant organizers from talking to tenants who have not asserted this right. Proposed § 245.155 is renumbered as § 245.130 in this final rule.

15. Section 245.160, Additional Tenant Organizations

Comment: The rule should not allow more than one tenant organization at a project. Allowing more than one tenant organization could cause legal and administrative difficulties.

Allowing multiple tenant organizations would make it unclear who speaks for the community.

From management's perspective, multiple tenant organizations would be burdensome for management to accommodate. From the tenants' perspective, they would be better served by a single, strong organization that a multitude of fragmented organizations. At a minimum, the rule should provide that a tenant organization must represent at least 10% of all a project's residents, and not less than five residents in any case.

Allowing multiple tenant organizations could encourage confusion and dissension among tenants when a minority of tenants decide to form their own organization.

Allowing additional tenant organizations would create schisms, issue-based factions, and animosity among tenants and effectively destroy the effectiveness of the rule, and provide no means to establish an effective consensus among tenants in representing issues to management.

Response. The final rule omits the proposed language explicitly providing for multiple tenant organizations, in favor of the general definition in § 245.110. HUD believes that this general definition supplies sufficient guidance.

Comment: Management control. The rule should not permit the creation of a second organization under management control.

Response. HUD believes that the provision for complete independence of the tenant organization in § 245.110 adequately addresses this concern.

Comment: Proposed section 245.160(b), replacement of leadership. The final rule should only require owners to recognize the right of tenants to replace their leadership if the replacement is done according to the written procedures contained in the tenant organizations' by-laws, that meet the standards of proposed § 245.115.

Response. HUD also received numerous comments generally on proposed §§ 245.110—245.135, to the effect that these sections sought to excessively micro-manage tenant organizations, and would eliminate or hamper many effective organizations that follow different procedures. Therefore, HUD has decided to allow tenants to choose their organizational procedures and structures within the general guidelines of § 245.110. For this reason, the final rule omits proposed § 245.160(b).

16. Enforcement

Comment: Final rule should expressly provide tenants with the right to enforce the regulations. The rule will only be meaningful if it can be enforced by

tenants and tenant organizations in addition to HUD. In addition to providing by regulation tenant enforcement rights, HUD should explicitly make the tenants third party beneficiaries of the regulatory agreement between HUD and the owners. HUD should make tenants partners in the enforcement of HUD requirements.

The final rule should explicitly state enforcement procedures and penalties for violations.

The following should be added as new enforcement sections to the final rule:

Section 245.170 Enforcement.

(a) HUD staff shall utilize the procedures prescribed in the Management Agent Handbook 4381.5 REV–2 to identify, assess, and respond to resident complaints regarding owner agent conduct or omissions, including harassment of residents or resident associations who attempt to exercise their rights, lease violations, failure to maintain HQS requirements, or failure by the owner/agent to properly carry out its management responsibilities.

(b) HUD field staff shall assess resident complaints regarding harassment and owner/agent responses on these matters as part of field Management Reviews.

(c) If the owner/agent fails to adequately respond to outstanding resident complaints within a reasonable time period set by the HUD field office, HUD staff shall implement sanctions against the agent and/or owner.

(d) HUD staff shall classify the property as ''troubled'' due to persistent, validated resident complaints of a serious nature, including but not limited to harassment of the residents association or individual tenants for asserting their rights.

(e) Upon publication of a final rule, HUD shall revise regulatory agreements and contracts with owners and their agents to include the rights of tenants to organize and assert their individual rights explicitly in the agreements and contracts themselves, including but not limited to the renewal of expiring project-based or Preservation Voucher Section 8 contracts, amendments to existing regulatory agreements (which might occur in a partial payment of claim, bond refinancing, transfer of physical assets, or sale of the property), new regulatory agreements, and a revision to HUD's Model Lease as published in the Handbook 4350.3, Occupancy Standards for HUD Assisted Housing.

Section 245.180 Sanctions and Penalties.

(a) HUD shall pursue removal of the agent or appropriate civil and/or criminal penalties as sanctions for violations of residents rights to organize or assert their individual rights as tenants, including but not limited to:

(1) Removal of an agent under a HUD regulatory agreement, if any;

(2) Civil penalties up to $25,000 for violations of residents' right to organize or their individual rights as tenants;

(3) A fine of not more than $10,000, imprisonment of not more than five years or both for knowingly and willingly falsifying, concealing, or making any false, fictitious or fraudulent statement regarding harassment or interference with residents asserting their right to organize or their individual rights as tenants;

(4) Referral to the Attorney General and/or HUD's Enforcement Center with a recommendation for civil action, including mandatory or injunctive relief, to enjoin against owner/agent actions violating residents' right to organize or assert their individual rights as tenants.

(b) In cases of extended noncompliance affecting a property, or widespread noncompliance affecting more than one property, HUD will consider taking the following enforcement actions, without further notice to the owner/agent:

(1) Debarment from or limited denial of participation in HUD programs;

(2) Initiate legal action to place the property in receivership;

(3) Partially abate the project's assistance contracts;

(4) Take steps to have the property declared in default of the mortgage and initiate foreclosure proceedings.

(c) HUD shall otherwise follow the procedures prescribed in the Management Agent Handbook (4381.5, REV–2) in assessing these penalties.

Response. HUD agrees that it is important that tenants' rights to organize be enforceable. HUD can enforce the provisions of this tenant participation rule under the procedures of 24 CFR part 24, which provides for Limited Denials of Participation (''LDP''), debarment, and suspension in the case of such violations. These are powerful sanctions, and HUD will use them as necessary to address interference with tenants' right to organize. HUD has made an amendment to the rule to clarify that this existing authority applies with respect to this regulation.

Regarding tenant enforcement of the right to organize, HUD expects to consider whether to require prospective changes to the model lease, Regulatory Agreement and Use Agreement memorializing the right to tenant participation, and making tenants third-party beneficiaries of the Regulatory and/or Use Agreement. Such changes could strengthen the ability of tenants to enforce their rights to organize, if necessary.

On the issues of civil money penalties and criminal sanctions, HUD's statutes provide specific instances in which civil money penalties are applicable. HUD does not believe it can expand those instances to include tenant organizational rights without a statutory change. Likewise, HUD does not have statutory authority to impose criminal penalties such as imprisonment. However, HUD can use the existing administrative enforcement system. Because of the availability of the sanctions of LDP, suspension and debarment, HUD believes it currently has sufficient enforcement authority to address violations of this regulation.

Comment: The final rule should expressly prohibit harassment. Because of the lack of enforcement actions by HUD, the final rule should state that HUD will no longer tolerate harassment of tenants and tenant organizations asserting their protected rights.

The prohibited harassment tactics listed in chapter 7 of HUD's Management Agent Handbook should be included in the final rule, along with the listed sanctions available.

Response. The rule states that: tenants have a right to organize (§ 245.100); owners and their agents must recognize legitimate tenant organizations and give reasonable consideration to their concerns; and owners and their agents must allow tenants to conduct reasonable activities related to the establishment and operation of a tenant organization. These provisions suffice to require owners and their agents to allow tenant organizations to function. Violations of these regulatory provisions can be addressed through administrative means, as set forth in new § 245.135. A provision specifically on harassment would not add significantly to these existing protections, which apply to any interference with tenants' organizational rights.

Comment: The rule should include a list of prohibited activities. The rule should contain the following additional section:

Section 245.170 Impediments to residents or resident associations attempting to exercise their rights.

(a) Actions by owners/agents that constitute impediments to resident or

resident associations attempting to exercise their rights include, but are not limited to, the following:

(1) Unreasonable denial of accessible meeting space to residents;

(2) Sending management representatives (including residents who are management employees or who receive rent concessions in exchange for management services) to resident meeting when residents have not invited these representatives to attend;

(3) Evicting, threatening to evict, withholding entitlements, or otherwise penalizing tenants for organizing or asserting their rights;

(4) Attempting to adversely influence resident leaders by offering individual inducements such as employment, preferential transfers, rent abatements, favored repairs, or other benefits not available to all residents in the development;

(5) Attempting to form a competing resident organization under the control of the management company or the owner;

(6) Sexual harassment of residents by owners/agents;

(7) Interfering with or obstructing residents or non-tenant tenant organizers from engaging in any protected activities set forth in § 245.140 of these regulations; and

(8) Engaging in any activity designed to intimidate, harass, or retaliate against tenant or non-tenant tenant organizers exercising their right to organize or assert their rights.

(b) Owner or management employees may not run for elected office or serve on the board of directors of the residents organization.

(c) HUD considers any of the above action taken by owner/agents to be a violation of residents' rights to organize and assert individual rights.

Response. The rule as proposed contains a list exemplifying protected activities (see § 245.115(a)), and also protects other reasonable activities related to establishing and operating a tenant organization (see § 245.115(b)). Therefore, actions that interfere with these activities are prohibited. Additionally, some of the suggested additions are simply beyond the scope of this rulemaking in any case; the prohibition on sexual harassment of residents, for example, is enforced through the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, and the regulations promulgated pursuant thereto. Therefore, HUD makes no change to the final rule as a result of this comment.

IV. Findings and Certifications

E.O. 12866 Statement

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this final rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule, while it requires owners and their agents to permit reasonable tenant organizing activities, does not impose any affirmative obligation on owners to give financial or other assistance to tenant organizations in the conduct of these activities.

The rule would permit tenant organizations to develop responses to economic proposals made by owners that could affect the living environment of the tenants, such as rent increases and major capital additions, and requires owners of give reasonable consideration to such responses. However, it does not require owners to adopt such proposals.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this rule is categorically excluded from review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538)(UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

List of Subjects in 24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

For the reasons stated in the preamble, HUD amends part 245 as follows:

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 245 continues to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 245.10 [Amended]

2. Amend 24 CFR 245.10 as follows:

a. Remove paragraph (a)(2);

b. Remove from paragraph (c) the definition of ''Section 202 Loans for the Elderly or Handicapped BMIR Program'';

c. Redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3), respectively;

d. Revise redesignated paragraphs (a)(2)(ii) and (a)(3); and

e. Add paragraphs (a)(4)–(7) to read as follows:

§ 245.10 Applicability of part.

(a) * * *

(2) * * *

(ii) Was sold by the Secretary subject to a mortgage insured or held by the

Secretary and an agreement to maintain the low- and moderate-income character of the project;

(3) *State or local housing finance agency project.* The project receives assistance under section 236 of the National Housing Act (12 U.S.C. 1715z–1) or the Rent Supplement Program administered through a State or local housing finance agency, but does not have a mortgage insured under the National Housing Act or held by the Secretary. Subject to the further limitation in paragraph (b) of this section, only the provisions of subparts A and C of this part and of subpart D of this part for requests for approval of a conversion of a project from project-paid utilities to tenant-paid utilities or of a reduction in tenant utility allowances, apply to a mortgagor of such a project;

(4) The project receives project-based assistance under section 8 of the United States Housing Act of 1937 (this regulation does not cover tenant participation in PHAs that administer such project-based assistance);

(5) The project receives enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended;

(6) The project receives assistance under the Section 202 Direct Loan program or the Section 202 Supportive Housing for the Elderly program; or

(7) The project receives assistance under the Section 811 Supportive Housing for Persons with Disabilities program.

* * * * *

3. Subpart B is revised to read as follows:

Subpart B—Tenant Organizations

Sec.

245.100 Right of tenants to organize.
245.105 Recognition of tenant organizations.
245.110 Legitimate tenant organizations.
245.115 Protected activities.
245.120 Meeting space.
245.125 Tenant organizers.
245.130 Tenants' rights not to be re-canvassed.
245.135 Enforcement.

Subpart B—Tenant Organizations

§ 245.100 Right of tenants to organize.

The tenants of a multifamily housing project covered under § 245.10 have the right to establish and operate a tenant organization for the purpose of addressing issues related to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development.

§ 245.105 Recognition of tenant organizations.

Owners of multifamily housing projects covered under § 245.10, and their agents, must:

(a) Recognize legitimate tenant organizations; and (b) Give reasonable consideration to concerns raised by legitimate tenant organizations.

§ 245.110 Legitimate tenant organizations.

A tenant organization is legitimate if it has been established by the tenants of a multifamily housing project covered under § 245.10 for the purpose described in § 245.100, and meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives.

§ 245.115 Protected activities.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct the following activities related to the establishment or operation of a tenant organization:

(1) Distributing leaflets in lobby areas;

(2) Placing leaflets at or under tenants' doors;

(3) Distributing leaflets in common areas;

(4) Initiating contact with tenants;

(5) Conducting door-to-door surveys of tenants to ascertain interest in establishing a tenant organization and to offer information about tenant organizations;

(6) Posting information on bulletin boards;

(7) Assisting tenants to participate in tenant organization activities;

(8) Convening regularly scheduled tenant organization meetings in a space on site and accessible to tenants, in a manner that is fully independent of management representatives. In order to preserve the independence of tenant organizations, management representatives may not attend such meetings unless invited by the tenant organization to specific meetings to discuss a specific issue or issues; and

(9) Formulating responses to owner's requests for:

(i) Rent increases;

(ii) Partial payment of claims;

(iii) The conversion from project-based paid utilities to tenant-paid utilities;

(iv) A reduction in tenant utility allowances;

(v) Converting residential units to non-residential use, cooperative housing, or condominiums;

(vi) Major capital additions; and

(vii) Prepayment of loans.

(b) In addition to the activities listed in paragraph (a) of this section, owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct other reasonable activities related to the establishment or operation of a tenant organization.

(c) Owners of multifamily housing projects and their agents shall not require tenants and tenant organizers to obtain prior permission before engaging in the activities permitted under paragraphs (a) and (b) of this section.

§ 245.120 Meeting space.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must reasonably make available the use of any community room or other available space appropriate for meetings that is part of the multifamily housing project when requested by:

(1) Tenants or a tenant organization and used for activities related to the operation of the tenant organization; or

(2) Tenants seeking to establish a tenant organization or collectively address issues related to their living environment.

(b) Tenant and tenant organization meetings must be accessible to persons with disabilities, unless this is impractical for reasons beyond the organization's control. If the complex has an accessible common area or areas, it will not be impractical to make organizational meetings accessible to persons with disabilities.

(c) *Fees.* An owner of a multifamily housing project covered under § 245.10 may charge a reasonable, customary and usual fee, approved by the Secretary as may normally be imposed for the use of such facilities in accordance with procedures prescribed by the Secretary, for the use of meeting space. An owner may waive this fee.

§ 245.125 Tenant organizers.

(a) A tenant organizer is a tenant or non-tenant who assists tenants in establishing and operating a tenant organization, and who is not an employee or representative of current or prospective owners, managers, or their agents.

(b) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenant organizers to assist tenants in

establishing and operating tenant organizations.

(c) *Non-tenant tenant organizers.* (1) If a multifamily housing project covered under § 245.10 has a consistently enforced, written policy against canvassing, then a non-tenant tenant organizer must be accompanied by a tenant while on the property of the multifamily housing project, except in the case of recipients of HUD Outreach and Assistance Training Grants (''OTAG'') or other direct HUD grants designed to enable recipients to provide education and outreach to tenants concerning HUD's mark-to-market program (see 24 CFR parts 401 and 402), who are conducting eligible activities as defined in the applicable Notice of Funding Availability for the grant or other effective grant document.

(2) If a multifamily housing project covered under § 245.10 has a written policy favoring canvassing, any non-tenant tenant organizer must be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations. If the project does not have a consistently enforced, written policy against canvassing, the project shall be treated as if it has a policy favoring canvassing.

