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WHERE: Office of the Federal Register
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Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 65, No. 164

Wednesday, August 23, 2000

Agency for International Development
NOTICES
Meetings:
Malaria Vaccine Development Program Federal Advisory Committee, 51280
Voluntary Foreign Aid Advisory Committee, 51280

Agriculture Department
See Commodity Credit Corporation
See Food and Nutrition Service
See Food Safety and Inspection Service
See Forest Service
See National Agricultural Statistics Service
See Natural Resources Conservation Service

Air Force Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 51298

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
NOTICES
Meetings:
National Offshore Safety Advisory Committee, 51399

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
India, 51295–51296
Korea, 51296–51297
Thailand, 51297–51298

Commodity Credit Corporation
NOTICES
Sugar Payment-in-Kind Diversion Program; implementation, 51280–51283

Defense Department
See Air Force Department
See Engineers Corps

Drug Enforcement Administration
NOTICES
Shipment suspensions:
Zhaoqing Chemicals Import & Export Co. et al.; potassium permanganate, 51333–51338
Applications, hearings, determinations, etc.:
Applied Science Labs, Inc., 51330–51331
Calbiochem-Novabiochem Corp., 51331
Mallinckrodt, Inc., 51331
Radian International LLC, 51331–51332
Roxane Laboratories, Inc., 51332
Sigma Chemical Co., 51332–51333

Education Department
NOTICES
Meetings:
National Educational Research Policy and Priorities Board, 51300–51301
Privacy Act:
Computer matching programs, 51301

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
See Southeastern Power Administration
NOTICES
2001 American Solar Challenge; sponsorship and support request, 51301–51302
Grants and cooperative agreements; availability:
Nuclear Medicine Education Award Program, 51302–51303
Radiological condition certifications:
Kimble Property, Hamilton County, OH, 51303

Energy Efficiency and Renewable Energy Office
NOTICES
Grants and cooperative agreements; availability; etc.:
Superconductivity Partnership Initiative Program, 51303–51304

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Arkansas River, AR and OK; Navigation Study, 51298–51299
Greers Ferry Lake, AR; Shoreline Management Plan, 51299–51300

Environmental Protection Agency
RULES
Air programs:
Ambient air quality standards, national—
Astaris-Idaho LLC elemental phosphorus facility, ID; Fort Hall PM-10 nonattainment area, 51411–51451
NOTICES
Meetings:
Local Government Advisory Committee, 51314
Pesticide, food, and feed additive petitions:
Interregional Research Project (No. 4), 51314–51319
Superfund; response and remedial actions, proposed settlements, etc.:
Geiger (C&M Oil) Site, SC, 51319
ILCO Site, AL, 51319
Ware Shoals Dyeing and Printing Site, SC, 51319–51320

Federal Aviation Administration
RULES
Airworthiness directives:
Rolls-Royce plc.; correction, 51229
Class E airspace; correction, 51229
PROPOSED RULES
Air carrier certification and operations:
Hawaii; air tour operators, 51511–51514

Airworthiness directives:
Aerospatiale, 51260–51263
Airbus, 51254–51256
Bombardier, 51256–51260
Class E airspace, 51263–51264
NOTICES
High density airports; takeoff and landing slots and slot allocation procedures:
International slots for summer 2001 scheduling season; submission deadline, 51399
Meetings:
Research, Engineering, and Development Advisory Committee, 51400
Passenger facility charges; applications, etc.:
Kalamazoo/Battle Creek International Airport, MI, 51400

Federal Communications Commission
RULES
Freedom of Information Act; implementation:
Fee schedule, 51234
Radio stations; table of assignments:
Florida, 51235
Montana, 51235
Wyoming, 51235–51236
PROPOSED RULES
Digital television stations; table of assignments:
Alabama, 51278–51279
Arkansas, 51277–51278
Nebraska, 51277
Nevada, 51278
Radio stations; table of assignments:
Texas, 51279

Federal Energy Regulatory Commission
NOTICES
Environmental statements; notice of intent:
El Dorado Irrigation District; meetings and site visit, 51305–51306
Hydroelectric applications, 51306–51308
Applications, hearings, determinations, etc.:
Dominion Resources, Inc., et al., 51304
Natural Gas Pipeline Co. of America, 51304–51305
Northern Border Pipeline Co., 51305

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Amador County, CA; withdrawn, 51400–51401
Portland, OR to Vancouver, BC corridor; high speed rail improvement program; rescission, 51401
Grants and cooperative agreements; availability, etc.:
National Historic Covered Bridge Preservation Program; implementation guidance, 51401–51404

Federal Maritime Commission
NOTICES
Agreements filed, etc., 51320
Ocean transportation intermediary licenses:
Honda Express Co., Ltd., et al., 51320–51321

Federal Railroad Administration
NOTICES
Environmental statements; notice of intent:
Portland, OR to Vancouver, BC corridor; high speed rail improvement program; rescission, 51401

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 51321
Permissible nonbanking activities, 51321

Federal Trade Commission
NOTICES
Prohibited trade practices:
FirstPlus Financial Group, Inc., 51321–51322
SmartScience Laboratories, Inc., et al., 51322–51324

Fish and Wildlife Service
RULES
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 51495–51510

Food and Drug Administration
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 51324
Meetings:
Salmonella enteritidis, 51324–51325

Food and Nutrition Service
RULES
Child nutrition program:
Women, infants, and children; special supplemental nutrition program—
Infant formula rebate contracts; bid solicitations; requirements and evaluation, 51213–51229

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission—
Fruit and Vegetable Juices Intergovernmental Task Force, 51283–51284

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Indiana
Audivox Specialized Applications, LLC; motor vehicle audio/video products manufacturing plant, 51293
Puerto Rico
Merck, Sharp & Dohme Quimica de Puerto Rico, Inc.; pharmaceuticals manufacturing facilities, 51293–51294

Forest Service
NOTICES
Environmental statements; notice of intent:
Targhee National Forest, ID and WY, 51284–51291

Health and Human Services Department
See Food and Drug Administration

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
NOTICES
Environmental statements; notice of intent:
Central Utah Project—
Bonneville Unit, Utah Lake Drainage Basin Water Delivery System, 51325–51326

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 51407–51408

International Trade Administration
NOTICES
Antidumping:
Brake rotors from—
China, 51294

International Trade Commission
NOTICES
Import investigations:
Integrated repeaters, switches, transceivers, and products containing same, 51327
Prescription drugs pricing, 51327–51328
Stainless steel butt-weld pipe fittings from—
Various countries, 51328–51329
Steel concrete reinforcing bars from—
Various countries, 51329–51330

Justice Department
See Drug Enforcement Administration

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
RULES
General management:
Public administrative procedures—
Local governments; financial assistance; Payments in Lieu of Taxes for entitlement lands, 51229–51234
NOTICES
Closure of public lands:
Montana, 51326
Realty actions; sales, leases, etc.:
California, 51326

National Agricultural Statistics Service
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 51291–51292

National Archives and Records Administration
PROPOSED RULES
Freedom of Information Act; implementation; revision and reorganization of regulations, 51270–51277

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Fellowships Advisory Panel, 51338–51339

National Highway Traffic Safety Administration
RULES
Rulemaking procedures:
Global Technical Regulations, 1998 agreement implementation; agency policy goals and public participation; policy statement, 51236–51247
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 51404

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic snapper-grouper, 51248–51253
PROPOSED RULES
Ocean and coastal resource management:
Marine sanctuaries—
Commercial submarine cables; installation and maintenance, 51264–51270
NOTICES
Permits:
Endangered and threatened species, 51295

National Science Foundation
NOTICES
Meetings:
Bioengineering and Environmental Systems Special Emphasis Panel, 51339
Biomolecular Processes Advisory Panel, 51339
Computer and Information Science and Engineering Advisory Committee, 51339
Design, Manufacture, and Industrial Innovation Special Emphasis Panel, 51339–51340
Genetics Advisory Panel, 51340
Integrative Activities Special Emphasis Panel, 51340

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Indian Creek Project Area, PA, 51292
Field office technical guides; changes:
South Dakota, 51292–51293

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 51340–51342
Environmental statements; availability, etc.:
Commonwealth Edison Co., 51344–51345
Connecticut Yankee Atomic Power Co. et al., 51345–51346
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 51346–51369
Reports and guidance documents; availability, etc.:
Mixed oxide fuel fabrication facility; application review; standard review plan, 51369–51370
Applications, hearings, determinations, etc.:
Pennsylvania Power Co. et al., 51342–51344

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Bear, Stearns & Co. Inc., et al., 51453–51494