§ 245.130 Tenants' rights not to be re-canvassed.

A tenant has the right not to be re-canvassed against his or her wishes regarding participation in a tenant organization.

§ 245.135 Enforcement

(a) Owners of housing identified in § 245.10, and their agents, as well as any principals thereof (as defined in 24 CFR 24.105), who violate any provision of this subpart so as to interfere with the organizational and participatory rights of tenants, may be liable for sanctions under 24 CFR part 24. Such sanctions may include:

(1) Debarment. A person who is debarred is prohibited from future participation in Federal programs for a period of time. The specific rules and regulations relating to debarment are found at 24 CFR part 24, subpart C.

(2) Suspension. Suspension is a temporary action with the same effect as debarment, to be taken when there is adequate evidence that a cause for debarment may exist and immediate action is needed to protect the public interest. The specific rules and regulations relating to suspension are found at 24 CFR part 24, subpart D.

(3) Limited Denial of Participation. An LDP generally excludes a person from future participation in the Federal program under which the cause arose. The duration of an LDP is generally up to 12 months. The specific rules and regulations relating to LDPs are found at 24 CFR subpart G.

(b) These sanctions may also apply to affiliates (as defined in 24 CFR part 24) of these persons or entities.

(c) The procedures in 24 CFR part 24 shall apply to actions under this subpart.

Dated: June 1, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–14217 Filed 6–2–00; 2:57 pm]

BILLING CODE 4210–33–P

Federal Register

Wednesday,
June 7, 2000

Part VI

Department of Energy

Federal Energy Regulatory Commission

Open Access Same-Time Information System (OASIS) and Standards of Conduct; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–011]

Open Access Same-Time Information System (OASIS) and Standards of Conduct

May 19, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed changes.

SUMMARY: The Federal Energy Regulatory Commission (the Commission) proposes to adopt revisions to Version 1.3 of the OASIS Standards and Communication Protocols Document. The changes are being proposed to improve OASIS performance and to conform with Commission policy. The Commission invites written comments on this proposal and on four specific questions enumerated in the notice.

DATES: Written comments (an original and 14 paper copies) must be received by July 7, 2000. In addition, the Commission encourages the filing of a copy of the comments on computer diskette or by E-Mail by the same date.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 and by E-Mail to ''comment.rm@ferc.fed.us''.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (technical information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426; (202) 208–1283

Paul Robb (technical information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426; (202) 219–2702

Gary D. Cohen (legal information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426; (202) 208–0321

SUPPLEMENTARY INFORMATION: The full text of this notice, including the OASIS Standards and Communication Protocols, Version 1.4, is available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours, is posted on both the Commission's Issuance Posing System (CIPS) and the Records and Information Management System (RIMS), and may be viewed and printed remotely via the Internet through FERC's Home Page (http://www.ferc.fed.us).

Notice of Proposed Changes

I. Introduction

In this notice, the Federal Energy Regulatory Commission (Commission) proposes to revise Version 1.3 of the OASIS Standards and Communication Protocols Document (S&CP Document, Version 1.3) to reflect recommended revisions put forth by the OASIS How Working Group (How Group) and the Market Interface Committee (MIC) (collectively How/MIC) [1] in a joint filing submitted on January 31, 2000 (January 31 submittal).

The January 31 submittal was filed prior to our issuance of our ''Business Practice Standards for OASIS Transactions'' (BPS) in Order No. 638 and thus does not reflect our findings in that order. Accordingly, in addition to inviting comments on our proposed revisions to S&CP Document, Version 1.3, we are inviting commenters to address four specific questions (enumerated below) that are designed to insure that any revised S&CP Document we issue will be consistent with our determinations in Order No. 638.

II. Background

The Commission first issued the S&CP Document (Version 1.0) on April 24, 1996, as a separate document whose issuance accompanied issuance of Order No. 889.[2] We explained in Order No. 889 that we would periodically update and revise the S&CP Document as needed.[3] On September 10, 1996, the Commission issued a revised S&CP Document (Version 1.1) in *Open Access Same-Time Information System and Standards of Conduct*, 76 FERC ¶ 61,243 (1996). On June 18, 1998, the Commission again issued a revised S&CP Document (Version 1.2) in *Open Access Same-Time Information System and Standards of Conduct*, 83 FERC ¶ 61,360 (1998). On September 29, 1998, the Commission issued a third revised S&CP Document (Version 1.3) in *Open Access Same-Time Information System and Standards of Conduct*, 84 FERC ¶ 61,329 (1998). This is the S&CP Document currently in effect.

III. Discussion

The January 31 submittal recommends the following changes to Version 1.3 of the S&CP Document: (1) Post procedures associated with capacity benefit margin; (2) post references on curtailment information, interruptions, and system studies; (3) modifications to the TRANSREQUEST template; (4) removal of the TRANSALT, CURTAIL, and AUDIT templates; (5) addition of templates for SECURITY, REDUCTION, and SYSTEMDATA; (6) rename the SCHEDULE template as SCHEDULEDETAIL; (7) revised procedures for posting information in the TRANSOFFERING template; (8) addition of a unique reference to continuation records; (9) revisions to OASIS performance response times (section 5.3) to add specific required response times; and (10) corrections to support the above changes and update the table of contents.[4]

These changes are designed to implement the Commission's findings in Order No. 605,[5] the Commission's OASIS Audit Template Experiment, recent orders on posting capacity benefit margin (CBM), and other miscellaneous changes. We propose to adopt these changes. However, these changes, as proposed in the January 31 submittal, were not designed to implement the Commission's findings in Order No. 638, which was issued on February 25, 2000.

We therefore have concerns that additional changes may be needed to the S&CP Document to ensure consistency between the S&CP Document and our findings in Order No. 638. Accordingly, although this notice proposes adoption of the How/MIC–sponsored revisions to the S&CP Document (as a baseline), we contemplate that our final notice on this subject may include further revisions to reflect our findings in Order No. 638. We therefore invite interested persons filing comments on this NOPR to address both the merits of the proposed revisions to the S&CP Document as well as the following:

[1] As explained in Order No. 638, Open Access Same-time Information System and Standards of Conduct, Final Rule, 65 FR 17370 (March 31, 2000), FERC Stats. & Regs. ¶ at 31,398 n.2, 31,400 & n.8 (February 25, 2000), the MIC is an industry working group, sponsored by the North American Electric Reliability Council, that has taken over functions previously performed by the Commercial Practices Working Group.

[2] *See* Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 at 31,586 (April 24, 1996), *order on reh'g*, Order No. 889–A, 62 FR 12484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (March 4, 1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997), *order on reh'g*, Order No. 889–C, 82 FERC ¶ 61,046 (1998).

[3] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,591.

[4] A more complete explanation of these recommended changes is included in the January 31 submittal.

[5] Open Access Same-Time Information System and Standards of Conduct, Final Rule, 64 FR 34117 (June 25, 1999), FERC Stats. & Regs. ¶ 31,075 (May 27, 1999).

1. If we adopt the proposed revisions to the S&CP Document, are changes needed to reflect our findings in Order No. 638?

2. Specifically, do any provisions of the proposed S&CP revisions conflict with provisions of Order No. 638? If so, how should those conflicts be resolved? [6]

3. With regard to section 4.3.4.4 on System Data (Recommended S&CP Document Version 1.4 at page 55), this section states that a transmission provider is obligated to post values for one or more of the defined system attributes, but does not state that all system attributes can be requested at the same time.[7] We therefore request comment on whether the description of the template in section 4.3.4.4 should be revised to clarify that all system attributes can be requested at the same time.

4. With regard to section 5.3.3 on Measurement Criteria for OASIS Node Functions (Recommended S&CP Document Version 1.4 at page 108), we see three possible problems. First, section 5.3.3, as recommended, provides performance standards (time limits) for responding to queries regarding TRANSSTATUS and TRANSOFFERING. It does not establish comparable requirements regarding response times for any other queries. We therefore invite comment on whether the proposed performance standards meet customer needs today and for the near term future.

Note: Proposed section 5.3.3 would require the following response times to OASIS queries:

Template or GUI equivalent	Average response not fewer than	90% of responses not fewer than
transstatus	100 rows/minute	10 rows/minute.
transoffering	500 rows/minute	100 rows/minute.

Second, we also note that the recommended performance standards in section 5.3.3 are so specific that they may become obsolete and fail to keep pace with changing technology, market conditions, and user needs. We therefore invite comment on whether it would be preferable to adopt a more general performance standard, such as one that would require a node's response to be sufficient to meet the legitimate needs of its customers.

Third, we also would be open to consideration of other possible revisions to section 5.3.3 that might contain a novel approach preferable to either that proposed in this NOPR or that contained in Version 1.3.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[8–9] requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

If promulgated, the same entities subject to the current S&CP Document would be required to comply with the revised S&CP Document (Version 1.4) proposed in this Notice. Moreover, the proposals in this Notice would not affect which entities would be eligible for a waiver. As we explained in Order No. 889–A, under appropriate circumstances the Commission will grant waiver of the OASIS Final Rule requirements (including compliance with the S&CP Document) to small public utilities. We further explained that the Commission's waiver policy follows the SBA definition of small electric utility [10] and that 34 small entities had received waivers of the requirement to establish and maintain an OASIS and five small entities had received waivers of the OASIS Standards of Conduct requirements.[11] These decisions show that the Commission carefully evaluates the effect of the OASIS requirements on small electric utilities and is granting waivers where appropriate, thus mitigating the effect of that rule on small public and non-public utilities. The Commission's standards for deciding on requests for waiver are unaffected by this Notice.

The proposed revisions to the S&CP Document are technical revisions intended to implement the Commission's findings in Order No. 605,[12] the Commission's OASIS Audit Template Experiment, recent orders on posting CBM, and other miscellaneous technical changes. We hereby certify, under section 605(b) of RFA, that this notice, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of RFA. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of RFA.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[13] In the Commission's view, the environmental impact of this proposal is negligible. This proposal makes technical revisions to existing technical requirements governing the format used for OASIS postings to ensure uniformity in the display of information posted on OASIS nodes. Accordingly, we find that this notice does not propose any action that might have a significant effect on the human environment and find that no environmental impact statement concerning this proposal is required.

VI. Statement of Information Collection and Public Reporting Burden

In this notice, based on recommendations from two industry working groups with input from diverse industry segments, we propose minor technical revisions to Version 1.3 of the S&CP Document.

On December 1, 1998, the Commission issued a proposed information collection and request for

[6] For example, this NOPR proposes modifying the TRANSQUEST template to allow Transmission Customers to request modifications to confirmed transmission reservations. Among the new types of transmission requests proposed is RENEWAL. This is intended to permit a customer to request to renew an expiring transmission reservation. Would such a request provide the existing customer rights it did not have under S&CP Document Version 1.3 or the OASIS Business Practice Standards? Does RENEWAL conflict with any OASIS Business Practice Standards or rights of first refusal under the *pro forma* tariff?

[7] We note that: (1) More than four system attributes are listed in section 4.3.4.4; (2) the system attribute query variable in section 4.3.4.4 is followed by an asterisk; and, (3) section 4.3.2 (Recommended S&CP Document Version 1.4 at page 44) states that a variable listed with an asterisk can have at least four multiple instances defined by the user in making a query. Taken together, these provisions show that multiple system attributes may be requested in one request, even though this is not explicitly stated in section 4.3.4.4.

[8–9] 5 U.S.C. 601–612.

[10] *See* 5 U.S.C. 601(3) and 601(6) and 15 U.S.C. 632(a). The RFA defines a small entity as one that is independently owned and not dominant in its field of operation. *See* 15 U.S.C. 632(a). The Small Business Administration defines a small electric utility as one that disposes of 4 million MWh or less of electric energy in a given year. *See* 13 CFR 121.601 (Major Group 49—Electric, Gas and Sanitary Services). In the Open Access Final Rule, we concluded that, under these definitions, the Open Access Final Rule and the OASIS Final Rule would not have a significant economic impact on a substantial number of small entities. We reaffirmed that conclusion in Order Nos. 888–A and 889–A.

[11] *See* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,578.

[12] Open Access Same-Time Information System and Standards of Conduct, Final Rule, 64 FR 34117, FERC Stats. & Regs. ¶ 31,075 (1999).

[13] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); 1986–90 Regs. Preambles FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR Part 380).

comments in Docket No. IC99–717–000 that covered all information collected under the requirements of FERC–717 ''Open Access Same-Time Information System and Standards of Conduct'' (OMB No. 1902–0173) over the next three years that provides as follows:

Information Collection Statement

Title: FERC–717, Open Access Same-Time Information Systems and Standards of Conduct.

Action: Proposed Collection.

OMB Control No: 1902–0173.

Respondents: Business or other for-profit, including small business.

Frequency of Responses: On occasion.

Necessity of the Information: The Notice of Proposed Rulemaking solicits public comments on proposed revisions to Version 1.3 of the OASIS Standards and Communication Protocols Document (S&CP Document, Version 1.3) to reflect recommended revisions put forth by two industry-led working groups. These technical revisions are designed to implement the Commission's findings in Order No. 605, the Commission's OASIS Audit Template Experiment, recent orders on posting CBM, and other miscellaneous changes.

In addition, the burden estimate submitted on December 1, 1998 for all OASIS requirements was as follows:

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
140	1	1,418	198,520 hours

The estimated total cost to respondents is $21,157,500.[14]

We are not preparing a separate estimate covering this notice only, because we find that the notice would not significantly alter the estimate contained in the December 1, 1998 notice. The December 1, 1998 burden estimate gave the Commission's estimate of OASIS-related information requirements over the next three years, and this estimate contemplated the Commission's continued use of the S&CP Document during this time frame. In any event, if a separate estimate were prepared, it would not be substantial, because the proposal in this notice, if promulgated, would not substantially increase the information collection requirements already specified in Version 1.3 of the S&CP Document.

The collection of information contained in this notice has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). For copies of the OMB submission, contact Michael Miller at 202–208–1415.

Internal Review

The Commission has conducted an internal review of the public reporting burden associated with this collection of information and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information proposed by this notice and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.[15]

Based on our experience in OASIS implementation over the past four years, the Commission has refined the estimate of reporting entities covered by OASIS regulations. Our latest estimate is that 140 respondents are required to collect information under the OASIS regulations. However, as discussed above, this notice does not impose any new information collection burdens.

The Office of Management and Budget's (OMB) regulations,[16] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this notice will be reflected in OASIS postings that are directly available to transmission users and subject to subsequent audit by the Commission. The more efficient posting of this information will help the Commission carry out its responsibilities under Part II of the FPA.

The Commission is submitting notification of this notice to OMB. Persons wishing to comment on the collections of information proposed by this notice should direct their comments to the Desk Officer for FERC, OMB, Room 10202 NEOB, Washington, DC 20503, phone 202–395–3087, facsimile 202–395–7285. Comments must be filed with OMB within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street NE, Washington, DC 20426. For further information on the reporting requirements, contact Michael Miller at (202) 208–1415.

VII. Public Comment Procedure

This notice gives notice of our intention to make certain technical revisions to S&CP Document, Version 1.3. Prior to taking final action on this notice, we are inviting comments from interested persons on the proposals discussed in this notice and compiled in the OASIS Standards and Communication Protocols, Version 1.4. In addition, the Commission specifically invites comments on four specific questions enumerated in the discussion above relating to whether the proposal is consistent with our findings in Order No. 638. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

[14] The estimated total cost of $21,157,500 was computed as follows:

The Commission has assumed that 4.5 personnel are necessary for staffing and using a total personnel cost of $109,889, the result is $494,501. To get the total cost, add annual ongoing costs of $110,000 plus staffing costs [$110,000 + $494,501] for a total of $604,501 divided by 4 = $151,125. The estimated total cost of the OASIS requirement is 140 respondents × $151,125 or $21,157,500.