Personnel Management Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 51370

Postal Service
NOTICES
Meetings:
Consensus Committee; curbside mailboxes design; postal standard revision; recommendations, 51370–51371

Public Debt Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 51408–51409

Public Health Service
See Food and Drug Administration

Research and Special Programs Administration
NOTICES
Meetings:
Hazardous Liquid Pipeline Safety Advisory Committee; correction, 51404–51405

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 51371
Investment Company Act of 1940:
Exemption applications—
Nations Fund, Inc., et al., 51372–51374
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 51374–51377
National Association of Securities Dealers, Inc., 51377–51382
New York Stock Exchange, Inc., 51382–51390
Options Clearing Corp., 51390
Pacific Exchange, Inc., 51390–51396
Philadelphia Stock Exchange, Inc., 51396–51397
Applications, hearings, determinations, etc.:
Datalink.net, Inc., 51371–51372
White Electronic Designs Corp., 51372

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 51398
Disaster loan areas:
North Dakota, 51398

Southeastern Power Administration
NOTICES
Power rates:
Jim Woodruff Project, 51308–51314

State Department
NOTICES
Meetings:
International Communications and Information Policy Advisory Committee, 51398–51399

Statistical Reporting Service
See National Agricultural Statistics Service

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Public Service Co. of Colorado, 51405
Union Pacific Railroad Co., 51405
Railroad services abandonment:
Strouds Creek & Muddlety Railroad, 51405–51406

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

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
See Public Debt Bureau
NOTICES
Senior Executive Service:
Departmental Performance Review Board; membership, 51406–51407

Separate Parts In This Issue

Part II
Environmental Protection Agency, 51411–51451

Part III
Department of Labor, Pension and Welfare Benefits Administration, 51453–51494

Part IV
Department of Interior, Fish and Wildlife Service, 51495–51510

Part V
Department of Transportation, Federal Aviation Administration, 51511–51514

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
246.....51213

14 CFR
39.....51229
71.....51229

Proposed Rules:
39 (4 documents) 51254, 51256, 51259, 51260
71.....51263
91.....51512
135.....51512

15 CFR

Proposed Rules:
922.....51264

36 CFR

Proposed Rules:
1250.....51270
1254.....51270

40 CFR
49.....51412

43 CFR
1880.....51229

47 CFR
0.....51234
73 (4 documents) 51235, 51236

Proposed Rules:
73 (5 documents) 51277, 51278, 51279

49 CFR
553.....51236

50 CFR
20.....51496
622.....51248

Rules and Regulations

Federal Register
Vol. 65, No. 164
Wednesday, August 23, 2000

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

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AB52

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule strengthens and simplifies current bidding requirements for using a single-supplier competitive system to provide a rebate for infant formulas. It also addresses new infant formula cost containment requirements which are needed due to recent changes in the infant formula industry. This rule also requires WIC State agencies to award infant formula rebate contracts based on the lowest net price, allowing the highest rebate as a basis of award only when the weighted average retail prices of the different brands of infant formula vary by 5 percent or less. A proposed rule was published July 16, 1998 and as a result of comments received we are publishing an interim rule.

DATES: *Effective Date:* This rule is effective October 23, 2000.

Implementation Date: This rule must be implemented by November 21, 2000.

Comment Date: To be assured of consideration, written comments on this rule must be postmarked on or before August 23, 2001. Since comments are being accepted simultaneously on several separate rulemakings, commenters on this interim rule are asked to label their comments ''Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts.''

ADDRESSES: Comments may be mailed to Patricia M. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, phone number (703) 305–2746. All written comments will be available for public inspection during regular business hours (8:30 a.m.—5:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Patricia O'Kelley, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, phone number (703) 305–2710. An analysis package is available upon request at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Department's fiscal year 1989 appropriations act (Public Law 100–460) required all WIC State agencies (except Indian State agencies with participation levels under 1,000) to explore the feasibility of cost containment measures for infant formula and implement such measures when feasible. Since that time, expenditures for infant formula have decreased from 40 percent of all WIC food costs to approximately 20 percent of all food costs in fiscal year 1997. Our figures show that nearly one out of every four WIC participants is supported with rebate savings. Without these savings, millions of low-income women, infants and children would not have the advantage of nutritious supplemental foods, nutrition education, and health care referrals provided by the WIC program.

A key component to the success of infant formula rebates is the requirement in section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) that WIC State agencies operating retail food delivery systems must use a competitive bidding system for the procurement of infant formula, or any other infant formula cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system.

However, the infant formula industry has changed considerably over the past several years. Today there are fewer infant formula manufacturers available to bid on infant formula rebate contracts, yet the product lines of infant formula have expanded along with the selection of packaging sizes offered. In addition, infant formula rebate contract awards are increasingly subject to protests and challenges for a variety of reasons. All of these changes have a potential negative effect on competition for WIC program infant formula rebate contracts.

Another issue regarding competition is the way bids for infant formula rebate contracts are evaluated. Current program regulations allow State agencies to evaluate infant formula rebate contracts by the lowest net wholesale cost or highest rebate per unit of infant formula. However, recognizing that the former method results in a competitive disadvantage to infant formula manufacturers that have significantly lower wholesale prices, the Department's appropriations acts for fiscal years 1997 and 1998, Public Laws 104–180 and 105–86, respectively, along with the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105–336) for fiscal year 1999 and beyond, required State agencies to award infant formula rebate contracts on the basis of the lowest net price, unless the State agency demonstrates to the satisfaction of the Secretary of Agriculture that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent.

Therefore, a proposed rule to amend 7 CFR Part 246 (63 FR 38343, July 16, 1998) was published which addressed not only the lowest net price requirement, but also the numerous issues reflecting infant formula industry changes. The rule also included provisions to accommodate future market dynamics.

The proposed rule provided a 60-day comment period that ended on September 14, 1998. Twenty-nine comment letters were received on the proposed rule from the following sources: WIC State and local agencies, public interest groups, industry, and other Federal agencies. Approximately one-fourth of the comments were received after the comment period ended. However, because of the low number of comments received and because the late comments were similar to the ones received on time, we

considered all comments. In addition, WIC staff met with representatives from industry who expressed and reiterated their written comments on the proposed rule. We have given all comments careful consideration in the development of this interim rule and would like to thank all commenters who responded to the proposal.

We have made many changes to the proposed rule as a result of the comments received which clarify current and existing proposed requirements. In addition, we have taken this opportunity to consolidate the cost containment requirements in a new section (7 CFR § 246.16a), and to rewrite the provisions in a question and answer format in order to improve readability.

In light of these changes and due to the complicated nature of infant formula rebate contracting, we have decided to publish this rule as an interim rule, rather than a final rule. This approach permits us to go forward with these long overdue improvements to the cost containment requirements while having the benefit of receiving additional comments based on experience gained during the implementation of this rule. We will accept comments until August 23, 2001 in order to provide plenty of time for comments based on operational experience. We will consider the comments received on this interim rule in developing a final rule.

As noted above, we have consolidated the cost containment requirements in a new section 246.16a. This required us to republish all of the requirements, even those that are otherwise unchanged. However, we ask that commenters focus on the substantive changes made by this rule and the issues addressed in this preamble when developing their comments.

Although this rule takes effect October 23, 2000, these changes are not required to be implemented until November 21, 2000. This means that all bid solicitations issued on or after November 21, 2000 must comply with the requirements of this rule.

The following is a discussion of each proposed provision, comments received, and an explanation of the provisions set forth in this interim rule and/or the our response.

A. Definitions

The proposed rule defined ''infant formula'' and ''exempt infant formula'' to mean the same as they are defined in sections 201(z) and 412 of the Federal Food, Drug, and Cosmetic Act (FDC Act 21 U.S.C. 321(z) and 350a), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services implementing regulations (21 CFR Parts 106 and 107).

Commenters were in favor of cross-referencing the requirements in the FDC Act and regulations; therefore, no changes were made to the proposed definitions in the rule. However, some of the commenters pointed out that using additional undefined terms in the WIC regulations led to confusion. Therefore, to avoid confusion and to help clarify certain requirements, the interim rule includes three definitions in addition to the proposed definitions of infant formula and exempt infant formula, and amends one existing definition. The following is a summary of the new and modified definitions:

Contract brand infant formula means all of infant formula (as defined in this rule) excluding exempt infant formulas, produced by the manufacturer that has been awarded the contract. However this rule, in section 246.16a(c)(1)(i), requires that State agencies issue solicitations which require bidders that do not produce a soy-based infant formula to subcontract with another manufacturer to provide it under the contract. In this case, any soy-based infant formula that is subcontracted is also considered a contract brand infant formula. In addition, this rule in section 246.16(a)(c)(1)(ii) allows a State agency to solicit separate bids for milk-based and soy-based infant formula. If a State agency elects to solicit separate bids, all relevant infant formulas issued under each contract are considered contract brand infant formulas. Finally, all new infant formulas that are introduced after a contract is awarded are also considered contract brand infant formulas. Such infant formulas must meet the definition of an ''infant formula''. See section D of this preamble for more detailed information regarding these requirements.

Net price is defined in section 17(b)(20) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(20)) and section 246.2 of the current WIC regulations as the difference between the manufacturer's wholesale price for infant formula and the rebate level or the discount offered or provided by the manufacturer under a cost containment contract entered into with the pertinent State agency. In order to ensure that State agencies award contracts in a fair and consistent manner, this rule amends the definition of ''net price'' to clarify that the wholesale price is the lowest national wholesale price for a full truckload of infant formula. We discuss this change in more detail in Section I of the preamble.

Non-contract brand infant formula means all brands of infant formulas, including exempt infant formula, that are not covered by a cost containment contract. If a State agency issues an infant formula or exempt infant formula that is not covered under the contract, it is considered a non-contract brand infant formula, does not generate a rebate, and requires medical documentation for its issuance.

WIC-eligible medical foods means certain enteral products that are specifically formulated to provide nutritional support for individuals with a diagnosed medical condition when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible medical foods may be nutritionally complete or incomplete, but they must serve the purpose of a food, provide a source of calories and one or more nutrients, and be designed for enteral digestion via an oral or tube feeding.

The current food package regulations use the term ''formula'' in some instances to mean just infant formula and in others to mean substitute products for infant formula. After publishing the proposed rule, we discovered that, in addition to incorporating the precise terms of ''infant formula'' and ''exempt infant formula'' into the WIC regulations, we also needed to define what FNS recognizes as allowable alternatives to these infant formulas, especially under Food Package III for women and children with special dietary needs.

The inclusion of definitions for infant formula, exempt infant formula, and WIC-eligible medical foods in program regulations clarifies our historic interpretation of the types of products that may be used as substitutes, when medically warranted and documented, for iron-fortified infant formulas as specified under sections 246.10(c)(1) (in the case of infants 0 through 3 months) and 246.10(c)(2) (in the case of infants 4 through 12 months) or for conventional foods as specified under section 246.10(c)(3) (in the case of children and women with special dietary needs). In addition to the new definition, conforming changes are made to the food package requirements in sections 246.10(c)(1) and (3). As is currently the case, WIC-eligible medical foods may not be used for the sole function of enhancing nutrient intake or managing body weight without an underlying medical condition. Also, WIC-eligible medical foods must be supported with medical documentation.

Readers are reminded that WIC-eligible medical foods and exempt infant formulas are permissible expenses under the Federal Medicaid statute and regulations and are also

reimbursable under some other health care programs. Accordingly, State agencies are encouraged to coordinate with other Federal, State, or local public agencies or with private agencies that operate programs that also provide or reimburse for WIC-eligible medical foods and/or exempt infant formula benefits to WIC participants in order to share the cost whenever possible.

B. Issuance of Kosher Infant Formula

It has come to our attention that the proposed rule, as written, would disallow the issuance of certain types of kosher infant formula if the winning bidder does not offer kosher infant formula in its product line. This is because the proposed rule allows non-contract brand infant formula to be issued only with medical documentation. This was not an issue under the current regulations; if the winning bidder did not produce a suitable infant formula, the State agency could have issued a non-contract brand infant formula without medical documentation. As such, the proposed rule does not accommodate special needs for infant formula based on religious beliefs.

It was not our intent to prevent the issuance of kosher and other types of infant formula to accommodate religious eating patterns. Therefore, section 246.10(c)(1)(iv) of this rule makes clear that local agencies may issue non-contract brand infant formulas to accommodate religious eating patterns. We would like to stress that this is the only reason non-contract brand infant formulas may be issued without medical documentation, as described below. In addition, any non-contract infant formula issued to accommodate religious eating patterns must meet the infant formula requirements in section 246.10(c)(1).

C. Medical Documentation Requirements

Current regulations at section 246.10(c)(1) require medical documentation for the issuance of any infant formula that does not meet the nutritional requirements of that section. The proposed rule would also have required medical documentation from a licensed health care professional authorized to write medical prescriptions under State law whenever the State agency issued any non-contract brand infant formula, even if it met the nutritional requirements of section 246.10(c)(1). The documentation required would have included the: brand name of the infant formula prescribed; medical diagnosis warranting the infant formula; length of time the infant formula is medically required by the participant; and signature of the health care professional requesting the infant formula. Medical documentation would not have been required for contract brand infant formulas that meet the nutritional requirements of section 246.10 (c)(1).

A majority of the commenters supported this requirement, stating that such documentation is reasonable and is an important step toward ensuring that non-contract brand infant formulas are issued only when medically necessary. Therefore, this interim rule maintains the medical documentation requirements for the issuance of non-contract infant formula except as discussed in section B of this preamble. Commenters did, however, raise several concerns related to this requirement which are discussed below along with our response.

Issue 1: Medical documentation requirements for soy-based infant formula. A number of commenters found the proposed rule confusing regarding whether medical documentation is required for contract brand soy-based infant formula.

Department Response: We did not intend to mandate medical documentation for any contract brand infant formulas, including soy-based infant formulas, as long as they meet the nutritional requirements in section 246.10(c)(1)(i). Therefore, the interim rule at section 246.10(c)(1)(i) clarifies that all such contract brand infant formulas may be issued without medical documentation. Exempt infant formulas, which are not considered to be contract brand infant formulas, continue to require medical documentation. The interim rule further clarifies at section 246.10(c)(1)(iii) that all non-contract brand infant formulas may be issued only with medical documentation. This clarification is also addressed in section 246.2 by defining contract and non-contract brand infant formulas.

Issue 2: Limiting the issuance of infant formulas. Commenters suggested that regulatory language should be added that would limit the issuance of different types of contract brand infant formulas.

Department Response: Requiring a rebate on the bidder's entire infant formula product line (except exempt infant formula) does not obligate State agencies to approve or issue all of the types of infant formulas produced by a manufacturer. In fact, the best impartial medical evidence strongly demonstrates that milk-based, lactose containing and soy-based, lactose-free infant formulas meet the nutritional needs of almost all infants. State agencies currently have the authority to limit the issuance of both contract brand infant formulas and non-contract brand infant formulas, and we strongly encourage State agencies to exercise this authority. However, to further emphasize this authority, the interim rule at section 246.10(c)(1)(i) states that State agencies may choose to limit the types of contract brand infant formulas that are approved for issuance or may require medical documentation for contract brand infant formulas. This choice is also addressed in section 246.16a(c)(6).

Issue 3: Role of the dietitian. Commenters were also concerned that due to the medical documentation requirement for non-contract brand infant formulas, dietitians (as opposed to health care professionals with prescription-writing authority) would be prevented from prescribing non-contract brand infant formulas. They stressed dietitians are in a better position to counsel parents, investigate infant formula problems, and make infant formula suggestions and are more accessible than physicians. In addition, dietitians are often more aware of the savings rebates provide to the WIC program, and thus would be judicious in ensuring that fewer clients use non-contract brand infant formulas.

Department Response: We would like to emphasize that the role of the dietitian is critical in providing nutrition education not only to parents and/or caretakers, but also in relaying to the medical community the significant savings to the WIC program of using contract brand infant formulas. If there is not an infant formula in the contractor's product line that meets the infant's needs, dietitians are encouraged to work closely with the participant's health care providers who are authorized to make the necessary determinations for medical documentation. We believe requiring medical documentation only strengthens a dietitian's role in ensuring that the most suitable infant formula is issued without compromising an infant's nutritional needs. However, we continue to believe that permitting only health care professionals with prescription-writing authority to authorize non-contract brands of infant formula will ensure that issuance occurs only in exceptional situations with minimal loss of rebate savings.

Issue 4: Allowing medical documentation to be telephoned into clinics. Commenters indicated that the medical documentation requirement may place an infant's urgent nutritional and health needs at risk by delaying services. Commenters recommended

allowing medical documentation to be telephoned to the WIC clinic.