[15] *See* 44 U.S.C. 3506(c).

[16] 5 CFR 1320.11.

The original and 14 copies of such comments must be received by the Commission by July 7, 2000. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington DC 20426 and should refer to Docket No. RM95–9–011.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM95–9–011; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to ''comment.rm@ferc.fed.us'' in the following format. On the subject line, specify Docket No. RM95–9–011. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter by telephone at 202–501–8145 or by E-Mail (to brooks.carter@ferc.fed.us).

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

VIII. Document Availability

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street NE, Washington DC 20426, during regular business hours. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Home Page (http://www.ferc.fed.us) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222, or by E-Mail (to WebMaster@ferc.fed.us) or the Public Reference Room at (202) 208–1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13103 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Wednesday,
June 7, 2000

Part VII

Federal Housing Finance Board

12 CFR Parts 900, 905, 965, 966, 969, 985 and 989

Office of Finance; Authority of Federal Home Loan Banks To Issue Consolidated Obligations; Final Rule and Changes to the Financial Management Policy of the Federal Home Loan Bank System; Notice

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 905, 965, 966, 969, 985 and 989

[No. 2000–24]

RIN 3069–AA88

Office of Finance; Authority of Federal Home Loan Banks To Issue Consolidated Obligations

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations governing the operations of the Office of Finance (OF), a joint office of the Federal Home Loan Banks (Bank or Banks), and the issuance of debt for the Federal Home Loan Bank System. The final rule authorizes the Banks to issue joint debt, *i.e.,* bonds, notes or debentures, on which the Banks are jointly and severally liable, to be called consolidated obligations (COs), under section 11(a) of the Federal Home Loan Act (Act). This action is intended to more closely reflect the reality of the Banks' current funding operations by allowing the Banks to be responsible for accessing the capital markets through the OF to fund their own operations, rather than having the Finance Board issue COs on behalf of the Banks as is currently the case. The final rule does not have a substantive effect on the debt issuance process or on the joint-and-several liability of the Banks on outstanding COs or COs to be issued in the future. This action is consistent with devolutionary actions taken by Congress to give the Banks greater autonomy over the management of their business and to remove the Finance Board from involvement in Bank management functions.

The final rule also incorporates changes to the leverage limit that were originally proposed as a part of conforming amendments to the policy statement entitled ''Financial Management Policy of the Federal Home Loan Bank System'' (FMP). Specifically, the final rule deletes the Bank System-wide leverage limit, recasts the Bank-by-Bank leverage limit from a liability-based limit to an asset-based limit and incorporates into regulation expanded leverage originally permitted for year 2000 liquidity purposes, all as consistent with the Act provisions of the recently enacted Gramm-Leach-Bliley Act.[1]

The final rule also authorizes the Finance Board to continue to issue COs under the authority of section 11(c) of the Act. At some point to be determined by the Finance Board and the OF, the issuance of debt under the authority of section 11(c) of the Act will cease and all COs will be issued under the authority of section 11(a) of the Act. The final rule makes clear that OF ultimately will be responsible for performing all CO issuance functions, including preparation of combined financial reports, for the Banks. The final rule also effects a number of other corporate governance changes to maximize the operating efficiency of the OF.

The Finance Board is also adopting in final form certain conforming amendments to the FMP. A Notice describing the FMP amendments in detail is published elsewhere in this issue of the **Federal Register**.

DATES: This final rule is effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Deputy Chief Economist, Office of Policy, Research and Analysis, 202/408–2845, *mckenziej@fhfb.gov,* Deborah F. Silberman, General Counsel, Office of General Counsel, 202/408–2570, *silberman@fhfb.gov,* or Charlotte A. Reid, Special Counsel, Office of General Counsel, 202/408–2510, *reidc@fhfb.gov.* Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On January 4, 2000, the Finance Board published for comment a proposed rule to amend parts 910 and 941 of the Finance Board's regulations governing operation of the OF and issuance of COs, to enable the OF to issue debt on behalf of the Banks pursuant to section 11(a) of the Act, require the OF to prepare the quarterly and annual combined financial reports of the Bank System, and provide services at the request of two or more Banks related to joint asset activities undertaken by the requesting Banks, including the administration of Member Mortgage Asset programs and liquidity management. The proposed rule also would have amended § 900.30 of the Finance Board's regulations to provide for the termination as of December 31, 2000, of the OF's authority to act as agent for the Finance Board in the issuance of COs under section 11(c) of the Act. By this provision, the Finance Board intended to transition itself out of, and the Banks into, the debt issuance function under the provisions of section 11(a) of the Act as soon as practicable. *See* 65 FR 324 (Jan. 4, 2000). The proposed rule described a new structure for the OF to accommodate additional functions proposed to address new challenges faced by the Bank System. The 60-day public comment period closed on March 6, 2000. The Finance Board received a total of 22 comments, 15 from Banks, 5 from trade associations, 1 from a Bank member, and 1 from a group of Bank members. A majority of the commenters generally supported the concept of devolving the debt issuance from the Finance Board to the Banks, but opposed the proposed restructuring of the OF.

II. Comments on the Proposed Rule and Analysis of Changes Made in the Final Rule

A. Joint Asset Activity Management and Restructuring of the Office of Finance

The proposed rule would have amended part 941 of the regulations to authorize the OF, as the only statutorily recognized joint office of the Banks, to operate as a centralized facility through which Bank assets could be efficiently administered on a joint basis. The proposed rule provided that, to the extent requested by two or more Banks pursuant to any agreement or contract, the OF shall facilitate or provide services to the Banks in connection with any Bank joint asset activities authorized by law. With regard to the joint asset activities of the Banks, the OF would have been required to provide administrative and technical support for the origination, purchase, management, servicing or sale of any asset owned by one or more Banks pursuant to any contract, including acquired member assets; provide market information to the Banks concerning acquired member assets and other assets or investments of the Banks; conduct and provide research on such assets and investments; develop effective systems to monitor credit exposure and manage counter-party risk; adopt procedures to assist the Banks in managing their liquidity; and adopt procedures to facilitate the inter-Bank sale of participation interests in advances and investments. This section would not have required the Banks to make use of the OF in this capacity, but it would have required the OF to provide the services outlined if two or more Banks wished the OF to do so. The OF would have been authorized to establish a reasonable fee structure or charge for its services by contract or otherwise. It also would have been authorized to mediate among competing Bank demands, in accordance with its specified duties and responsibilities.

[1] Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

These proposed provisions were intended primarily to address the Finance Board's belief that the market has created an incentive and a business need for a facility controlled by the Banks and their members to provide economies and efficiencies of scale, as it has done for the issuance of COs by the Finance Board, by giving the Banks the flexibility to centralize certain of their common business functions. As discussed in the **SUPPLEMENTARY INFORMATION** of the proposed rulemaking, *see* 65 FR 324 (Jan. 4, 2000), the Finance Board anticipates that this need will become even more critical as the Banks develop asset activities such as acquired member assets as part of their core business.[2] Not only would such a facility provide operational benefits, it also would enhance the safety and soundness of the operations by providing both expertise and a mechanism for achieving risk management, and geographic diversity on a joint asset portfolio basis. In light of the recent enactment of Title VI of the Gramm-Leach-Bliley Act, the Federal Home Loan Bank System Modernization Act of 1999, the Finance Board proposed a reorganization of the OF that would allow OF, the only joint office of the Banks, to function in this way at the request of the Banks and facilitate growth in the Bank System's business as the Banks seek to provide their members with new credit products and respond to changes in the marketplace and congressional mandates.

The Finance Board believes that administering joint assets through a centralized facility could offer safety-and-soundness benefits of better risk-management capabilities and geographic diversity in the asset portfolio, which is particularly important given the national nature of the mortgage markets. The mortgage market is no longer the fragmented, localized market that it was when Congress created the Bank System in 1932. Driven by technological improvements, the mortgage market's delivery systems have become more national in scope, and the mortgage market now plays a central role in the national economy. The need for ''an appropriate vehicle for coordination of System-wide business issues,'' such as a central facility to assist the Banks in managing various aspects of their operations, including mortgage-related assets, has grown in the ten years since Congress confirmed the OF as a joint office of the Banks in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).[3]

A majority of the commenters opposed this portion of the proposal, as well as the provisions of proposed § 941.4 [4] concerning the restructuring of the OF board of directors to significantly alter both the size and composition of the OF board of directors by including representatives from each Bank, elected members of the Bank System, and appointed representatives of the general public with relevant experience, and other proposed changes designed to provide the structure, additional functions and operational capacity the OF would have to possess in order to accommodate the joint assets activities function. Because the Finance Board does not wish to delay adoption of the debt issuance provisions in final form, the Finance Board has decided to remove the joint asset activity management and restructuring provisions from the text of this final rule. The proposals regarding joint asset activity management functions for the OF and the necessity to adapt the structure of the OF for the addition of such functions, however, remain under active consideration and analysis by the Finance Board. It is anticipated that the Finance Board will respond to the comments and adopt those provisions in a future separate notice of final rulemaking.

B. Authorization of Banks To Issue Joint Debt Under Section 11(a) of the Act

As discussed in the **SUPPLEMENTARY INFORMATION** of the proposed rulemaking, section 11(a) of the Act provides that the Banks may issue bonds, debentures or other obligations ''upon such terms and conditions'' as the Finance Board may approve and ''subject to the rules and regulations prescribed by'' the Finance Board. 12 U.SC. 1431(a). Proposed § 910.2(b) (redesignated as § 966.2(b) in the final rule) expressly authorizes the OF to undertake the issuance of joint Bank debt pursuant to section 11(a) of the Act as COs on which all of the Banks would be jointly and severally liable subject to § 966.9 of the Finance Board regulations (which governs the joint-and-several liability of the Banks on COs issued under section 11(c) of the Act). As adopted, § 966.2(b) also provides that the authorization contained therein shall be deemed to constitute satisfaction of the requirement for Finance Board approval of the ''terms and conditions'' pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

As discussed in the **SUPPLEMENTARY INFORMATION** of the proposed rulemaking, the Finance Board wishes to achieve the goals of continuing to give the Banks the autonomy to manage and run their own businesses by authorizing the Banks to issue the COs, while eliminating the continued potential for conflict with the Finance Board in its roles as regulator of the OF and the Banks and issuer of the COs. *See* 65 FR 324 at 325 (Jan. 4, 2000).

A majority of the commenters generally supported the concept of devolution of the CO issuance function to the Banks. However, almost all of the commenters expressed varying degrees of apprehension about recent market volatility and about how implementation of the final rule would be perceived in the capital markets, and many recommended delaying adoption of the final rule because of those concerns. Several commenters questioned whether the Finance Board had a legal basis to require, as a condition of authorizing the Banks to issue debt under section 11(a) of the Act, that the Banks be jointly and severally liable on the debt. One Bank commenter questioned whether COs issued by the OF as agent for the Banks would be afforded the same treatment under the Federal securities laws as COs issued by the Finance Board under section 11(c).

[2] Indeed, the General Accounting Office (GAO) foresaw this need, stating that ''there may be a need for a central coordinating mechanism . . . [that] should reside in the [Bank] System itself. *See* report commissioned by Congress in section 1393 of the Housing and Community Development Act of 1992, issued on December 8, 1993 (GAO/GGD–94–38) (GAO Report), at 113. The GAO Report observed that there were certain positive goals that could be attained by relieving the Finance Board of certain Bank System governance functions, including enhanced cost control and the centralization of ''certain business functions.'' *Id.* at 114.

[3] *See* Pub.L. 101–73, tit. VII, sec. 702, 103 Stat. 183 (Aug. 9, 1989). The GAO report noted that FIRREA made ''many changes'' to the Bank System that ''introduced significant cultural changes for the Banks and their members.'' GAO Report at 19–20. Principally, after FIRREA, the Banks were no longer involved in the oversight and supervision of their members. The members henceforth only would view the Banks as a credit facility, and this change would promote the cooperative nature of the Bank System. GAO concluded, however, that to attract new, voluntary members and retain members, the Banks ''must provide sufficient value—through the products and services offered and the dividends paid—to warrant the required stock investment for membership.'' *Id.* at 21. The GAO Report noted the need for coordination of System-wide business issues. *Id.* at 117.

[4] The Finance Board recently reorganized and redesignated all of its regulations. *See* 65 FR 8253 (Feb. 18, 2000). Part 900 of the Finance Board's regulations, 12 CFR part 900 (1999), was redesignated as part 905, *see* 65 FR 8253, 82 (*to be codified at* 12 CFR part 905); part 910, ''Consolidated Bonds and Debentures,'' was redesignated as part 966 ''Consolidated Obligations,'' *see* 65 FR 8253, 82 (*to be codified at* 12 CFR part 966); and part 941, ''Operations of the Office of Finance, '' was redesignated as part 985, *see* 65 FR 8253, 82 (*to be codified at* 12 CFR part 985).

There are no conditions or restrictions attached to the Finance Board's authority to prescribe the rules and regulations or to approve the terms and conditions of issuance of Bank debt under section 11(a). So long as the Finance Board exercises its power to promulgate its rules in a form authorized by Congress,[5] and the rules are reasonable and consistent with the statute, the rules will be valid and enforceable, and will have the force and effect of law.[6]

As proposed, the final rule applies the same rules governing the apportionment of joint-and-several liability to COs issued by the Finance Board pursuant to section 11(c) of the Act as to COs issued by the Banks pursuant to section 11(a). By requiring joint-and-several liability as a condition of authorizing the Banks to issue debt under section 11(a), the Finance Board is implementing by regulation an issuance scheme that is identical to the issuance scheme established by Congress elsewhere in section 11 of the Act, and the Banks will be subject to the same payment provisions (*i.e.,* the joint-and-several liability provisions) currently established in the Finance Board's regulations. Nothing in the Finance Board's regulatory action requiring the Banks to be jointly and severally liable on debt issued under section 11(a) is inconsistent with any existing statutory or regulatory requirement.

The Finance Board has concluded that it has the authority both to promulgate this rule and to require, as a condition of authorizing the Banks to issue debt under section 11(a) of the Act, that the Banks be jointly and severally liable on that debt. Further, the Finance Board has concluded that the technical change in the issuer of the COs from the Finance Board to the Banks will have no effect on the treatment of COs under the Federal securities laws.[7]

C. Authorized Liabilities

Proposed § 910.2(a) (redesignated as § 965.2 in the final rule) set forth an exclusive list of liabilities authorized for Bank business operations, which was designed to replace the Funding Guidelines section of the FMP. *See* 65 FR 324 at 328; 65 FR 339 (Jan. 4, 2000). Five commenters expressed opposition to various aspects of this provision.

Two Bank commenters and one trade association commenter objected to limiting the purchase of Federal funds and the use of repurchase agreements to meet the short-term liquidity needs of the Banks, stating that the standard was ambiguous or that the limits would make liquidity management more difficult. The Finance Board has reconsidered the need for the limit in light of the comments and in light of its change to the leverage limit from a liability-based limit to an asset-based limit, and has determined not to limit the purchase of Federal funds or the use of repurchase agreements in the final rule.

Proposed § 910.2(a)(2) (redesignated as § 965.2(b) in the final rule) was designed to continue each Bank's authority to accept deposits from members, other Banks and instrumentalities of the United States, but provided that deposit transactions may not be conducted in such a way as to result in the offer or sale of a security in a public offering as those terms are defined under the Federal securities laws. *See* 65 FR at 328. Three commenters criticized this provision, noting that it was unclear as proposed whether deposits from categories of financial institutions from which the Banks now accept deposits still would be permitted, and that there was no justification for limiting or eliminating a significant, low-cost source of funds for the Banks. The Finance Board did not intend to preclude the Banks from accepting deposits or cash accounts from any category of financial institution from which the Banks are currently authorized by statute or regulation to do so. The final rule has been revised in light of the comments to remedy this. Two commenters objected to the ''no public offering'' provision relating to deposits and recommended that it be eliminated as difficult to apply in light of the rate posting practices of the Banks and unnecessary given the nature of the Banks' depositors. The Finance Board agrees with the comments and has eliminated that restriction from the final rule.

D. Powers and Responsibilities of the OF

Proposed § 941.2 stated that the OF is a joint office of the Banks under section 2B of the Act; set out a two-pronged purpose for the OF; provided that, as a part of its purpose, OF shall issue COs on behalf of the Banks or the Finance Board and shall support the Banks upon the request of two or more Banks undertaking joint asset activities that the Banks are otherwise authorized by law to undertake individually; and set out the functions the OF was authorized to undertake in support of the issuance of debt and the support to be provided to the Banks engaged in joint asset activities. *See* 65 FR 324 at 329. As previously discussed, because only the CO issuance provisions of the proposal are being adopted in final form at this time, only those comments are being addressed here. Three Banks, two trade associations, and one individual commented on some aspect of this provision of the proposed rule.

Proposed § 941.2(c) (redesignated as § 985.6(b) of the final rule) assigned to the OF the function of preparing the combined Bank System annual and quarterly financial reports as a part of the CO issuance or debt management function. The proposal codified current Finance Board policy (*See* Res. No. 98–27 (June 24, 1998)) (Policy Statement) and set forth the standards under which the OF would be required to prepare Bank System financial reports, including requiring that the scope, form and content of the disclosure contained in such financial reports generally be consistent with the requirements of the Securities and Exchange Commission's (SEC) Regulations S–K (specific narrative disclosure requirements) and S–X (accounting and financial statement disclosure requirements) (17 CFR parts 229 and 210) and be presented in accordance with the Statement Of Financial Accounting Standards No. 131, ''Disclosures about Segments of an Enterprise and Related Information'' (FAS 131).

The proposed rule included an Appendix listing exceptions to the standards set forth in proposed § 941.2(c)(1)(iv)(A) and (B), derived from the Finance Board's Policy Statement, which included certain disclosures concerning related-party transactions, biographical information, compensation, submission of matters to a vote of shareholders, exhibits, per-share information and beneficial ownership. The proposed rule also required the OF to file and distribute combined Bank System financial reports according to a schedule that mirrors the filing requirements applicable to corporate registrants under the Securities Exchange Act of 1934 (1934 Act) (*i.e.,* annual reports within 90 days after the end of the fiscal year and quarterly reports within 45 days after the end of each of the first 3 fiscal quarters). The proposal expressly confirmed the Finance Board's sole authority to determine compliance with the standards of proposed part 941 (redesignated as part 985) and provided an explicit compliance mechanism by

[5] Generally, Congress has authorized Federal agencies to issue binding rules through the use of the notice and comment procedure set forth in section 553 of the Administrative Procedure Act, 5 U.S.C. 551 *et seq. See generally,* 1 Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 6.3 at 236 (3rd ed. 1994 and Supp. 1999).

[6] *Id. (citing Fawcus Machine Co. v. United States,* 282 U.S. 375, 378 (1931); *Maryland Casualty Co. v. United States,* 251 U.S. 342, 349 (1920)).

[7] *See* Op. Gen. Counsel (May 22, 2000).

requiring the OF to promptly comply with any Finance Board directive pertaining to the preparation, filing, amendment or distribution of financial reports.

Two commenters objected to the timeframes within which the financial statements are required to be prepared and recommended that those deadlines be relaxed. One commenter also suggested that the provision governing the preparation of the system financial statements make clear that the Finance Board would make its determination as to whether the reports conform to the appropriate disclosure and accounting requirements *prior to* the release of the financial statement by the OF. Two commenters suggested the addition of a provision stating that the failure to comply with the rule would not create any private right of action that would not have existed in the absence of the regulation's reporting requirement.

Section 985.6(b) is adopted as proposed, with only minor changes, in the final rule. With respect to the comments concerning relaxing the timeframes for preparation of financial reports, the Finance Board continues to believe that, just as disclosure concerning the Bank System should conform to industry standards, so too should the Bank System provide that information to interested parties within the timeframes applicable in the industry. In this regard, the Finance Board prepared and completed both the 1999 combined annual financial report and the first quarter 2000 combined financial report within the applicable timeframes. There does not appear to be any reason why the OF could not and should not continue to meet this standard. Therefore, no changes have been made in the final rule to the proposed timeframes.

With respect to the comment concerning Finance Board review of disclosure prior to release of financial reports, the Finance Board does not wish to impose any delay in the issuance or distribution process, nor to have the process of review of these reports differ from the process of review practiced by the SEC. When the SEC reviews 1934 Act reports, it does not generally do so prior to issuance. Therefore, the Finance Board has adopted the review provision as proposed.

A provision stating that the failure to comply with the rule would not create any private right of action that would not have existed in the absence of the regulation's reporting requirement has been added to the rule in § 985.6(b)(7), in response to a concern expressed by the commenters. The Finance Board has no intention by engaging in this rulemaking of creating any private right of action that would not have existed in the absence of this rule. It should be noted that the Finance Board does not believe that the Banks, the OF or the OF board of directors will incur any different or greater liability under any aspect of the final rule than existed previously. *See* Op. Gen. Counsel (May 22, 2000).

Proposed § 941.2(c)(ii)(C) (redesignated as § 985.8(c)(3) of the final rule) would have required OF to define, implement and maintain investor suitability standards, and assure that these standards are met. Several commenters noted that investor suitability is more properly dealt with by underwriters than by issuers. The Finance Board agrees with these comments and has revised the final rule to address suitability by requiring OF to require that *underwriters* of COs have and maintain adequate suitability sales practices and policies governing the distribution of Bank debt that are acceptable to, and subject to review by, the OF.

Proposed § 941.2(c)(2)(iv) (redesignated as § 985.6 of the final rule) would have required the OF to have systems in place for timely monitoring the unsecured credit exposure of the Banks, and appropriate systems to manage the Banks' counterparty risk. While the monitoring of counterparty risk is an existing function of the OF, management of counterparty risk, as at least two commenters pointed out, is a function more appropriately left to the Banks. The final rule has been revised to delete the requirement that the OF manage the Banks' counterparty risk, but retains the requirement that the OF timely monitor each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

Proposed § 941.2(c)(1)(i) and (iii) (redesignated as § 985.8(c)(4) of the final rule) required the OF to consider or promote the cooperative nature of the Bank System, and be mindful of and preserve the relationship between the Banks and their members, which are also issuers of debt in the capital markets. Several commenters objected to the inclusion of these concepts as ambiguous, onerous, confusing and lacking clarity as standards. One commenter suggested that this rule was not the optimal forum for addressing the matter of retail debt issuance by the Banks *vis a vis* Bank members. Another commenter, while acknowledging that Bank System debt is not currently distributed directly to retail level investors, speculated that such distributions could raise a policy issue of ''competition with the retail deposit offering of member institutions.''

The Finance Board agrees that this regulation is the appropriate place to address the issue. The Finance Board agrees with the commenter that, ultimately, it should be up to the boards of directors of the Banks to determine such matters involving their members. Therefore, the final rule has been revised to prohibit the issuance of COs intended to be privately placed with or sold without the participation of an underwriter to retail investors, or issued with a concession structure designed to facilitate the placement of the COs in retail accounts, unless the OF has given notice to the board of directors of each of the Banks describing a policy permitting such issuances, soliciting comments from each Bank's board of directors, and considering the comments received before adopting a policy permitting such issuance activities. The language of the rule has been designed so as to have no effect on current debt issuance practices, which as noted above are not currently directed at retail level investors. Only departures from current practices would subject the issuance process to the notice procedure described in the rule. All other references to considering or promoting the cooperative nature of the Bank System have been deleted from the final rule.

E. Leverage Limit

The proposed rule, and corresponding proposed changes to the FMP, did not include the 20-to-1 leverage limit from § 910.1(b) of the Finance Board's regulations, or the 20-to-1 leverage limit on each Bank contained in the FMP. Instead, the proposed amendments to the FMP recast the leverage limit applicable to each Bank from a liability-based limit to an asset-based limit, and required that each Bank maintain capital in an amount equal to at least 4.76 percent of the Bank's total assets. *See* 65 FR at 328, 339. This limit required that the assets of a Bank not exceed 21 times its capital.

The Finance Board did not believe that either the elimination of the Bank System-wide leverage limit from the Finance Board's regulations, or the proposed revision to the leverage limit contained in the FMP, would have any practical effect on the Bank System or its bondholders. The Finance Board, as the regulator of the Banks, would continue to monitor each Bank for compliance with the individual leverage limit included in the FMP. The existing FMP provision prohibits a Bank from participating in COs if such transactions would cause the Bank's liabilities to

exceed 20 times the Bank's capital.[8] The proposed revision to the FMP established an equivalent leverage standard, stated as a percentage of assets, which would require each Bank to maintain capital of at least 4.76 percent of its total assets. The imposition of the proposed standard on each Bank would ensure that the Bank System itself stays within the leverage limit, rendering any retention of a Bank System-wide leverage limit unnecessary. Further, the Finance Board noted that with the recent passage of the Gramm-Leach-Bliley Act, the Banks would be subject to asset-based statutory leverage limits and risk-based capital requirements. When implemented, the new risk-based capital regime would provide an additional safeguard to the Bank System and its bondholders by requiring Banks to hold capital in proportion to the risks they assume.

The final rule incorporates the leverage change that originally was proposed to be part of the FMP. In addition, the final rule extends and makes permanent the additional leverage authority originally permitted to the Banks for Year 2000 liquidity. In particular, the final rule allows a Bank to have asset-based leverage of up to 25 to 1 if the Bank's non-mortgage assets after deducting deposits and capital, do not exceed 11 percent of its total assets. For the purpose of the final rule, non-mortgage assets equal the total assets after deducting core mission activity assets and assets described in sections II.B.8 through II.B.11 of the FMP.[9] The Year 2000 leverage provision allowed a Bank to have liability-based leverage of up to 25 to 1 if its ratio of non-mortgage investments did not exceed 12 percent of the liabilities for which the Bank was the primary obligor. This 25 to 1 leverage requirement is consistent with the leverage requirements of the Gramm-Leach-Bliley Act.

A number of commenters objected to the proposed change on the basis that secured liabilities, principally repurchase agreements, are not now subject to a capital requirement. Under the proposed FMP, however, assets funded by repurchase agreements and other secured liabilities would be subject to capital charges.

Repurchase agreements are a *de minimis* portion of Bank funding. At December 31, 1999, repurchase agreements were less than one-tenth of one percent of the total funding of the Banks, eight of the Banks had no repurchase agreements, and one Bank accounted for a majority of the Bank System's repurchase agreements.

The Finance Board agrees with the recommendation that the leverage requirement be included in the Finance Board's regulations rather than in the FMP. The final rule incorporates the leverage limit provision into § 966.3(a).

The proposed rule deleted provisions of the Finance Board's regulations that purported to limit the Finance Board's ability to change the leverage limit only if the Finance Board received either written evidence from at least one major Nationally Recognized Securities Rating Organization (NRSRO) that the proposed change will not result in the lowering of that rating agency's then-current rating or assessment on senior bonds outstanding or next to be issued; or a written opinion from an investment banking firm that the proposed change would not have a materially adverse effect on the creditworthiness of senior bonds outstanding or next to be issued. *See* 65 FR 324 at 328–329. As proposed, these provisions are deleted by the final rule.[10] Instead, § 966.3(b) of the final rule requires the Banks to seek, obtain and maintain a rating on the COs from an NRSRO. It requires each Bank to operate in such a manner and take whatever actions are necessary to ensure that the COs receive and maintain the highest rating from an NRSRO. Section 966.3(c) of the final rule requires each Bank to obtain a rating, such as a long-term credit issuer rating from Standard and Poor's or a financial strength rating from Moody's that is no lower than the second highest credit rating. Each of the Banks now has an Aaa long-term issuer credit rating from Standard and Poor's. Therefore, the ratings requirements in the final rule merely reflect current practice and will impose no new costs or burdens on the Banks.

The ratings requirements in the final rule will enhance the protections afforded the holders of COs. Requiring each of the Banks on an ongoing basis to take whatever action may be necessary to maintain the rating of COs at the highest level is a substantially stronger protection than the current requirement of a one-time written statement from a rating agency or investment banking firm that a change in the leverage limit would not adversely affect the rating or creditworthiness of COs.

F. Other Changes

1. Amendments to Part 900

As proposed, the duplicative definitions in part 966 of the terms ''Board'' and ''Bank,'' which are now defined in part 900, have been deleted. The definition of ''consolidated obligation'' is adopted as proposed, with minor edits, in § 900.1 of the final rule to clarify that it includes any bond, debenture or note authorized under part 966 to be issued jointly by the Banks under section 11(a) of the Act, or any bond or note issued by the Finance Board on behalf of all Banks pursuant to section 11(c) of the Act, on which the Banks are jointly and severally liable.

2. Amendment to Part 905

The proposal would have amended § 905.30 to add a new paragraph (a)(3) to provide for the termination as of December 31, 2000, of the OF's authority to act as agent for the Finance Board in the issuance of COs under section 11(c) of the Act. By this provision, the Finance Board intended to transition itself out of, and the Banks into, the debt issuance function under the provisions of section 11(a) of the Act as soon as practicable.

The Finance Board has determined that it can accomplish the same goal by deleting § 905.30 in its entirety, and providing in § 966.2 that the Finance Board may in its discretion from time to time delegate its issuance of COs under section 11(c) of the Act by resolution of the Board of Directors of the Finance Board.[11] The Finance Board anticipates working with the OF to determine a mutually acceptable date on which the OF will begin issuing COs under the authority of section 11(a) of the Act and ceasing to issue COs under the authority of section 11(c) of the Act.

3. Amendments to Part 966—Consolidated Obligations

Part 910 of the Finance Board's regulations was redesignated as part 966. The part has been reorganized and renumbered, terms have been modified

[8] By resolution the Board of Directors of the Finance Board directed that, through June 30, 2000, a Bank may have leverage up to 25 to 1 as long as that Bank's ratio of non-mortgage investments to COs does not exceed 12 percent. The Finance Board adopted this additional leverage flexibility on an interim basis to allow the Banks to provide Year 2000 funding to their members. *See* Res. No. 99–33 (May 28, 1999).

[9] On May 3, 2000, the Finance Board published for notice and comment a proposed rule that included a listing of activities that would qualify as core mission activities. *See* 65 FR 25676 at 25688 (May 3, 2000).

[10] Without conceding that the terms of the current rule apply, but in an abundance of caution, so as to be in compliance with the terms of the current rule, a written opinion from an NRSRO that the changes to the leverage limit would not have a materially adverse effect on the creditworthiness of COs outstanding or next to be issued was obtained prior to adoption of the final rule.