Department Response: The interim rule at section 246.10(c)(1)(v)(B) allows medical documentation to be telephoned into a competent professional authority (CPA) at WIC clinics by a health care professional licensed by the State to write medical prescriptions. However, such verbal confirmation must promptly be transformed into written documentation by the CPA and kept on file at the WIC clinic. This method may only be used until written confirmation is received and only when absolutely necessary to prevent undue hardship to a participant or to prevent a delay in the provision of infant formula that would place the participant at increased nutritional risk. The local clinic must obtain written confirmation of the medical documentation within a reasonable amount of time after accepting the initial medical documentation by telephone (*i.e.*, one or two weeks' time). The written documentation must be kept on file with the initial telephone documentation. The interim rule makes clear that medical documentation may be provided as an original written document, electronically or by facsimile.

Issue 5: Filing of medical documentation. One commenter requested that State agencies be allowed to keep a hard copy of medical documentation on file but not necessarily in the participant's file. Otherwise, requiring medical documentation to be filed in a participant's file is difficult for a paperless system.

Department Response: The interim rule at section 246.10(c)(1)(v)(B) makes allowances for paperless systems by requiring medical documentation to be kept on file at the WIC clinic, instead of requiring the documentation in the participant's certification file.

D. Soliciting Bids for Milk-based Infant Formula

The proposed rule would have required State agencies to solicit and evaluate bids for a single milk-based infant formula only. We received several comments fully supporting this provision; however, many comments were received opposing this provision. See below for more detailed discussion on comments received and our response.

Issue 1: Potential issues as a result of soliciting and evaluating bids for milk-based infant formula only. Several commenters pointed out that a manufacturer that produces only a milk-based infant formula could potentially win the contract because there is no requirement that bidders also produce a soy-based infant formula. In the current marketplace, this is not a problem because all infant formula manufacturers produce a soy-based infant formula. However, in the past not all infant formula manufacturers produced both a milk-based and soy-based infant formula. There is no way to predict what changes may occur in the future. For example, a manufacturer may enter the market that does not produce a soy-based infant formula or a current manufacturer may discontinue producing a soy-based infant formula. If such a manufacturer were to win a WIC infant formula rebate contract, medical documentation would be required for soy-based infant formula. As a result, because of the soy-based infant formula's non-contract status the State agency would be forced to pay the full retail price for this formula, thus eroding rebate savings.

Several commenters also stated that evaluating bids only for a milk-based infant formula and then using that bid as a basis for calculating rebates on all of the winning bidder's other infant formulas would put a State agency at risk of selecting a bidder that does not necessarily offer the lowest total cost to the State. Commenters pointed out that the proposed rule did not consider the variances in wholesale prices between milk-based and soy-based infant formula. Commenters stated that the requirement limiting bids to a single milk-based infant formula would provide an immediate advantage to any manufacturer whose wholesale price relationship between its soy-based and milk-based infant formulas is greatest relative to that for other manufacturers because the discount ratio would have less effect on the net price for its soy-based product. In fact, commenters stated that the requirement may encourage a manufacturer to change its infant formula prices in amounts that would provide a bidding advantage.

Finally, there was concern that limiting bids to a milk-based infant formula would preclude a State agency from issuing separate solicitations for milk-based and soy-based infant formulas. Allowing separate solicitations enables new or smaller manufacturers with a limited product line of infant formula to bid and, as a result, opens the bidding to a larger number of competitors.

Department Response: The interim rule addresses these concerns in two ways. Under the ''single solicitation'' option in section 246.16a(c)(1)(i), the State agency must require any manufacturer who does not produce a soy-based infant formula to contract with another manufacturer to supply a soy-based infant formula. The winning bidder is required to pay a rebate on the contracted soy-based infant formula using the same percentage discount on wholesale price as the winning bidder is required to use for all other infant formulas it produces. This approach recognizes the commenters' point about ensuring the availability of soy-based infant formulas while maintaining the simplified bidding structure of the proposed rule. There will always be some variation between the estimates of the types and amounts of infant formulas that will be issued and the actual types and amounts issued. The unpredictability is further exacerbated when new types of infant formula are introduced. Taking bids for a single milk-based infant formula strikes a balance between simplifying the bidding process without sacrificing rebate savings.

However, we do agree that uncoupled bids can increase competition in some instances. Accordingly, section 246.16a(c)(1)(ii) permits the State agency to issue a separate solicitation for a soy-based infant formula. This solicitation would be in addition to the milk-based infant formula solicitation. This approach is commonly called an ''uncoupled bid.'' Many State agencies have used the uncoupled bid approach when soliciting bids for infant formula rebate contracts. In fact, we have encouraged this approach as a way of allowing all infant formula manufacturers an opportunity to bid and, as a result, increasing competition.

This option results in two contracts with potentially different manufacturers. The winning bidder for the milk-based infant formulas contract must provide a rebate on all the milk-based infant formula it produces, except exempt infant formulas. The winning bidder for the soy-based infant formula must provide a rebate on all the soy-based infant formulas it produces, except exempt infant formulas.

Issue 2: Types of infant formulas vary between bidding manufacturers. One commenter pointed out that the proposed rule did not consider that the types of infant formula vary between bidding manufacturers. For example, all infant formula manufacturers do not offer a milk-based lactose-free infant formula. Consequently, the number of units on which rebates are demanded and the total amount of rebates required are different for each bidder—again, leaving State agencies at risk of selecting a bidder that does not necessarily offer the lowest cost to the State.

Department Response: We acknowledge that the types and forms of infant formula issued will vary depending on which manufacturer is awarded the contract. However, the best medical evidence indicates that almost all infants nutritional needs can be met by the milk-based, lactose-containing and soy-based contract brand of infant formulas. (As discussed above, the winning bidder would be required to provide a soy-based infant formula.) Further, accounting for the various types and forms of infant formula available to State agencies by manufacturer during the bid evaluation process would be a burdensome task that may itself result in an uncompetitive solicitation process. Therefore, in the interest of streamlining the solicitation process and ensuring the continued viability of the competitive bidding process, this interim rule requires the winning bidder to supply and provide a rebate on all infant formula it produces that are issued by the State agency, except exempt infant formulas.

E. Use of Composite Rebate

A few commenters pointed out that there are some State agencies that use a generic food instrument that allows participants to purchase either a milk-based infant formula or a soy-based infant formula. These State agencies evaluate bids based on a composite rebate for both infant formulas, which enables them to invoice one rebate for both products. Commenters stated their current data systems do not include a method for tracking milk-based and soy-based infant formulas separately. In addition, segregating infant formula by type on the food instrument would require extensive computer system changes. As such, the requirement complicates the process of issuance, redemption, and rebate bidding.

Department Response: While we strongly encourage State agencies to identify the type of infant formula prescribed on the food instrument, it was never our intent to prevent State agencies from using a generic food instrument for infant formula. Under this interim rule State agencies may continue to issue a generic instrument that allows participants to purchase more than one type of infant formula. However, these State agencies must still request and evaluate bids for only a milk-based infant formula (unless a State agency elects to issue separate bid solicitations). After a winning bidder is selected, the State agency must determine the rebate for the soy-based infant formula based on the rebate bid for the milk-based infant formula (or use the winning rebate for soy-based infant formula if the State agency elects to issue separate bid solicitations). The State agency must then determine a composite rebate for the generic food instruments using the rebate amounts established for the milk-based and soy-based infant formulas under the contract(s) and the projected usage rate for each type purchased with the generic food instruments.

F. Requiring a Rebate for all Infant Formula Produced by the Manufacturer

The proposed rule would have required the bid solicitations and contracts to require that the winning bidder pay a rebate for any infant formula it produces that is issued by the State agency.

Just over half of the commenters opposed this provision. Supporters stated the requirement would ensure that no manufacturer has an advantage in the bidding process because it offers more types of infant formula than its competitors. This interim rule retains the requirement in section 246.16a(c)(1). See below for further discussion of the comments.

Issue 1: Perception of across-the-board endorsement of infant formulas. Commenters opposing the requirement indicated that it may give the perception of an across-the-board endorsement of infant formulas by the WIC program by providing a marketing opportunity for manufacturers. State agencies are currently under considerable pressure from manufacturers to approve their brands of infant formula. There is concern that if a rebate is required for all infant formulas produced by the winning bidder, it will be very difficult to limit the issuance of these other types of infant formulas. Other opponents also stated that requiring a rebate on all infant formulas produced by the winning bidder would create an impression that the State agency is not maximizing its food dollars if it does not issue an infant formula that generates a rebate.

Department Response: As stated earlier in this preamble, the interim rule codifies the current authority which allows State agencies to limit the types of infant formulas that are issued. Thus, if State agencies do not wish to endorse particular infant formulas, they may elect to exclude such formulas from their approved supplemental food list.

Issue 2: Administrative burden for State agencies. State agencies were also concerned that requiring a rebate on all infant formulas produced by the winning bidder would cause confusion among staff, participants, vendors, and the medical community, which may lead to conflicts, non-compliance and lower rebates.

Department Response: We envision that after a contractor is selected, State agencies will identify the infant formulas in the contractor's product line it will approve for issuance and establish the rebate to be paid on each of these infant formulas. This is the only information that needs to be provided to WIC clinics, health care providers, and vendors and is no different than the process used by State agencies today. If a new infant formula is introduced into the winning bidder's product line or the State agency decides to add more types of infant formulas to its approved list, the State agency need only calculate the rebate for the additional infant formula, notify the affected parties in the WIC community, and bill the manufacturer accordingly when and if that infant formula is issued.

Issue 3: Concerns regarding on which infant formulas a rebate should be paid. Several of the comments we received that opposed the requirement that the winning bidder must pay a rebate on all infant formula it produces were centered on difficulties with who should determine which infant formulas require a rebate. Several commenters indicated that State agencies should be allowed to specify in the bid solicitation the items it seeks to procure (e.g., a milk-based infant formula and at least one lactose-free infant formula).

On the other hand, one infant formula manufacturer stated that within the two categories of milk-based and soy-based infant formulas, each prospective bidder should be allowed to identify its own list of potential infant formulas that would be covered by the contract (i.e., the ''contract brand infant formulas'') at the time of bid submission. This would allow bidders an option to exclude from its list any of its infant formulas with a particularly high cost base.

A second manufacturer believed that manufacturers should not be obligated to provide rebates on any infant formula other than one milk-based lactose containing and one soy-based infant formula. The commenter elaborated that if a manufacturer is willing to supply other infant formulas at its own option and the State agency approved such infant formulas, these formulas should then be included in the contract and should yield the same percentage discount on the wholesale cost as the products they replace. However, if a manufacturer is unwilling to pay a rebate on other infant formulas it produces and other manufacturers have equivalents of such formulas, then issuance of any of these formulas should be on a non-discriminatory basis and

should be subject to the medical documentation requirement.

Department Response: Allowing State agencies to specify in the bid solicitation the types of infant formula requiring a rebate could eliminate from bidding some manufacturers who do not offer certain types of infant formula. Conversely, we believe that if infant formula manufacturers were able to pick which infant formulas would receive a rebate, it would be impossible to equitably assess competing bids. Both bidding options are inconsistent with our effort to streamline the solicitation process and to maximize full and open competition among manufacturers.

Issue 4: Discourages manufacturers from developing new products and packaging. One infant formula manufacturer stated that given the large percentage of total U.S. infants served by the WIC program, imposing a rebate on yet undeveloped infant formulas may create a disincentive for a manufacturer to develop a new or better infant formula(s). Manufacturers may also reduce rebates to allow for the added cost of an advanced product, thereby increasing the chance it will lose the bid. In this case, WIC participants might not receive that manufacturer's advanced product and the successful bid price for a less advanced product could be higher. They further state that manufacturers might also withdraw from the bidding process and focus on only non-WIC business. For example, the manufacturer's research could center on exempt infant formulas or on product packaging that is not appropriate for the WIC program.

Conversely, a second infant formula manufacturer asserted that the rule encourages innovation and competition because it minimizes any bid evaluation inequities. The commenter further stated that removing such inequities gives manufacturers greater incentives to offer new and/or improved products in the United States.

Department Response: In the past, State agencies that have approved for issuance new infant formulas, with and without a rebate and/or medical documentation, have witnessed an increase in the issuance of these new infant formulas—some as high as 7 percent or more. These new products continue to gain popularity and we anticipate new products will continue to be introduced. This requirement enables State agencies to issue a solicitation that is competitive while ensuring a rebate is paid on any infant formula in the winning bidder's product line. The medical documentation requirement prevents a State agency from unnecessarily issuing any non-contract brand infant formula.

G. Clarification of Percentage Discount Rebate

The proposed rule would have required the rebate paid on any infant formula to yield the same percentage discount on its wholesale cost as the rebate for the infant formula for which a bid was submitted.

Issue: Most of the comments received centered on the need for clarification. Specifically, several commenters believed that the rule should be revised to clarify that bidders are not required to offer the same discount on different physical forms of infant formula (e.g., powdered versus concentrated liquid). In addition, commenters requested clarification as to how the percentage discount is to be applied to a new infant formula introduced after the contract is implemented. Comments were also received questioning whether the percentage discount applies to a manufacturer's prices as of the bid opening date, the commencement date of the contract, or after each wholesale price increase or decrease during the contract term.

Department Response: The interim rule clarifies in section 246.16a(c)(2) that different bids may be submitted for each of the physical forms of the milk-based infant formula for which bids are being sought. Section 246.16a(c)(5) then makes clear that in calculating the rebates for other types of infant formula, the percentage discount to be used will depend on the physical form of the infant formula.

For example, if the rebate offered for the concentrated liquid form of the milk-based infant formula is 80 percent of the wholesale price, then the rebate required to be paid for a soy-based infant formula in concentrated liquid form, or any other concentrated liquid infant formulas in the bidder's product line, will be 80 percent of its wholesale price. The same calculation approach holds true for infant formulas in powdered and ready-to-feed forms.

Clarifications also were added to the interim rule in response to commenters' confusion regarding when the discount percentage and resultant rebates are established for each of the infant formula types in the bidder's infant formula product line. The interim rule clarifies at section 246.16a(c)(5) (i) and (ii) that the discount percentages and rebates must be based on the wholesale prices in effect on the date of the bid opening. If a new infant formula product is introduced during the term of the contract, the rebate required for the new product must be calculated using the wholesale price of the new infant formula at the time it is approved for issuance by the State agency.

Currently, all State agencies with competitively-bid infant formula rebate contracts require an inflationary provision ensuring the net cost remain constant. In order to preserve the net cost, this interim rule requires at section 246.16a(c)(5)(iv) that all rebate contracts must include an inflation provision to adjust for price changes subsequent to the date of the bid opening. State agencies may require either a cent-for-cent increase in the rebate amounts whenever there is a change in the wholesale price for infant formula or another method established by the State agency in the bid solicitation.

H. Participation Data and Infant Formula Usage Rates

The proposed rule would have required State agencies to solicit bids based on the estimated total amount of infant formula it expects to issue (by physical form) based on the current number of infant participants, excluding those exclusively breastfed and those issued exempt infant formula. The comments received generally supported this requirement; however, several commenters relayed concerns which are summarized below along with our comments.

Issue: Several commenters suggested that State agencies be allowed to use actual participation and usage rates, rather than estimates.

Department Response: It was not our intention to have State agencies use anything but the most current infant participation available. We believe that due to the fairly stable levels of participation, as compared to past years, a State agency's most current participation figures available give potential bidders the best data for evaluating the amount of infant formula it will be required to provide under the contract. Therefore, this rule does not permit State agencies to use estimates, such as projected participation, to establish infant formula usage data.

The interim regulation clarifies this requirement at sections 246.16a(c) (3) and (4). Section 246.16a(c)(3) requires State agencies to use the most recent available participation data and usage rates in evaluating bids, and section 246.16a(c)(4) requires State agencies to provide the same data to bidders. The word ''estimate'' has been removed to avoid confusion, as neither of these figures are estimates but instead are actual data based on program operation. The rule requires that infant participation data include at least 6

months of the most recent average infant participation information.

We expect that given the wide range of infant formulas that will be available under each contract, only a small portion of infant formula will be issued as non-contract brand infant formula. This is why all infants, except those exclusively breastfed and those issued exempt infant formulas, must be included in the participation data.

We would like to stress that even though bids are solicited for milk-based infant formula only, all types of infant formulas, (including soy-based and milk-based lactose-free infant formulas) issued to infants must be included in the infant formula usage rates. For example, if a State agency issued a total of 1,000 units of concentrated liquid infant formula a month (excluding exempt infant formula), the usage rate must include all possible types of infant formula that were issued in the form of concentrated liquid infant formula, including both contract and non-contract brand infant formula issuance under its current contract. The same approach must be applied for calculating the usage rates for powdered and ready-to-feed infant formula.

All bidders should be reminded that participant data and infant formula usage rates provided include all types of infant formula the State agency currently uses, except exempt infant formula. At the same time, we strongly encourage State agencies to provide their latest invoice information, or comparable information, that categorizes the infant formula usage data by type and form. Providing this data ensures all bidders have the same information as the current contractor has to base bids on.

The exception to the above is when a State agency elects to solicit separate bids for milk-based and soy-based infant formulas. In this case, participation data and usage rates must be calculated the same as above, but broken out by milk-based infant formula (including all types of milk-based infant formula except exempt infant formula) and soy-based infant formula.