[11] The Finance Board annually adopts a debt-issuance authorization to the OF that includes parameters to which the debt must conform. See Res. No. 2000–11 (Feb. 23, 2000).

as proposed in the final rule for regulatory consistency (such as by substituting ''Finance Board'' for ''Board,'' ''Bank'' for ''Federal Home Loan Bank,'' and ''consolidated obligation'' for ''consolidated bond''), and a new § 966.10 has been added.

a. Definitions—§ 966.1. As proposed, the definitions of the terms ''Board'' and ''Bank,'' which are now defined in part 900, and of the term ''unsecured senior liabilities'' have been deleted. The definition of ''Nationally Recognized Statistical Rating Organizations'' has been adopted as proposed in § 966.1.

b. Sections 966.2 through 966.10. The negative pledge requirement is adopted as proposed, in § 966.2(c), retaining the negative pledge requirement for debt previously issued by the OF on behalf of the Finance Board under section 11(c), and expressly requiring each Bank to maintain the specified assets free of pledge in an amount equal to the Bank's *pro rata* share in COs issued by the OF on behalf of the Banks under section 11(a) in which the Bank participated.

Proposed § § 910.3 through 910.7 are adopted as proposed, with minor changes, in the final rule, but redesignated as § § 966.4 through 966.8. One commenter argued that the provision in proposed § 910.3, reserving to the Finance Board the authority to prescribe the form of each CO, runs counter to the devolution of management issues. The Finance Board agrees and has therefore deleted that provision from § 966.4 of the final rule.

Proposed § 910.7, redesignated as § 966.8 in the final rule, provided the conditions under which the OF board of directors shall authorize the issuance of COs. As adopted, § 966.8 provides that the OF board of directors shall authorize the offering for current and forward settlement (not to exceed 12 months) or the reopening of COs as necessary and authorize the maturities, rates of interest, terms and conditions thereof, subject to the provisions of 31 U.S.C. 9108. It also provides that COs may be offered for sale only to the extent that the Banks are committed to take the proceeds, and continues the existing prohibition on directly placing COs with another Bank. As discussed previously, the requirements in the proposal that the OF board of directors shall implement investor suitability standards and adopt a policy addressing the relationship between the Banks and their members as debt issuers, have been deleted from the final rule.

Proposed § 910.8 (joint-and-several liability) has been redesignated as § 966.9 without change.

One commenter recommended the inclusion in the final rule of a provision stating that agreements and instruments entered into in connection with the issuance of COs prior to implementation of the final rule will continue to be effective with respect to the issuance of COs issued under the authority of the final rule by operation of law, and that references to COs in those agreements and instruments shall be deemed to refer to all COs by whomever issued. The Finance Board agrees that such a savings clause would be prudent and would further its goal of effecting a smooth and seamless transition of the CO issuance process between it and the Banks. Accordingly, the Finance Board has added such a savings clause as § 966.10 in the final rule.

4. Amendments to Part 985—the Office of Finance

The final rule has been significantly reorganized in form, but not in substance, from the proposed rule. The most important conceptual difference between the proposed and final rules is that certain powers and duties proposed to be powers and duties of the OF board of directors have been recast as authorities and responsibilities of the OF itself in the final rule. Part 941 has been redesignated as part 985.

a. Definitions, oversight, authority of the Office of Finance, functions and funding. i. Definitions. Section 985.1 of the final rule defines ''OF'' as the Office of Finance, a joint office of the Banks pursuant to section 2B of the Act. See 12 U.S.C. 1422b(b)(2).

ii. Authority of the OF. Proposed § 941.5 (redesignated as § 985.2(a)), which was entitled ''Powers of the OF board of directors,'' has been adopted as ''Authority of the OF,'' but otherwise is enacted substantively as proposed. It provides that the OF shall have the incidental powers under section 12(a) of the Act as are necessary, convenient and proper to accomplish the efficient operation and management of the OF, including having authority to contract with a Bank or Banks for the use of Bank facilities or personnel in order to perform its functions or duties. The rule empowers the OF to act as agent (rather than the OF board of directors) for the Banks in issuing COs pursuant to section 11(a) of the Act, for the Finance Board, by delegation, in issuing COs pursuant to section 11(c) of the Act, and in making principal and interest payments on COs issued in either capacity. Finally, § 985.2 gives the OF authority to assess the Banks for the funding of its operations in accordance with the provisions of § 985.5.

iii. Functions of the OF. Proposed § 941.2(b)(1) expressly provided that the OF could issue COs on which the Banks would be jointly and severally liable, on behalf of the Banks and the Finance Board under sections 11(a) and 11(c) of the Act, respectively. 12 U.S.C. 1431(a) and (c). That proposal has been adopted in § 985.3(a) of the final rule. Section 985.3 of the final rule goes on to provide that the OF shall prepare and issue the combined annual and quarterly financial reports for the Bank System, shall function as the Fiscal Agent for the Banks, and shall perform such duties and responsibilities for the Financing Corporation and the Resolution Funding Corporation as may be required under the Finance Board's regulations or the Act.

iv. Finance Board oversight. Proposed § 941.3 has been redesignated as § 985.4 and adopted without other changes from the proposal.

v. Funding of the OF. Proposed § 941.7 incorporated, with modest revisions, the existing provisions of the Finance Board's regulations regarding the responsibility of the Banks to fund the operations of the OF. That section has been redesignated as § 985.5 in the final rule and revised to eliminate unnecessary provisions and to more fully devolve the responsibility for this process. As adopted, § 985.5 retains the requirement that the Banks are responsible for jointly funding the OF, and makes explicit that this shall include the cost of indemnifying the members of the OF board of directors, the Managing Director, and other officers and employees of the OF. This requirement was added at the urging of several commenters, with whom the Finance Board agrees. As proposed, § 985.5(b) of the final rule provides that, at the direction of and pursuant to policies and procedures adopted by the OF board of directors, the Banks are required periodically to reimburse the OF to maintain sufficient operating funds under the budget approved by the OF board of directors. Also as proposed, the final rule provides that each Bank's respective *pro rata* share of the reimbursement must be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System. The final rule adopts the provision of the proposed rule providing authority for the OF board of directors, with the prior approval of the Finance Board, to implement an alternative formula for determining each Bank's respective share of the OF expenses or, by contract with a Bank or Banks, to choose to be reimbursed through a fee structure in lieu of or in addition to assessment, for services provided to the Bank or Banks for the

issuance or servicing of COs or for other activities.

One commenter suggested not using the Banks' paid-in capital as the allocation method for assessments on the Banks for the OF operating expense, stating that soon there would no longer exist any direct connection between the paid-in capital of a member of a Bank and the member's advances outstanding. The commenter suggested that the measure should more directly approximate the issuance costs for the Bank System and recommended further that the measure be the Banks' apportionment of the proceeds of aggregate CO issuance for the prior year or quarter. While the Finance Board believes that there may be some merit in these suggestions, no changes have been made at this time to the final rule. The Finance Board has proposed a risk-based capital rule, but it will be some time before the new capital system is fully in place. At such time as the new capital system has been implemented, the Finance Board will consider the need to change this provision of the rule. In the interim, the Banks can take advantage of the provision allowing for alternative formulae for assessments if the current formula becomes unworkable.

The final rule does not require, as did the proposed rule, that the OF's checking account be called the Imprest Fund. The final rule does contain new provisions specifying that the OF's operating funds shall not be commingled with any proceeds received from the sale of COs, and that, pursuant to the provisions of section 2B(b)(1) of the Act, 12 U.S.C. 1422b(b)(1), none of the OF's operating funds or any of the proceeds from the sale of any COs shall be construed to be Government funds or appropriated monies or subject to apportionment for the purposes of chapter 15 of title 31 of the United States Code or any other authority.

b. Debt management activities. i. Debt management duties of the OF. Proposed § 941.2(c) (redesignated as § 985.6(a) in the final rule) set out the functions the OF is authorized to undertake in support of the issuance of debt; it also set forth functions the OF is authorized to undertake in support of joint asset activities which are not being addressed at this time. As adopted in § 985.6 of the final rule, this section sets out an abbreviated version of the debt management duties of the OF proposed in § 941.2(c), including: (1) That the OF shall issue and service COs pursuant to and in accordance with the policies and procedures established by the OF board of directors; (2) that the OF shall prepare and distribute the combined annual and quarterly financial reports for the Bank System (discussed previously in more detail); (3) that the OF shall manage relationships with the NRSROs; (4) that the OF shall conduct research reasonably related to the issuance or servicing of COs; and (5) that the OF shall timely monitor each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

Proposed § 941.2(c)(3) provides that, in accordance with policies and procedures established by the OF board of directors, the OF shall perform such duties and responsibilities for the Financing Corporation (FICO) or the Resolution Funding Corporation (REFCorp) on behalf of the Banks, as may be required. This section preserves a current function of the OF as set forth in § 941.5(b).

ii. Structure of the OF board of directors. The proposed rule would have changed the current structure of the OF board of directors to accommodate proposed new functions for the OF. As discussed previously, no new functions for the OF are being adopted at this time, except the preparation of the Bank System's combined annual and quarterly financial reports. Therefore, no changes to the structure of the OF board of directors are being adopted in the final rule. Although the structure is not being changed, provisions relating to compensation and governance of the OF board of directors in the final rule have been revised to devolve responsibilities to the OF board of directors consistent with similar regulatory provisions relating to the boards of directors of the Banks.

Section 985.7 of the final rule maintains the current three-member structure of the OF board of directors, composed of two Bank presidents and one private citizen with demonstrated expertise in financial markets, all appointed by the Finance Board. This structure has served the OF and the Bank System well while the OF's only functions have been to issue COs and to make CO principal and interest payments when due. The Finance Board believes that this structure will continue to serve these purposes in an efficient and effective manner, under the oversight and supervision of the Finance Board.

The final rule provides that the directors shall serve three-year terms. The initial terms are staggered so that ⅓ of the terms will expire each year. The directors are subject to removal or suspension for cause by the Finance Board. The Finance Board fills vacancies, but only for the remainder of the term during which the vacancy occurs. Section 985.7(c) provides that the private citizen director shall serve as the Chair, with the Vice Chair being selected by a majority vote of the directors. The Chair is responsible for ensuring that the directives, resolutions and minutes of the OF board of directors are drafted and maintained.

Proposed § 941.4(e) (redesignated as § 985.7(d) in the final rule) would have replaced the multiple provisions of the current rule with a single standard of compensation permitting members of the OF board of directors to receive compensation and reimbursement for expenses incurred as a result of their service on the OF board of directors. The final rule maintains the existing compensation provisions, with modifications to reflect recent amendments to the Finance Board's rules in light of the enactment of Gramm-Leach-Bliley. In light of the OF's role, § 985.7 of the final rule also includes a new paragraph (e) requiring, rather than merely allowing, the OF to indemnify its directors, the Managing Director, and other officers and employees of the OF under such terms and conditions as shall be determined by the OF board of directors, provided that such terms and conditions shall be generally consistent with the terms and conditions of indemnification of directors, officers and employees of the Banks generally.

iii. General Duties of the OF board of directors. Section 985.8 of the final rule sets forth general duties of the OF board of directors, adopting provisions from proposed § 941.6 and applying to the OF board of directors appropriate provisions of the Finance Board's recently adopted rule on ''Powers and Responsibilities of Federal Home Loan Bank Boards of Directors and Senior Management'' at part 917. *See* 65 FR 25267 (May 1, 2000). It retains existing requirements that the OF board of directors shall adopt bylaws, but provides that it shall do so in accordance with the provisions of § 917.10 of the Finance Board's regulations, 12 CFR 917.10. It also retains existing requirements that the OF board of directors shall conduct its business by majority vote of its members convened at a meeting in accordance with its bylaws, but goes on to require, consistent with recently adopted provisions of § 918.7, that the OF board of directors shall hold no fewer than nine meetings annually.

Section 985.8(c) adopts provisions of proposed § 941.6(b)(2) requiring the OF board of directors to establish policies regarding COs which shall govern the frequency and timing of issuance, issue

size, minimum denomination, bond concessions, underwriter qualifications, currency of issuance, interest-rate change or conversion features, call features, principal indexing features, selection and retention of outside counsel, and selection of clearing organizations. It also requires that the policies be intended to cause CO issuance efficiently and at the lowest all-in funding costs over time, consistent with: (i) Prudent risk-management practices, prudential debt parameters, short and long-term market conditions, and the Banks' role as government-sponsored enterprises; (ii) maintaining reliable access to the short-term and long-term capital markets; and (iii) positioning the issuance of debt to take advantage of current and future capital market opportunities.

Section 985.8(d) adopts without significant substantive change the provisions of proposed § 941.6(b), and requires the OF board of directors to be responsible for the conduct and performance of all duties, functions, operations and activities of the OF and for its efficient and effective operation. The final rule authorizes the OF board of directors to approve a strategic business plan for the OF and monitor the progress of its operations under such plan; and to review, adopt, and monitor the annual operating budget of the OF. The final rule requires the OF board of directors to select, employ and define the duties of the Managing Director, who shall be the chief executive officer of the OF, a member of the Directorate of the Financing Corporation, pursuant to section 21(b)(1)(A) of the Act, 12 U.S.C. 1441(b)(1)(A), and a member of the Directorate of the Resolution Funding Corporation, pursuant to section 21B(c)(1)(A) of the Act, 12 U.S.C. 1441b(c)(1)(A). The final rule provides that the OF will be the Fiscal Agent of the Banks. Additionally, the final rule requires the OF board of directors to review and approve all contracts of the OF. Pursuant to the final rule, the OF board of directors will have the exclusive authority to employ and contract for the services of an independent, external auditor for the Banks' annual and quarterly combined financial statements; select, evaluate, determine the compensation of, and, where appropriate, replace the internal auditor, who may be removed only by vote of the OF board of directors. Under the final rule, the OF board of directors will assume any other responsibilities that may from time to time be delegated to it by the Finance Board. The final rule expressly states that no private rights of action are created and none may be deemed to be created under part 985.

Also adopted is the provision of proposed § 941.4(f) that requires the OF board of directors to establish an audit committee. The final rule provides that the OF board of directors shall constitute and perform the duties of an audit committee, which to the extent possible shall operate consistent with the requirements of § 917.6 and the requirements pertaining to audit committee reports set forth in Item 306 of Regulation S-K promulgated by the SEC.

Proposed § 941.8, which would have retained a savings clause providing that all actions taken by the OF as it existed prior to these amendments will continue to be valid as regards the Finance Board and the Bank System, is deleted, along with the rest of the provisions of current § 941.12 (which were proposed to be deleted) as obsolete and no longer necessary. As discussed above, the appropriate savings clause applying to pre-existing contracts has been included as § 966.10.

The new § 989.2 sets forth audit requirements. At the present time, the process for selecting the independent outside accountant for the Bank System and independent audit requirements is governed by Decision Memorandum 95–DM–09 (Feb. 9, 1995), as modified by Resolution 96–94 (Dec. 12, 1996). These require the Banks to have a single independent outside accountant and that this independent outside accountant provide a separate opinion on the financial statements on each Bank and on the combined financial statements for all of the Banks that appears in the annual financial report for the Bank System. Although the selection of the independent outside accountant was up to the Banks, the Finance Board, as issuer of the COs under section 11(c) of the Act, annually ratified the Banks' selection.

New § 989.2 codifies most of the provisions of Decision Memorandum 95–DM–09, with the exception of the requirement that there be a single independent outside accountant for each Bank and the Bank System. It also removes the Finance Board from any role in selecting or ratifying the selection of the independent outside accountant.