I. Lowest Net Price

All but one commenter supported the requirement to award contracts based on the lowest net price for infant formula. This requirement is dictated by statute; therefore, the interim rule retains the lowest net price requirement in section 246.16a(c)(3). However, as explained in this preamble in the definitions section, there was some confusion among commenters regarding the term ''net price'' which is summarized below.

Issue 1: Several commenters stated that if bids are to be evaluated on the basis of lowest net price, it would improve consistency if the basis for the wholesale price is defined. Other commenters asked for clarification in determining the lowest net price. As one manufacturer explained, manufacturers bracket their wholesale prices based on subdivisions of a full truckload, and the ''full truckload price'' is simply the best, or lowest, price they offer to retail and wholesale outlets. However, different manufacturers base their wholesale prices on different truckload weights due primarily to variations in packaging size and weight, and different trucking equipment used to ship product. What matters is that each manufacturer's best full truckload price bracket be used when evaluating bids. Otherwise, bid evaluations may not be evaluated in a fair and consistent manner.

Department Response: In order to clarify the requirement of awarding a contract based on the lowest net price this rule amends the current definition of ''net price.'' State agencies must use a consistent measurement of a common denominator to evaluate all rebates in order to ensure contracts are evaluated in a fair and consistent manner. As such, this rule requires State agencies to use the lowest national wholesale price for a full truckload of the infant formula on which a bid is submitted when evaluating bids and establishing rebates for the manufacturer's full product line. This requirement is reflected in the definition of net price in section 246.2 and in sections 246.16a(c)(3) and 246.16a(c)(5) which describe how to award contracts and to calculate rebates for infant formulas.

Issue 2: One commenter opposing this provision expressed concern that evaluating bids based on the lowest net price using wholesale prices prevents State agencies from recognizing a State agency's true cost of infant formula. The commenter explained that retailers purchase infant formula at different wholesale price tiers depending on the quantity of product purchased, which affects the retail cost of infant formula. As such, the rule should permit a State agency to identify a wholesale pricing level used in evaluating bids that is consistent with the unique characteristics of that State agency. A second commenter, asking for clarification of net price, stated that because manufacturers have different wholesale prices depending upon the quantity they deliver and the geographic area, the net price should be based on the quantity most commonly delivered to vendors participating in the WIC Program.

Department Response: It would be impractical to exactly capture wholesale cost actually paid by vendors or to use retail pricing. Therefore, this rule includes in the definition of net price the national wholesale price for a full truck of infant formula. This definition ensures consistency and simplifies the bidding process. State agencies should recognize that the national wholesale price catalog is used only as a tool in evaluating bids and setting rebate amounts. Infant formula manufacturers do not, and may not, by law, act in concert to influence retail prices for infant formula to retailers. Therefore, they, as a group, have no control over the price that is charged for the infant formula sold by WIC vendors and cannot be held accountable for retail prices charged. On the other hand, the actual price that retailers charge for infant formula falls under the domain of State-agency-managed WIC vendor cost controls. In fact, to promote efficiency and contain costs, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105–336) requires WIC State agencies to consider the prices a store charges for authorized supplemental foods as compared to the prices that other stores charge when selecting vendors.

J. Retail Prices at WIC and Non-WIC Retailers

The proposed rule would have allowed a State agency to evaluate bids by the highest rebate instead of lowest net price if the State agency could demonstrate that the weighted average retail prices for different brands of infant formula in the State vary by 5 percent or less. The retail prices were to reflect both authorized WIC vendors and stores that do not participate in the WIC program.

Issue: Many commenters disagreed with the requirement of including non-WIC stores when demonstrating the differences and/or similarities in retail prices. It was remarked that a number of WIC State agencies currently consider price practices in determining whether a vendor can participate in the WIC program. However, allowing such State agencies to consider pricing practices of non-WIC stores could enable a State agency to demonstrate that retail prices do not vary by more than 5 percent in the State while the prices of WIC vendors do vary by more than 5 percent. Commenters also stated that obtaining price information from non-WIC stores would be a difficult task and a burden on State agencies.

Department Response: As a result of the comments received, the interim rule at section 246.16a(c)(3)(ii) modifies the

highest rebate option to give State agencies the option to evaluate infant formula prices at only authorized WIC vendors or at both WIC vendors and stores that do not participate in the WIC program. State agencies using retail price information from WIC vendors only may find it more difficult to present a compelling argument demonstrating a price differential of less than 5 percent. State agencies are also reminded that price information must be approved by FNS before soliciting bids using an evaluation method of highest rebates offered.

K. Variance in Unit Sizes of Powdered Infant Formula

Some commenters pointed out that powdered infant formula no longer comes in a single standard unit size. One commenter also wrote that although the food package regulations state the maximum amounts of infant formula in dry ounces, not all powdered infant formulas reconstitute at the same rate. That commenter suggested basing rebates on reconstituted ounces of infant formula. These commenters questioned how State agencies should account for differences in the unit size and reconstitution rates when evaluating rebate bids.

The proposed rule, at section 246.16(k)(1)(ii), required bids to be solicited based on an estimated total amount of infant formula the State agency expected to issue; however, the proposed rule was silent on how to account for differing unit sizes when evaluating rebate bids. As discussed in the Background section of this preamble, the infant formula industry has changed considerably over the past several years. Over the past decade, there have been numerous changes in both the packaging and formulation of infant formulas and it is impossible to predict future changes.

Currently, the liquid concentrate and ready-to-feed milk-based lactose containing infant formula is available in the same unit size, regardless of the manufacturer. However, the three primary infant formula manufacturers currently offer milk-based lactose powder in six different unit sizes ranging from 12 ounces to 32 ounces not including single packet sizes. Of the six unit sizes offered for milk-based powder, there is no common size among those three manufacturers.

The current variations in unit sizes for powdered infant formulas create a dilemma for State agencies when evaluating bids because the unit size dictates how many units a State agency can issue to a WIC infant without exceeding the Federal maximum monthly allowance of 8 pounds or 128 dry ounces of powdered infant formula. Consequently, the total number of units of powdered infant formula that can be issued each month depends upon the brand. The table below illustrates how differences in unit sizes for powdered infant formula can affect monthly issuance rates and identifies the total dry ounces of powdered product that can be issued each month for each of the current unit sizes most commonly issued.

Current unit sizes for powdered milk-based lactose containing infant formulas	Total number of units issued each month without exceeding the federal allowance of 128 oz./8 lbs.	Yield per total number of units issued monthly & resulting issuance shortage
12 dry oz.	10 units	120 dry oz. (8 oz. short).
14.1 dry oz.	9 units	126.9 dry oz. (1.1 oz. short).
16 dry oz.	8 units	128 dry oz. (no shortage) .

Currently, many State agencies evaluate rebate bids for powdered infant formula based on the total number of units of infant formula a bidder is able to provide under the contract without exceeding the Federal maximum monthly allowance of 128 dry ounces of powdered product. The smaller the unit size, the greater is the number of units needed to provide up to the Federal maximum monthly allowance. However, this method fails to recognize that State agencies already have the flexibility to provide up to the Federal maximum monthly infant formula averaged over the participant's certification period. It also fails to take into account further potential changes in unit sizes.

In this interim rule, as well as the proposed rule, we are seeking to simplify the bid evaluation process and to set forth standards that will take into account future changes in the infant formula industry, such as changes in unit size. Unfortunately, we cannot address the issue of differing reconstitution rates in this rulemaking. However, we can simplify the bidding process by requiring the bid evaluation to be made on a standardized number of units of infant formula among bidders. Therefore, this interim rule requires at section 246.16a(c)(3) that State agencies evaluate bids for a standardized number of units of infant formula equal to the total maximum allowable amount number of ounces in the infant formula package at section 246.10(c)(1)(vi), rather than the maximum number of units that could be issued in a single month due to unit size limitations and State agency issuance practices.

This standardized number of units of infant formula to be bid upon must contain the equivalent maximum allowable number of ounces of each physical form of infant formula that could be issued to all infants under section 246.10(c)(1)(vi). Since rebate bids are typically made on a per unit basis, it is necessary to convert the maximum allowable number of ounces of each physical form needed to serve all infants into a number of units needed to serve all infants. In order to do so a State agency would first calculate the total number of ounces needed by physical form by multiplying the total number of infants expected to use each physical form of infant formula (based on the most recent available participation and usage data) by the maximum allowable number of ounces for each physical form (e.g., 128 ounces of powdered). Next, the number of units needed to provide the maximum number of ounces of infant formula would be calculated by dividing the total number of ounces calculated by physical form by the number of ounces in the size of the unit being bid. If the number of units calculated is not a whole number, the number would be rounded down to the nearest unit. To calculate the total cost of each bid the State agency would then multiply the per unit net cost (rebate offered minus wholesale price) by the number of units needed to provide the maximum amount of infant formula allowed.