The method of selecting the independent outside accountant must change for two reasons. First, the Banks will be taking over the function of issuing COs under the authority of section 11(a) of the Act, with the OF acting as their agent in issuing and servicing the debt and in preparing the Bank System's combined financial reports. Section 985.8(d)(7) of the final rule gives the OF board of directors the exclusive authority to select the independent outside accountant for the combined financial report.

Second, in its recently adopted governance rule, § 917.7, the Finance Board gives the audit committee of each Bank a role in the selection or retention of the independent outside accountant for that Bank. Section 989.2 of the final rule sets the criteria for selecting the independent outside accountant that each Bank and the OF must follow.

III. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 33 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

V. Effective Date

Because the final rule provides for revisions to the leverage limit previously authorized under Finance Board Resolution No. 99–33, dated May 28, 1999, which by its terms expires June 30, 2000, the Finance Board for good cause finds that the final rule should become effective on July 1, 2000. *See* 5 U.S.C. 553(d)(3).

List of Subjects

12 CFR Part 900

Administrative practice and procedure.

12 CFR Part 905

Organization and functions (Government agencies).

12 CFR Part 965

Federal home loan banks, Finance.

12 CFR Part 966

Federal home loan banks, Securities.

12 CFR 969

Federal home loan banks, Finance.

12 CFR Part 985

Federal home loan banks, Securities.

12 CFR Part 989

Accounting, Federal home loan banks, Financial disclosure.

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR parts 900, 905, 965, 966, 969, 985, and 989 as follows:

PART 900—DEFINITIONS

1. The authority citation for part 900 continues to read as follows:

Authority: 12 U.S.C. 1422b(a).

2. Amend § 900.1 to revise the definition of ''Consolidated obligations'' to read as follows:

§ 900.1 Definitions applying to all regulations.

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Consolidated obligation or *CO* means any bond, debenture, or note authorized under part 966 of this chapter to be issued jointly by the Banks pursuant to section 11(a) of the Act, as amended (12 U.S.C. 1431(a)), or any bond or note issued by the Finance Board on behalf of all Banks pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)), on which the Banks are jointly and severally liable.

* * * * *

PART 905—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

3. The authority citation for part 905 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1422b(a) and 1423.

Subpart C [Removed and Reserved]

4. Remove and reserve subpart C.

5. Add part 965 to read as follows:

PART 965—SOURCE OF FUNDS

Sec.
965.1 Definitions.
965.2 Authorized liabilities.
965.3 Liquidity reserves for deposits.

Authority: 12 U.S.C. 1422a, 1422b, and 1431.

§ 965.1 Definitions.

As used in this part:

Deposits in banks or trust companies means:

(1) A deposit in another Bank;

(2) A demand account in a Federal Reserve Bank;

(3) A deposit in, or a sale of Federal funds to:

(i) An insured depository institution, as defined in section 2(12)(A) of the Act (12 U.S.C. 1422(12)(A)), that is designated by a Bank's board of directors;

(ii) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation, and is designated by a Bank's board of directors; or

(iii) A U.S. branch or agency of a foreign bank, as defined in the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*), that is subject to the supervision of the Board of Governors of the Federal Reserve System, and is designated by a Bank's board of directors.

Repurchase agreement means an agreement in which a Bank sells securities and simultaneously agrees to repurchase those securities or similar securities at an agreed upon price, with or without a stated time for repurchase.

§ 965.2 Authorized liabilities.

As a source of funds for business operations, each Bank is authorized to incur liabilities by:

(a) Accepting proceeds from the issuance of consolidated obligations issued in accordance with part 966 of this chapter;

(b) Accepting time or demand deposits from members, other Banks or instrumentalities of the United States, and cash accounts from members or associates pursuant to § § 969.2, 950.24(b)(2)(i)(B), 950.24(d) or 961.4(a)(1), or other institutions for which the Bank is providing correspondent services pursuant to section 11(e) of the Act (12 U.S.C. 1431(e));

(c) Purchasing Federal funds; and

(d) Entering into repurchase agreements.

§ 965.3 Liquidity reserves for deposits.

Each Bank shall at all times have at least an amount equal to the current deposits received from its members invested in:

(a) Obligations of the United States;

(b) Deposits in banks or trust companies; or

(c) Advances with a maturity of not to exceed five years that are made to members in conformity with part 950 of this chapter.

6. Revise part 966 to read as follows:

PART 966—CONSOLIDATED OBLIGATIONS

Sec.
966.1 Definitions.
966.2 Issuance of consolidated obligations.
966.3 Leverage limit and credit rating requirements.
966.4 Form of consolidated obligations.
966.5 Transactions in consolidated obligations.
966.6 Lost, stolen, destroyed, mutilated or defaced consolidated obligations.
966.7 Administrative provision.
966.8 Conditions for issuance of consolidated obligations.
966.9 Joint and several liability.
966.10 Savings clause.

Authority: 12 U.S.C. 1422a, 1422b, and 1431.

§ 966.1 Definitions.

For purposes of this part:

Financial Management Policy (FMP) has the meaning set forth in § 956.1 of this chapter.

NRSRO means a credit rating organization regarded as a Nationally Recognized Statistical Rating Organization by the Securities and Exchange Commission.

§ 966.2 Issuance of consolidated obligations.

(a) *Consolidated obligations issued by the Finance Board.* The Finance Board may issue consolidated obligations under section 11(c) of the Act (12 U.S.C. 1431(c)), including the determination of the dates of issue, maturities, rates of interest, terms and conditions thereof, and the manner in which such consolidated obligations shall be issued. The Finance Board in its discretion from time to time may delegate this by resolution of the Board of Directors of the Finance Board, or may terminate such delegation.

(b) *Consolidated obligations issued by the Banks.* (1) Pursuant to the Banks' housing finance mission set forth in section 2A(a)(3)(B)(ii) of the Act (12 U.S.C. 1422a(a)(3)(B)(ii)), pursuant to the Finance Board's duty to ensure that the Banks carry out that mission and remain adequately capitalized and able to raise funds in the capital markets under section 2A(a)(3)(B)(ii) and (iii) of the Act (12 U.S.C. 1422a(a)(3)(B)(ii) and (iii)), and subject to the provisions of this part and such rules, regulations, terms and conditions as the Finance Board may prescribe, the Banks are authorized to issue joint debt under section 11(a) of the Act (12 U.S.C. 1431(a)), which shall be called consolidated obligations and on which the Banks shall be jointly and severally liable under § 966.9 of this part.

(2) Consolidated obligations shall be issued only through the Office of Finance, as agent of the Banks pursuant to this part and part 985.

(3) The authorization contained herein shall be deemed to constitute satisfaction of the requirement for Finance Board approval of the ''terms and conditions'' of the consolidated obligations pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

(c) *Negative pledge requirement.* Each Bank shall at all times maintain assets

described in paragraphs (c)(1) through (c)(6) of this section free from any lien or pledge, in an amount at least equal to a *pro rata* share of the total amount of currently outstanding consolidated obligations jointly issued by the Banks pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)) and by the Finance Board pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)) and equal to such Bank's participation in all such COs outstanding, *provided that* any assets that are subject to a lien or pledge for the benefit of the holders of any issue of consolidated obligations shall be treated as if they were assets free from any lien or pledge for purposes of compliance with this paragraph (c). Eligible assets are:

(1) Cash;

(2) Obligations of or fully guaranteed by the United States;

(3) Secured advances;

(4) Mortgages as to which one or more Banks have any guaranty or insurance, or commitment therefor, by the United States or any agency thereof;

(5) Investments described in section 16(a) of the Act (12 U.S.C. 1436(a)); and

(6) Other securities that have been assigned a rating or assessment by an NRSRO that is equivalent to or higher than the rating or assessment assigned by that NRSRO to consolidated obligations outstanding.

§ 966.3 Leverage limit and credit rating requirements.

(a) *Bank leverage.* (1) Except as provided in paragraph (a)(2) of this section, the total assets of any Bank shall not exceed 21 times the total of paid-in capital stock, retained earnings, and reserves (excluding loss reserves and liquidity reserves for deposits pursuant to 12 U.S.C. 1431(g)) of that Bank.

(2) The aggregate amount of assets of any Bank may be up to 25 times the total paid-in capital stock, retained earnings, and reserves of that Bank, provided that non-mortgage assets, after deducting the amount of deposits and capital, do not exceed 11 percent of such total assets. For the purposes of this section, the amount of non-mortgage assets equals total assets after deduction of core mission activity assets and assets described in sections II.B.8 through II.B.11 of the FMP.

(b) *Credit ratings.* (1) The Banks, collectively, shall obtain from an NRSRO and, at all times, maintain a current credit rating on the Banks' consolidated obligations.

(2) Each Bank shall operate in such a manner and take any actions necessary, including without limitation reducing Bank leverage, to ensure that the Banks' consolidated obligations receive and continue to receive the highest credit rating from any NRSRO by which the consolidated obligations have then been rated.

(c) *Individual Bank credit rating.* Each Bank shall operate in such a manner and take any actions necessary to ensure that the Bank has and maintains an individual issuer credit rating of at least the second highest credit rating from any NRSRO providing a rating, where such rating is a meaningful measure of the individual Bank's financial strength and stability, and is updated at least annually by an NRSRO, or more frequently as required by the Finance Board, to reflect any material changes in the condition of the Bank.

(d) *Transition provision.* Each Bank shall obtain the credit rating from an NRSRO required under paragraph (c) of this section by July 1, 2001.

§ 966.4 Form of consolidated obligations.

(a) All consolidated obligations shall be issued *in pari passu*.

(b) Consolidated obligations with maturities of one year or less may be designated consolidated notes.

§ 966.5 Transactions in consolidated obligations.

The general regulations of the Department of the Treasury now or hereafter in force governing transactions in United States securities, except 31 CFR part 357 regarding book-entry procedure, are hereby incorporated into this part 966, so far as applicable and as necessarily modified to relate to consolidated obligations, as the regulations of the Finance Board for similar transactions on consolidated obligations. The book-entry procedure for consolidated obligations is contained in part 987 of this subchapter.

§ 966.6 Lost, stolen, destroyed, mutilated or defaced consolidated obligations.

United States statutes and regulations of the Department of the Treasury now or hereafter in force governing relief on account of the loss, theft, destruction, mutilation or defacement of United States securities, so far as applicable and as necessarily modified to relate to consolidated obligations, are hereby adopted as the regulations of the Finance Board for the issuance of substitute consolidated obligations or the payment of lost, stolen, destroyed, mutilated or defaced consolidated obligations.

§ 966.7 Administrative provision.

The Secretary of the Treasury or the Acting Secretary of the Treasury is hereby authorized and empowered, as the agent of the Finance Board and the Banks, to administer §§ 966.5 and 966.6, and to delegate such authority at their discretion to other officers, employees, and agents of the Department of the Treasury. Any such regulations may be waived on behalf of the Finance Board and the Banks by the Secretary of the Treasury, the Acting Secretary of the Treasury, or by an officer of the Department of the Treasury authorized to waive similar regulations with respect to United States securities, but only in any particular case in which a similar regulation with respect to United States securities would be waived. The terms ''securities'' and ''bonds'' as used in this section shall, unless the context otherwise requires, include and apply to coupons and interim certificates.

§ 966.8 Conditions for issuance of consolidated obligations.

(a) The OF board of directors shall authorize the offering for current and forward settlement (up to 12 months) or the reopening of COs, as necessary, and authorize the maturities, rates of interest, terms and conditions thereof, subject to the provisions of 31 U.S.C. 9108.

(b) COs may be offered for sale only to the extent that Banks are committed to take the proceeds.

(c) COs shall not be directly placed with any Bank.

§ 966.9 Joint and several liability.

(a) *In general.* (1) Each and every Bank, individually and collectively, has an obligation to make full and timely payment of all principal and interest on consolidated obligations when due.

(2) Each and every Bank, individually and collectively, shall ensure that the timely payment of principal and interest on all consolidated obligations is given priority over, and is paid in full in advance of, any payment to or redemption of shares from any shareholder.

(3) The provisions of this part shall not limit, restrict or otherwise diminish, in any manner, the joint and several liability of all of the Banks on all of the consolidated obligations issued by the Finance Board pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)) and by the Banks pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

(b) *Certification and reporting.* (1) Before the end of each calendar quarter, and before declaring or paying any dividend for that quarter, the President of each Bank shall certify in writing to the Finance Board that, based on known current facts and financial information, the Bank will remain in compliance with the liquidity requirements set forth

in section 11(g) of the Act (12 U.S.C. 1431(g)), and the Finance Board's FMP or any regulations (as the same may be amended, modified or replaced), and will remain capable of making full and timely payment of all of its current obligations, including direct obligations, coming due during the next quarter.

(2) A Bank shall immediately provide written notice to the Finance Board if at any time the Bank:

(i) Is unable to provide the certification required by paragraph (b)(1) of this section;

(ii) Projects at any time that it will fail to comply with statutory or regulatory liquidity requirements, or will be unable to timely and fully meet all of its current obligations, including direct obligations, due during the quarter;

(iii) Actually fails to comply with statutory or regulatory liquidity requirements or to timely and fully meet all of its current obligations, including direct obligations, due during the quarter; or

(iv) Negotiates to enter or enters into an agreement with one or more other Banks to obtain financial assistance to meet its current obligations, including direct obligations, due during the quarter; the notice of which shall be accompanied by a copy of the agreement, which shall be subject to the approval of the Finance Board.

(c) *Consolidated obligation payment plans.* (1) A Bank promptly shall file a consolidated obligation payment plan for Finance Board approval:

(i) If the Bank becomes a non-complying Bank as a result of failing to provide the certification required in paragraph (b)(1) of this section;

(ii) If the Bank becomes a non-complying Bank as a result of being required to provide the notice required pursuant to paragraph (b)(2) of this section, except in the event that a failure to make a principal or interest payment on a consolidated obligation when due was caused solely by a temporary interruption in the Bank's debt servicing operations resulting from an external event such as a natural disaster or a power failure; or

(iii) If the Finance Board determines that the Bank will cease to be in compliance with the statutory or regulatory liquidity requirements, or will lack the capacity to timely and fully meet all of its current obligations, including direct obligations, due during the quarter.

(2) A consolidated obligation payment plan shall specify the measures the non-complying Bank will undertake to make full and timely payments of all of its current obligations, including direct obligations, due during the applicable quarter.

(3) A non-complying Bank may continue to incur and pay normal operating expenses incurred in the regular course of business (including salaries, benefits, or costs of office space, equipment and related expenses), but shall not incur or pay any extraordinary expenses, or declare, or pay dividends, or redeem any capital stock, until such time as the Finance Board has approved the Bank's consolidated obligation payment plan or inter-Bank assistance agreement, or ordered another remedy, and all of the non-complying Bank's direct obligations have been paid.

(d) *Finance Board payment orders; Obligation to reimburse.* (1) The Finance Board, in its discretion and notwithstanding any other provision in this section, may at any time order any Bank to make any principal or interest payment due on any consolidated obligation.

(2) To the extent that a Bank makes any payment on any consolidated obligation on behalf of another Bank, the paying Bank shall be entitled to reimbursement from the non-complying Bank, which shall have a corresponding obligation to reimburse the Bank providing assistance, to the extent of such payment and other associated costs (including interest to be determined by the Finance Board).

(e) *Adjustment of equities.* (1) Any non-complying Bank shall apply its assets to fulfill its direct obligations.