The following is an example of a bid calculation of the standardized number of units in a State agency using the single solicitation method. The example assumes the bids are evaluated by lowest net price, and the most recent available participation and usage data show the State agency issued powdered infant formula to 290 infants, liquid concentrate to 1,000 infants, and ready-to-feed to 10 infants per month.

(A) Unit size & physical form	(B) Max. issuance per infant (oz.)*	(C) Avg. monthly infant participation by form**	(D) Total oz. for bid B*C	(E) Standardized number of units D/A (16, 14.1, 12 oz.)	(F) Whole-sale cost***	(G) Rebate per unit	(H) Net Cost Per Unit F–G	(I) Standardized number of units column E	(J) Net cost H*I
16 oz. powder, or	128	290	37,120	2,320				2,320	
14.1 oz.. powder, or	128	290	37,120	2,633				2,633	
12 oz. powder	128	290	37,120	3,093				3,093	
13 oz. liq. concentrate	403	1,000	403,000	31,000				31,000	
32 oz. RTF	806	10	8,060	252				252	
Total monthly cost									$

*Allowed under Section 246.10(c)(1)(vi) of regulations.
**Excludes only infants exclusively breastfed and issued nonexempt infant formula.
***Lowest national wholesale cost per unit for a full truckload of infant formula.

As noted above, this evaluation method is consistent with an issuance option WIC State agencies currently have to average the amount of infant formula issued over the participant's certification period. We are developing guidance that will clarify how under current WIC regulations State agencies can better accommodate the wide variances in both container size and multi-unit packaging configurations of infant formulas, exempt infant formulas and WIC-eligible medical foods. State agencies that elect to make accommodations to their monthly issuance of infant formula due to the unit size limitations of its contract infant formula ensure infants are prescribed an amount of infant formula that best meets their needs.

L. Responsive and Responsible Bidders/ Full and Open Competition

Several commenters relayed concern about the dependence upon a single manufacturer that may not be able to perform the contract requirements. Specific concerns raised were the ramifications of an interruption of infant formula supply due to a manufacturer's inability to perform the job. One State agency relayed that the cost of replacing a contractor goes well beyond the cost of infant formula. Several commenters requested us to explore procurement and contract management policies which would prevent an unreliable entity from winning a contract and, thus, ensuring a bidder that is capable of performing under the contract wins.

Department Response: Section 17(h)(8)(A)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)(i)) requires State agencies subject to the infant formula cost containment requirements to use competitive bidding or another method that yields equal or better savings. ''Competitive bidding'' is defined as, among other things, selecting the bidder ''offering the lowest price'' (42 U.S.C. 1786(b)(17)).

We have consistently taken the position that the competitive bidding requirement encompasses both the concepts of requiring that the winning bidder must be responsive and responsible and that the bid solicitation must be conducted in a manner to maximize full and open competition. As a result, we have said that technical requirements are appropriate only if they do not unnecessarily limit competition.

One provision that has caused confusion on this point is the requirement in current section 246.16(n)(2) that prohibits State agencies from issuing bid solicitations or entering into rebate contracts which exclude from consideration in the bidding evaluation any infant formula manufacturer that is in compliance with the Federal Food, Drug, and Cosmetic Act. This provision is based on a requirement in section 17(f)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(F)(15)) which requires companies supplying infant formula to the WIC program to register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act and to certify to the State Health Department that it is in compliance with that Act and the related regulations. (There is a parallel regulatory provision concerning the registration and certification in section 246.10(f) of the current regulations.) Some have read the provision at section 246.16(n)(2) as meaning that no bidder may be precluded from bidding or contract award if it meets the FDA registration requirement. If read strictly, this requirement could be interpreted to mean that even a bidder that submits a nonresponsive bid may not be precluded from being awarded a contract if the bidder presents the lowest net price.

It was not our intent to totally exclude technical information from the bid evaluation process. We recognize the place that technical specifications have in competitive bidding situations. In fact, section 246.16a(c) of this interim rule requires State agencies to solicit bids from infant formula manufacturers to not only provide a rebate for infant formula, but to also supply such formula. However, we must also bear in mind the extremely small number of infant formula manufacturers and the highly regulated infant formula industry. In addition, care must be taken to ensure that any technical requirements do not unnecessarily limit competition in violation of the statutory requirement for competitive bidding.

As a result, this interim rule includes two provisions. The first (in section 246.16a(c)(3)) makes clear that the contract must be awarded only to a responsive and responsible bidder. To be responsive, a bidder must submit a bid that conforms to the solicitation. To be responsible, a bidder must meet the eligibility requirements under the applicable statute and regulations and any additional technical requirements set forth in the bid solicitation. Any information required to be submitted under a technical requirement must be capable of being evaluated objectively on a yes/no or pass/fail basis.

As we have previously advised, State agencies can address their concerns about possible performance problems by including appropriate contract provisions in their bid solicitations. For example, a State agency could include a clause that requires the winning bidder to pay a rebate on another brand of similar infant formula issued to participants in the event the contract manufacturer's infant formula is unavailable to WIC vendors for a specified period of time (e.g., 5 days).

The second provision, in section 246.16a(c), makes clear that maximizing ''full and open'' competition is an integral part of competitive bidding. The interim rule also removes the confusing and somewhat duplicative provision relating to FDA registration currently at section 246.16(n)(2) and includes

instead a cross reference to the FDA registration/certification requirement in section 246.10(f).

We would also like to emphasize that procurement requirements in 7 CFR 3016.36(a) still pertain to State agencies, whereby a State agency may follow the same policies and procedures it uses for State procurements. However, if State agency policies and procedures are in conflict with Federal requirements such as those in this rule, Federal requirements supersede State requirements.

M. Alternative Cost Containment System and National Bid Solicitation and Selection

One commenter pointed out that the proposed rule failed to make conforming amendments to the requirements for bid evaluation under the comparative method (section 246.16(j)(2)(i)) and under the National Bid Solicitation and Selection (section 246.16(o)). This rule amends these provisions to be consistent with the participation and infant formula usage data required by this rule for the single-supplier competitive system and the lowest net price/highest rebate requirements. These provisions are moved to section 246.16a(d) and (k), respectively.

N. Implementation Time Frames

We have taken this opportunity to update the implementation time frames for infant formula cost containment systems. WIC regulations currently in effect mandate that State agencies must have an infant formula cost containment system in effect as of March 15, 1990, and no later than November 10, 1990. The interim rule clarifies that all WIC State agencies (except Indian State agencies operating a retail food delivery system with fewer than 1,000 participants), must continuously operate a cost containment system in accordance with section 246.16a. This rule also makes conforming changes to the State Plan requirements in section 246.4(a)(14)(x).

O. Miscellaneous Regulation Citations

We have also taken this opportunity to update certain regulation citations in section 246.4.

Executive Order 12866

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary, Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will help ensure that WIC State agencies will be able to serve the maximum number of eligible applicants possible within their grant levels provided by the Federal government by removing current regulatory ambiguities that have resulted in the proliferation of protests of infant formula rebate contract awards. This rule further defines evaluation procedures for WIC State agencies' infant formula rebate contracts. While some WIC local agencies and WIC vendors may be small entities, the changes proposed by this rule will not affect them significantly.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115, June 24, 1983), this Program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection and recordkeeping requirements included in Section 246.10(c)(1)(i) of this interim final rule have been approved by the Office of Management and Budget (OMB) under control number 0584–0043.

Public Law 104–4

Title II of the Unfunded Mandated Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Food and Nutrition Service, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

Accordingly, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2:

a. add the definitions of *Contract brand infant formula, Exempt infant formula, Infant formula, Non-contract brand infant formula,* and *WIC-eligible medical foods* in alphabetical order; and

b. revise the definition of *Net price.*

The additions and revision read as follows:

§ 246.2 Definitions.

* * * * *

Contract brand infant formula means all infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant

formula cost containment contract. If under a single solicitation the manufacturer subcontracts for soy-based infant formula, then all soy-based infant formulas covered by the subcontract are also considered contract brand infant formulas (see § 246.16a(c)(1)(i)). If a State agency elects to solicit separate bids for milk-based and soy-based infant formulas, all infant formulas issued under each contract are considered the contract brand infant formula (see § 246.16a(c)(1)(ii)). For example, all of the milk-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the milk-based contract are considered contract brand infant formulas. Similarly, all of the soy-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the soy-based contract are also considered to be contract brand infant formulas. Contract brand infant formulas also include all infant formulas (except exempt infant formulas) introduced after the contract is awarded.