(2) If a Bank is required to meet, or otherwise meets, the direct obligations of another Bank due to a temporary interruption in the latter Bank's debt servicing operations (*e.g.,* in the event of a natural disaster or power failure), the assisting Bank shall have the same right to reimbursement set forth in paragraph (d)(2) of this section.

(3) If the Finance Board determines that the assets of a non-complying Bank are insufficient to satisfy all of its direct obligations as set forth in paragraph (e)(1) of this section, then the Finance Board may allocate the outstanding liability among the remaining Banks on a *pro rata* basis in proportion to each Bank's participation in all consolidated obligations outstanding as of the end of the most recent month for which the Finance Board has data, or otherwise as the Finance Board may prescribe.

(f) *Reservation of authority.* Nothing in this section shall affect the Finance Board's authority to adjust equities between the Banks in a manner different than the manner described in paragraph (e) of this section, or to take enforcement or other action against any Bank pursuant to the Finance Board's authority under the Act or otherwise to supervise the Banks and ensure that they are operated in a safe and sound manner.

(g) *No rights created.* (1) Nothing in this part shall create or be deemed to create any rights in any third party.

(2) Payments made by a Bank toward the direct obligations of another Bank are made for the sole purpose of discharging the joint and several liability of the Banks on consolidated obligations.

(3) Compliance, or the failure to comply, with any provision in this section shall not be deemed a default under the terms and conditions of the consolidated obligations.

§ 966.10 Savings clause.

Any agreements or other instruments entered into in connection with the issuance of COs prior to the amendments made to this part shall continue in effect with respect to all COs issued under the authority of section 11 of the Act and pursuant to this part. References to consolidated obligations in such agreements and instruments shall be deemed to refer to all joint and several obligations of the Banks.

PART 969—DEPOSITS

7. The authority citation for part 969 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1431.

§ 969.3 [Removed]

8. Remove § 969.3.

9. Revise part 985 to read as follows:

PART 985—THE OFFICE OF FINANCE

Sec.

985.1 Definitions.
985.2 Authority of the OF.
985.3 Functions of the OF.
985.4 Finance Board oversight.
985.5 Funding of the OF.
985.6 Debt management duties of the OF.
985.7 Structure of the OF board of directors.
985.8 General duties of the OF board of directors.
Appendix A to Part 985—Exceptions to the General Disclosure Standards

§ 985.1 Definitions.

For purposes of this part:

Bank System means the Banks and the Office of Finance.

Chair means the Chairperson of the board of directors of the Office of Finance.

Managing Director means the managing director of the Office of Finance.

OF means the Office of Finance, a joint office of the Banks pursuant to

section 2B of the Act (12 U.S.C. 1422b(b)(2)).

§ 985.2 Authority of the OF.

(a) *General.* The OF shall enjoy such incidental powers under section 12(a) of the Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient execution of its duties and functions pursuant to this part, including the authority to contract with a Bank or Banks for the use of Bank facilities or personnel in order to perform its functions or duties.

(b) *Agent.* The OF in the performance of its duties, shall have the power to act on behalf of:

(1) The Banks in issuing consolidated obligations pursuant to section 11(a) of the Act (12 U.S.C. 1431(a));

(2) By delegation of the Finance Board under § 966.2 of this chapter in issuing consolidated obligations pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)); and

(3) The Banks in paying principal and interest due on the consolidated obligations, or other obligations of the Banks.

(c) *Assessments.* The OF shall have authority to assess the Banks for the funding of its operations in accordance with § 985.5.

§ 985.3 Functions of the OF.

(a) *Joint debt issuance.* Subject to parts 965 and 966 of this chapter, and this part, the OF as agent shall offer, issue and service (including making timely payments on principal and interest due) consolidated obligations on which the Banks are jointly and severally liable on behalf of the Finance Board pursuant to section 11(c) of the Act (12 U.S.C. 1431(c), or the Banks pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

(b) *Preparation of combined financial reports.* The OF shall prepare and issue the combined annual and quarterly financial reports for the Bank System in accordance with the requirements of § 985.6(b) and Appendix A of this part.

(c) *Fiscal agent.* The OF shall function as the Fiscal Agent of the Banks.

(d) *Financing Corporation and Resolution Funding Corporation.* The OF shall perform such duties and responsibilities for the Financing Corporation (FICO) as may be required under part 995 of this chapter, or for the Resolution Funding Corporation (REFCorp) as may be required under part 996 of this chapter or authorized by the Finance Board pursuant to section 21B(c)(6)(B) of the Act (12 U.S.C. 1441b(c)(6)(B)).

§ 985.4 Finance Board oversight.

(a) *Oversight and enforcement actions.* The Finance Board shall have the same regulatory oversight authority and enforcement powers over the OF, the OF board of directors, the directors, officers, employees, agents, attorneys, accountants or other OF staff, as it has over a Bank and its respective directors, officers, employees, attorneys, accountants, agents or other staff.

(b) *Examinations.* Pursuant to section 20 of the Act (12 U.S.C. 1440), the Finance Board shall examine the OF, all funds and accounts that may be established pursuant to this part 985, and the operations and activities of the OF, as provided for in the Act or any regulations promulgated pursuant thereto.

§ 985.5 Funding of the OF.

(a) *Generally.* The Banks are responsible for jointly funding all of the expenses of the Office of Finance, including the costs of indemnifying the members of the OF board of directors, the Managing Director and other officers and employees of the OF, as provided for in this part.

(b) *Funding policies.* (1) At the direction of, and pursuant to policies and procedures adopted by, the OF board of directors, the Banks shall periodically reimburse the OF in order to maintain sufficient operating funds under the budget approved by the OF board of directors. The OF operating funds shall be:

(i) Available for expenses of the Office of Finance and the OF board of directors, according to their approved budgets; and

(ii) Subject to withdrawal by check, wire transfer or draft signed by the Managing Director or other person designated by the OF board of directors.

(2) Each Bank's respective *pro rata* share of the reimbursement described in paragraph (b)(1) of this section shall be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System.

(c) *Alternative formula for assessment.* With the prior approval of the Finance Board, the OF board of directors may implement an alternative formula for determining each Bank's respective share of the OF expenses or, by contract with a Bank or Banks, may choose to be reimbursed through a fee structure in lieu of or in addition to assessment, for services provided to the Bank or Banks.

(d) *Prompt reimbursement.* Each Bank from time to time shall promptly forward funds to the OF in an amount representing its share of the reimbursement described in paragraph (b) of this section when directed to do so by the Managing Director pursuant to procedures of the OF board of directors.

(e) *Indemnification expenses.* All expenses incident to indemnification of the members of the OF board of directors, the Managing Director, and other officers and employees of the OF shall be treated as an expense of the OF to be reimbursed by the Banks under the provisions of this part.

(f) *Operating funds shall be segregated.* (1) Any funds received by the OF from the Banks pursuant to this section for OF operating expenses promptly shall be deposited into one or more accounts and shall not be commingled with any proceeds from the sale of consolidated obligations in any manner.

(2) Neither the proceeds from the sale of consolidated obligations under part 966, nor any operating expense reimbursements received by the OF from assessments on the Banks under this section shall be construed to be Government Funds or appropriated monies or subject to apportionment for the purposes of chapter 15 of title 31 of the United States Code, or any other authority, in accordance with section 2B(b)(1) of the Act (12 U.S.C. 1422b(b)(1)).

§ 985.6 Debt management duties of the OF.

(a) *Issuance and servicing of COs.* The OF shall issue and service (including making timely payments on principal and interest due, subject to §§ 966.8 and 966.9 of this chapter) consolidated obligations pursuant to and in accordance with the policies and procedures established by the OF board of directors under this part.

(b) *Combined financial reports requirements.* The OF shall prepare and distribute the combined annual and quarterly financial reports for the Bank System in accordance with the following requirements:

(1) The scope, form and content of the disclosure generally shall be consistent with the requirements of the Securities and Exchange Commission's Regulations S–K and S–X (17 CFR parts 229 and 210).

(2) Information about each Bank shall be presented as a segment of the Bank System as if Statement of Financial Accounting Standards No. 131, titled ''Disclosures about Segments of an Enterprise and Related Information'' (FASB 131) applied to the combined annual and quarterly financial reports of the Bank System.

(3) The standards set forth in paragraphs (b)(1) and (2) of this section

are subject to the exceptions set forth in the Appendix to this part.

(4) The combined Bank System annual report shall be filed with the Finance Board and distributed to each Bank and Bank member within 90 days after the end of the fiscal year. The combined Bank System quarterly reports shall be filed with the Finance Board and distributed to each Bank and Bank member within 45 days after the end of the first three fiscal quarters of each year.

(5) The Finance Board in its sole discretion shall determine whether or not a combined Bank System annual or quarterly financial report complies with the standards of this part.

(6) The OF board of directors shall comply promptly with any directive of the Finance Board regarding the preparation, filing, amendment or distribution of the combined Bank System annual or quarterly financial reports.

(7) Nothing in this section shall create or be deemed to create any rights in any third party.

(c) *Capital markets data.* The OF board of directors shall provide capital markets information concerning debt to the Banks.

(d) *NRSROs.* The OF board of directors shall manage relationships with Nationally Recognized Statistical Rating Organizations in connection with their rating of consolidated obligations.

(e) *Research.* The OF shall conduct research reasonably related to the issuance or servicing of consolidated obligations.

(f) *Monitor Banks' credit exposure.* The OF shall timely monitor each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

§ 985.7 Structure of the OF board of directors.

(a) *Membership.* The OF board of directors shall consist of three part-time members appointed by the Finance Board as follows:

(1) Two Bank Presidents; and

(2) A citizen of the United States with a demonstrated expertise in financial markets. Such appointee may not be an officer, director or employee of a Bank or Bank System member, hold shares, or any other financial interest in, any member of a Bank, or be affiliated with any consolidated obligation selling or dealer group member under contract with the OF.

(b) *Terms.* (1) Except as provided in paragraph (b)(2) of this section, the members of the OF board of directors shall serve for three-year terms (which shall be staggered), and shall be subject to removal or suspension for cause by the Finance Board.

(2) The Finance Board shall fill any vacancy occurring on the OF board of directors. An appointment to fill a vacancy shall be only for the remainder of the term during which the vacancy occurred.

(3) Any member of the OF board of directors is authorized to continue to serve on the OF board of directors after the expiration of the member's term until a successor has been appointed by the Finance Board.

(c) *Chair.* (1) The private citizen member of the OF board of directors shall serve as the Chair, and the Vice Chair shall be selected by a majority vote of the members of the OF board of directors.

(2) The Chair shall preside over the meetings of the OF board of directors. In the absence of the Chair, the Vice Chair shall preside.

(3) The Chair shall be responsible for ensuring that the directives and resolutions of the OF board of directors are drafted and maintained and for keeping the minutes of all meetings.

(d) *Compensation.* (1) The Bank President members shall not receive any additional compensation or reimbursement as a result of their service on the OF board of directors.

(2) Each Bank shall be entitled to be reimbursed by from the Office of Finance for its expenditure of travel and per diem expenses associated with its Bank President's attendance at an OF board of directors meeting as a director member thereof.

(3) The Office of Finance shall pay compensation and expenses to the private citizen member of the OF board of directors in accordance with the requirements for payment of compensation and expenses to Bank chairs as set forth in part 918 of this chapter.

(e) *Indemnification.* (1) The OF board of directors shall indemnify its members, the Managing Director, and other officers and employees of the OF under such terms and conditions as shall be determined by the OF board of directors, *provided that* such terms and conditions are consistent with the terms and conditions of indemnification of directors, officers and employees of the Bank System generally.

(2) The OF board of directors shall adopt indemnification procedures, which shall be supplemented by a contract of insurance.

(f) *Delegation.* The OF board of directors may delegate any of its authority or duties to any employee of the OF in order to enable the OF to carry out its functions.

§ 985.8 General duties of the OF board of directors.

(a) *General.* (1) *Conduct of business.* Each director shall have the duties prescribed in § 917.2(b) of this chapter, as appropriate.

(2) *Bylaws.* The OF board of directors shall adopt bylaws in accordance with the provisions of § 917.10 of this chapter.

(b) *Meetings and quorum.* The OF board of directors shall conduct its business by majority vote of its members at meetings convened in accordance with its bylaws, and shall hold no fewer than nine meetings annually. Due notice shall be given to the Finance Board by the Chair prior to each meeting. A quorum, for purposes of meetings of the OF board of directors, shall be not less than two members.

(c) *Duties regarding COs.* The OF board of directors shall establish policies regarding COs that shall:

(1) Govern the frequency and timing of issuance, issue size, minimum denomination, CO concessions, underwriter qualifications, currency of issuance, interest-rate change or conversion features, call features, principal indexing features, selection and retention of outside counsel, selection of clearing organizations, and the selection and compensation of underwriters for consolidated obligations, which shall be in accordance with the requirements and limitations set forth in paragraph (c)(4) of this section;

(2) Prohibit the issuance of COs intended to be privately placed with or sold without the participation of an underwriter to retail investors, or issued with a concession structure designed to facilitate the placement of the COs in retail accounts, unless the OF has given notice to the board of directors of each Bank describing a policy permitting such issuances, soliciting comments from each Bank's board of directors, and considering the comments received before adopting a policy permitting such issuance activities;

(3) Require all broker-dealers or underwriters under contract to the OF to have and maintain adequate suitability sales practices and policies, which shall be acceptable to, and subject to review by, the Office of Finance;

(4) Require that COs shall be issued efficiently and at the lowest all-in funding costs over time, consistent with:

(i) Prudent risk-management practices, prudential debt parameters, short and long-term market conditions, and the Banks' role as government-sponsored enterprises;

(ii) Maintaining reliable access to the short-term and long-term capital markets; and

(iii) Positioning the issuance of debt to take advantage of current and future capital market opportunities.

(d) *Other duties.* The OF board of directors shall:

(1) Set policies for management and operation of the OF;

(2) Approve a strategic business plan for the OF in accordance with the provisions of § 917.5 of this chapter, as appropriate;

(3) Review, adopt and monitor annual operating and capital budgets of the OF in accordance with the provisions of § 917.8 of this chapter, as appropriate;

(4) Constitute and perform the duties of an audit committee, which to the extent possible shall operate consistent with:

(i) The requirements of § 917.6 of this chapter, and

(ii) The requirements pertaining to audit committee reports set forth in Item 306 of Regulation S–K promulgated by the Securities and Exchange Commission.

(5) Select, employ, determine the compensation for, and assign the duties and functions of a Managing Director of the OF who shall:

(i) Be the chief executive officer for the OF and shall direct the implementation of the OF board of directors' policies;

(ii) Serve as a member of the Directorate of the Financing Corporation, pursuant to section 21(b)(1)(A) of the Act (12 U.S.C. 1441(b)(1)(A)); and

(iii) Serve as a member of the Directorate of the Resolution Funding Corporation, pursuant to section 21B(c)(1)(A) of the Act (12 U.S.C. 1441b(c)(1)(A)).

(6) Review and approve all contracts of the OF;

(7) Have the exclusive authority to employ and contract for the services of an independent, external auditor for the Banks' annual and quarterly combined financial statements;

(8) Select, evaluate, determine the compensation of, and, where appropriate, replace the internal auditor, who may be removed only by vote of the OF board of directors; and

(9) Assume any other responsibilities that may from time to time be delegated to it by the Finance Board.

(e) *No rights created.* Nothing in this part shall create or be deemed to create any rights in any third party.

Appendix A to Part 985—Exceptions to the General Disclosure Standards

A. Related-party transactions. Item 404 of Regulation S–K, 17 CFR 229.404, requires the disclosure of certain relationships and related party transactions. In light of the cooperative nature of the Bank System, related-party transactions are to be expected, and a disclosure of all related-party transactions that meet the threshold would not be meaningful. Instead, the combined annual report will disclose the percent of advances to members an officer of which serves as a Bank director, and list the top ten holders of advances in the Bank System and the top five holders of advances by Bank, with a further disclosure indicating which of these members had an officer that served as a Bank director.

B. Biographical information. The biographical information required by Items 401 and 405 of Regulation S–K, 17 CFR 229.401 and 405, will be provided only for the members of the Board of Directors of the Finance Board, Bank presidents, chairs and vice chairs, and the directors and Managing Director of the OF.

C. Compensation. The information on compensation required by Item 402 of Regulation S–K, 17 CFR 229.402, will be provided only for Bank presidents and the Managing Director of the OF. Since stock in each Bank trades at par, the Office of Finance will not include the performance graph specified in Item 402(1) of Regulation S–K, 17 CFR 229.402(1).

D. Submission of matters to a vote of stockholders. No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10–K, 17 CFR 249.310. The only item shareholders vote upon is the annual election of directors.

E. Exhibits. The exhibits required by Item 601 of Regulation S-K, 17 CFR 229.601, are not applicable and will not be provided.

F. Per share information. The statement of financial information required by Items 301 and 302 of Rule S–K, 17 CFR 229.301 and 302, is inapplicable because the shares of the Banks are subscription capital that trades at par, and the shares expand or contract with changes in member assets or advance levels.

G. Beneficial ownership. Item 403 of Rule S–K, 17 CFR 229.403, requires the disclosure of security ownership of certain beneficial owners and management. The combined financial report will provide a listing of the ten largest holders of capital stock in the Bank System and a listing of the five largest holders of capital stock by Bank. This listing will also indicate which members had an officer that served as a director of a Bank.

PART 989—FINANCIAL STATEMENTS OF THE BANKS

10. The authority citation for part 989 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431 and 1440.

11. Add § 989.1 to read as follows:

§ 989.1 Definitions.

For purposes of this part:

Audit means an examination of the financial statements by an independent accountant in accordance with Generally Accepted Accounting Principles for the purpose of expressing an opinion thereon.

Audit report means a document in which an independent accountant indicates the scope of the audit made and sets forth an opinion regarding the financial statement taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

§§ 989.2 and 989.3 [Redesignated]

12. Redesignate §§ 989.2 and 989.3 as §§ 989.3 and 989.4, respectively.

13. Add § 989.2 to read as follows:

§ 989.2 Audit requirements.

(a) Each Bank, the OF and the Financing Corporation shall obtain annually an independent, external audit of and an audit report on its individual financial statement.

(b) The OF board of directors shall obtain an audit and an audit report on the combined annual financial statements for the Bank System.

(c) All audits must be conducted in accordance with generally accepted auditing standards and in accordance with the most current government auditing standards issued by the Office of the Comptroller General of the United States.

(d) An independent, external auditor must meet at least twice each year with the audit committee of each Bank, the OF board of directors, and the Financing Corporation Directorate.

(e) Finance Board examiners shall have unrestricted access to all auditors' work papers and to the auditors to address substantive accounting issues that may arise during the course of any audit.

14. Revise newly designated § 989.3 to read as follows:

§ 989.3 Requirement to provide financial and other information to the Finance Board and the Office of Finance.

In order to facilitate the preparation by the Office of Finance of combined Bank System annual and quarterly reports, each Bank shall provide to the Office of Finance in such form and within such timeframes as the Finance Board or the Office of Finance shall specify, all financial and other information and assistance the Office of Finance shall request for that purpose. Nothing in this section shall contravene or be deemed to circumscribe in any manner the authority of the Finance Board to obtain any information from any Bank related to the preparation or review of any financial report.

§ 989.4 [Amended]

15. Amend newly designated § 989.4 by removing the words ''Finance Board'' wherever they appear and adding in their place the words ''Office of Finance.''

Dated: June 2, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–14366 Filed 6–6–00; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

[NO. 2000–25]

RIN 3069–AA88

Changes to the Financial Management Policy of the Federal Home Loan Bank System

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its policy statement entitled ''Financial Management Policy of the Federal Home Loan Bank System'' (''FMP'') to: (1) delete the ''Funding Guidelines'' in section IV; (2) insert a new section IV titled ''Hedging Requirements''; and (3) revise the ''Interest Rate Risk Limitations'' in section VII. These FMP amendments are being made in conjunction with changes to the Finance Board's regulations governing the issuance of consolidated obligations (COs) under section 11 of the Federal Home Loan Bank Act (Act) (12 U.S.C. 1431) and the authority and operations of the Office of Finance (OF), described in detail in a Final Rule published elsewhere in this issue of the **Federal Register** (OF Final Rule).

DATES: The FMP amendments are effective June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Deputy Chief Economist, Office of Policy, Research and Analysis, 202/408–2845, *mckenziej@fhfb.gov;* or Charlotte A. Reid, Special Counsel, Office of General Counsel, 202/408–2510, *reidc@fhfb.gov.* Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The FMP evolved from a series of policies and guidelines initially adopted by the former Federal Home Loan Bank Board (FHLBB), predecessor agency to the Finance Board, in the 1970s and revised a number of times thereafter. The Finance Board adopted the FMP in 1991, consolidating into one document the previously separate policies on funds management, hedging and interest-rate swaps, and adding new guidelines on the management of unsecured credit and interest-rate risks.[1]

The FMP governs how the Banks may implement their financial management strategies by specifying the types of investments the Banks may purchase pursuant to their statutory investment authority. The FMP also establishes mandatory guidelines relating to the funding and hedging practices of the Banks, the management of their credit, interest-rate, and liquidity risks, and the liquidity requirements for the Banks in addition to those required by statute. *See* FMP secs. III–IV.[2]

II. Proposed FMP Amendments

On January 4, 2000, the Finance Board published for comment a notice of proposed amendments to the FMP, in conjunction and conformance with proposed regulatory changes to the Finance Board's regulations regarding the OF (Proposed OF Rule). *See* 64 FR 339 (Jan. 4, 2000) (Proposed FMP Amendments). The Proposed FMP Amendments would have deleted FMP sec. IV. C. ''Funding Guidelines,'' as unnecessary in light of the Proposed OF Rule, with the exception that the current Bank-by-Bank, liability-based leverage limit would have been replaced with a minimum total capital requirement recast as a percentage of assets. The Proposed FMP Amendments would have required that a Bank's capital must be at least 4.76 percent of assets, or, inversely, that a Bank's total assets could not exceed 21 times its capital. The Proposed FMP Amendments also would have amended section IV.C.3 of the FMP to eliminate the distinction between standard and non-standard debt issues and require the Banks to hedge debt issues linked to equity or commodity prices or those denominated in foreign currencies.

Finally, the Proposed FMP Amendments would have amended section VII [3] of the FMP, which currently permits the Banks to include the cash flows associated with their REFCorp and Affordable Housing Program (AHP) payment obligations in their duration of equity calculations, to restrict the Banks from treating the REFCorp obligation as if it were a fixed dollar obligation. In light of the Gramm-Leach-Bliley Act,[4] changes to the Banks' REFCorp obligation the Proposed FMP Amendments would have required the Banks to treat these obligations as typical variable expenses (similar to operating expenses) for purposes of the Banks' asset-liability management.

The sixty-day public comment period closed on March 6, 2000. The Finance Board received seven comment letters: six from Banks and one from a Bank trade association. Generally, the commenters opposed the proposed change to the leverage limit as more restrictive than the current allowance and premature in advance of the new statutory leverage limit and risk-based capital requirements imposed by the Gramm-Leach-Bliley Act.[5] The commenters offered no objection to the revisions to the hedging requirements or the duration of equity calculation.

III. Comments on the Proposed Amendments and Analysis of Changes Made in the FMP Amendments

A. Leverage Limit

The Proposed FMP Amendments, and corresponding Proposed OF Rule, did not include the 20-to-1 Bank System-wide leverage limit from the Finance Board's regulations, or the 20-to-1 liability-based leverage limit on each Bank contained in the FMP. Instead, the Proposed FMP Amendments recast the leverage limit applicable to each Bank from a liability-based limit to an asset-based limit, and required that each Bank maintain capital in an amount equal to at least 4.76 percent of the Bank's total assets. *See* 65 FR at 328, 339. This limit required that the assets of a Bank not exceed 21 times its capital.

The Finance Board did not believe that either the elimination of the Bank System-wide leverage limit from the Finance Board's regulations, or the proposed revision to the leverage limit contained in the FMP, would have any practical effect on the Bank System or its bondholders. The Finance Board, as the regulator of the Banks, would continue to monitor each Bank for compliance with the individual leverage limit included in the FMP. The existing FMP provision prohibits a Bank from participating in COs if such transactions would cause the Bank's liabilities to exceed 20 times the Bank's capital. The Proposed FMP Amendments established an equivalent leverage standard, stated as a percentage of assets, which would require each Bank to maintain capital of

[1] *See* Fin. Bd. Res. No. 96–45 (July 3, 1996), as amended by Fin. Bd. Res. No. 96–90 (Dec. 6, 1996), Fin. Bd. Res. No. 97–05 (Jan. 14, 1997), and Fin. Bd. Res. No. 97–86 (Dec. 17, 1997). *See also* 62 FR 13146 (Mar. 19, 1997)).

[2] *See* Fin. Bd. Res. No. 96–45, pp. 5–8.

[3] *See* Fin. Bd. Res. No. 96–45. p. 7.

[4] Title VI of the Gramm-Leach-Bliley Act, the Federal Home Loan Bank System Modernization Act of 1999, Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999) (Gramm-Leach-Bliley) changed the Banks' annual REF Corp. payment from a fixed, aggregate payment of $300 million to a payment of 20 percent of each Bank's net earnings (net of AHP and operating expenses). The Finance Board uses duration of equity as its primary measure of interest rate risk. Additionally, since 1995, each Bank has been required to contribute a minimum of 10 percent of its annual income (net of its REFCorp obligation) to the AHP, with a Bank System-wide minimum of $100 million.

[5] The Gramm-Leach-Bliley Act provides for a five-year phase-in for new statutory leverage limits and risk-based capital requirements for the Banks.

at least 4.76 percent of its total assets. The imposition of the proposed standard on each Bank would ensure that the Bank System itself stays within the leverage limit, rendering any retention of a Bank System-wide leverage limit unnecessary. Further, the Finance Board noted that with the recent passage of the Gramm-Leach-Bliley Act, the Banks would be subject to asset-based statutory leverage limits and risk-based capital requirements. When implemented, the new risk-based capital regime would provide an additional safeguard to the Bank System and its bondholders by requiring Banks to hold capital in proportion to the risks they assume.

The commenters uniformly opposed the proposed 4.76 percent asset-based, Bank-by-Bank, capital requirement. A number of commenters objected to the proposed change on the basis that secured liabilities, principally repurchase agreements, are not now subject to a capital requirement. Under the Proposed FMP Amendments, however, assets funded by repurchase agreements and other secured liabilities would be subject to capital charges. Repurchase agreements represent a *de minimis* portion of Bank funding. At December 31, 1999, repurchase agreements were less than one-tenth of one percent of the total funding of the Banks, eight of the Banks had no repurchase agreements, and one Bank accounted for a majority of the Bank System's repurchase agreements. The Finance Board finds these arguments unpersuasive.

Several commenters recommended providing the Banks with a level of asset/liability management flexibility similar to that provided under a resolution adopted by Finance Board to assist the Banks in meeting member demand for Year 2000 liquidity. *See* Finance Board Res. No. 99–33 (May 28, 1999)[6] (1999 Resolution). One commenter argued in favor of retaining the 25:1 leverage limit established in the 1999 Resolution, stating that the flexibility provided therein should not be forfeited. A majority of the commenters opposed eliminating the Bank System-wide leverage limit in the current regulations, and urged deferral of a new leverage limit until after the new capital regulations required under the Gramm-Leach-Bliley Act have been adopted and the Banks' capital plans have been reviewed and approved.

The Finance Board agrees with the recommendation that the leverage requirement should be included in the Finance Board's regulations rather than in the FMP. The OF Final Rule, published elsewhere in this issue of the **Federal Register** incorporates into § 966.3(a) of the Finance Board's regulations the leverage provision that was originally proposed in the notice of Proposed FMP Amendments. In addition, in response to the comments received, the OF Final rule extends and makes permanent the leverage authority provided to the Banks in the 1999 Resolution. In particular, the OF Final Rule allows a Bank to have asset-based leverage of up to 25 to 1 if that Bank's non-mortgage assets do not exceed 11 percent of that Bank's total assets that are not funded by deposits or capital. For the purpose of the OF Final Rule, non-mortgage assets equal the total assets after deducting core mission activity assets and assets described in sections II.B. 8 through II.B. 11 of the FMP.[7]

The Finance Board believes that, when implemented, the new risk-based capital regime would provide an additional safeguard to the Bank System and its bondholders by requiring Banks to hold capital in proportion to the risks they assume. The FMP Amendments, and the OF Final Rule published elsewhere in this issue of the **Federal Register**, are consistent with the requirements of the Gramm-Leach-Bliley Act.

Accordingly, the Finance Board is deleting existing section VI, ''Funding Guidelines'' from the FMP, as proposed.

B. Hedging Requirement

The Finance Board is replacing section IV of the FMP with a new section IV titled ''Hedging Requirements.'' The ''Hedging Requirements'' provision is adopted as proposed, without change, to read as follows:

IV. Hedging Requirements

Prohibition on foreign currency or commodity positions. A Bank shall not take a position in any commodity or foreign currency. If a Bank participates in consolidated obligations denominated in a currency other than U.S. dollars or linked to equity or commodity prices, it must hedge the currency, equity, and commodity risks.

C. Duration of Equity Calculation

The Finance Board is revising section VII of the FMP, which sets forth guidelines for the Banks on the management of interest-rate risk, including certain interest rate risk limitations. New section VII.B.4 is adopted as proposed, without change, to read as follows:

Each Bank is required to report its cash flows and calculate its duration and market value of equity without projected cash flows that represent the Bank's share of the System's REFCorp and AHP obligations.

Dated: June 2, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–14367 Filed 6–6–00; 8:45 am]

BILLING CODE 6725–01–P

[6] By resolution of its board of directors, the Finance Board directed that, through June 30, 2000, a Bank may have leverage up to 25 to 1 as long as that Bank's ratio of non-mortgage investments to COs does not exceed 12 percent. The Finance Board adopted this additional leverage flexibility on an interim basis to allow the Banks to provide Year 2000 funding to their members. *See* Fin. Bd. Res. No. 99–33 (May 28, 1999).

[7] On May 3, 2000, the Finance Board published for notice and comment a proposed rule that included a listing of activities that would qualify as core mission activities. *See* 65 FR 25676 at 25688 (May 3, 2000).

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S.J. Res. 44/P.L. 106–205
Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206
To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207
Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208
National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

H.R. 1377/P.L. 106–209
To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the ''John J. Buchanan Post Office Building''. (May 26, 2000; 114 Stat. 320)

H.R. 1832/P.L. 106–210

Muhammad Ali Boxing Reform Act (May 26, 2000; 114 Stat. 321)

H.R. 3629/P.L. 106–211

To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212

American Institute in Taiwan Facilities Enhancement Act (May 26, 2000; 114 Stat. 332)

S. 1836/P.L. 106–213

To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

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