* * * * *

Exempt infant formula means an infant formula that meets the requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107.

* * * * *

Infant formula means a food that meets the definition of an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for an infant formula under section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations at 21 CFR parts 106 and 107.

* * * * *

Net price means the difference between an infant formula manufacturer's lowest national wholesale price per unit for a full truckload of infant formula and the rebate level or the discount offered or provided by the manufacturer under an infant formula cost containment contract.

Non-contract brand infant formula means all infant formula, including exempt infant formula, that is not covered by an infant formula cost containment contract awarded by that State agency.

* * * * *

WIC-eligible medical foods means certain enteral products that are specifically formulated to provide nutritional support for individuals with a diagnosed medical condition, when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible medical foods may be nutritionally complete or incomplete, but they must serve the purpose of a food, provide a source of calories and one or more nutrients, and be designed for enteral digestion via an oral or tube feeding. WIC-eligible medical foods include many, but not all, products that meet the definition of medical food in Section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

3. In § 246.4, revise paragraph (a)(14)(xi) to read as follows:

§ 246.4 State plan.

(a) * * *

(14) * * *

(xi) A description of any cost containment system. A State agency must submit a State Plan or Plan amendment if it is attempting to structure and justify a system that is not a single-supplier competitive bidding system for infant formula in accordance with § 246.16a(d); is requesting a waiver for an infant formula cost containment system under § 246.16a(e); or, is planning to change or modify its current system or implement a system for the first time. The amendment must be submitted at least 90 days before the proposed effective date of the system change. The plan amendment must include documentation for requests for waivers based on interference with efficient or effective program operations; a cost comparison analysis conducted under § 246.16a(d)(2); and a description of the proposed cost containment system. If FNS disputes supporting plan amendment documentation, it will deem the Plan amendment incomplete under this paragraph (a), and will provide the State agency with a statement outlining disputed issues within 15 days of receipt of the Plan amendment. The State agency may not enter into any infant formula cost containment contract until the disputed issues are resolved and FNS has given its consent. If necessary, FNS may grant a postponement of implementation of an infant formula cost containment system under § 246.16a(f). If at the end of the postponement period issues remain unresolved the State agency must proceed with a cost containment system judged by FNS to comply with the provisions of this part. If the State agency does not comply, it will be subject to the penalties set forth in § 246.16a(i).

* * * * *

4. In § 246.10:

a. revise paragraph (c)(1)(i);

b. redesignate paragraph (c)(1)(ii) as paragraph (c)(1)(vi) and add a heading;

c. add four new paragraphs (c)(1)(ii) through (c)(1)(v);

d. revise paragraph (c)(2)(i); and

e. revise paragraph (c)(3) introductory text and paragraph (c)(3)(i).

The revisions and additions read as follows:

§ 246.10 Supplemental foods.

* * * * *

(c) * * *

(1) *Food Package I—Infants 0 Through 3 Months.* (i) *Iron-fortified infant formula—requirements and routine issuance.* Except as specified in paragraphs (c)(1)(iii) through (c)(1)(v) of this section, local agencies must issue a contract brand infant formula that meets the requirements of paragraph (c)(1)(i) of this section. The supplemental food for this food package is an iron-fortified infant formula that is not an exempt infant formula. The iron-fortified infant formula must be nutritionally complete, not requiring the addition of any ingredients other than water prior to being served in a liquid state. It also must contain at least 10 milligrams of iron per liter at standard dilution and supply 67 kilocalories per 100 milliliters (i.e., approximately 20 kilocalories per fluid ounce of infant formula) at standard dilution. Medical documentation is not required for any contract brand infant formula authorized for issuance by the State agency, including the soy-based contract brand of infant formula. However, the State agency may require medical documentation for any contract brand infant formula even though it meets these requirements and may decide that some contract brand infant formulas may not be issued under any circumstances.

(ii) *Physical forms.* Local agencies must issue all WIC formulas (WIC formula means all infant formulas, including exempt infant formulas, and WIC-eligible medical foods) in concentrated liquid or powdered physical forms. Ready-to-feed WIC formulas may be authorized when the competent professional authority determines and documents that the participant's household has an unsanitary or restricted water supply or poor refrigeration, the participant or person caring for the participant may have difficulty in correctly diluting concentrated forms or reconstituting powdered forms, or the WIC formula is only available in ready-to-feed form.

(iii) *WIC formulas requiring medical documentation.* Local agencies may issue the following WIC formulas, but only with medical documentation:

(A) Any contract brand infant formula that does not meet the requirements of paragraph (c)(1)(i) of this section (e.g., low-iron, low-calorie, or high-calorie infant formulas);

(B) Any non-contract brand infant formula (even if it meets the requirements for an iron-fortified infant formula in paragraph (c)(1)(i) of this section);

(C) Any exempt infant formula; and

(D) any WIC-eligible medical food.

(iv) *Religious eating patterns exception.* Local agencies may issue a non-contract brand infant formula that meets the requirements of paragraph (c)(1)(i) of this section without medical documentation in order to meet religious eating patterns. However, if the non-contract brand infant formula does not meet the requirements of paragraph (c)(1)(i) of this section, medical documentation must be provided. Documentation of the basis of the substitution must be kept on file at the local clinic.

(v) *Medical documentation.* (A) *Determination.* For purposes of this food package, medical documentation means a determination by a licensed health care professional authorized to write medical prescriptions under State law. A licensed health care professional must make a medical determination that an infant has a medical condition that dictates the use of the following: a contract brand infant formula that does not meet the requirements of paragraph (c)(1)(i) of this section; a non-contract brand infant formula; an exempt infant formula; or a WIC-eligible medical food. These conditions include, but are not limited to: those that contraindicate the use of iron-fortified infant formula, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndromes, and food allergies. Low-calorie WIC formulas may not be issued solely for the purpose of managing body weight.

(B) *Technical requirements.* Medical documentation must include the brand name of the WIC formula prescribed; medical diagnosis warranting the issuance of WIC formula; length of time the prescribed WIC formula is medically required by the participant; and signature or name (if the initial medical documentation was received by telephone) of the requesting health care professional. Medical documentation may be provided as an original written document, electronically, or by facsimile. Medical documentation also may be provided by telephone to a competent professional authority who must promptly document the information which must be kept on file at the local clinic. However, this method may only be used until written confirmation is received and only when absolutely necessary on an individual participant basis to prevent undue hardship to a participant or to prevent a delay in the provision of infant formula that would place the participant at increased nutritional risk. The local clinic must obtain written confirmation of the medical documentation within a reasonable amount of time (i.e., one or two weeks' time) after accepting the initial medical documentation by telephone. The written documentation must be kept on file with the initial telephone documentation.

(vi) *Quantities and types of supplemental foods.****

(2) *Food Package II—Infants 4 through 12 months.* (i) Infant formula as specified in paragraphs (c)(1)(i) through (c)(1)(v) of this section.

* * * * *

(3) *Food Package III—Children/Women with Special Dietary Needs.* Local agencies may issue this food package to women and children only with medical documentation. The supplemental foods in Food Package III are set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section. For purposes of this food package, medical documentation means a determination by a licensed health care professional authorized to write medical prescriptions under State law that the child or woman has a medical condition that dictates the use of a WIC formula (WIC formula means all infant formulas, including exempt infant formulas, and WIC-eligible medical foods) because the use of conventional foods is precluded or restricted. These medical conditions include, but are not limited to, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndromes and food allergies. This food package may not be issued solely for the purpose of enhancing nutrient intake or managing body weight. Medical documentation for WIC formulas must meet the technical requirements described in paragraph (c)(1)(v)(B) of this section.

(i) WIC formulas (i.e., an infant formula, exempt infant formula, or WIC-eligible medical food).

* * * * *

§ 246.16 [Amended]

5. In § 246.16:

a. In § 246.16, remove paragraphs (j) through (p).

6. Add a new § 246.16a to read as follows:

§ 246.16a Infant formula cost containment.

(a) *Who must use cost containment procedures for infant formula?* All State agencies must continuously operate a cost containment system for infant formula that is implemented in accordance with this section except:

(1) State agencies with home delivery or direct distribution food delivery systems;

(2) Indian State agencies with 1,000 or fewer participants in April of any fiscal year, which are exempt for the following fiscal year;

(3) State agencies granted a waiver under paragraph (e) of this section; and

(4) State agencies granted a postponement under paragraph (f) of this section.

(b) *What cost containment procedures must be used?* State agencies must use either a single-supplier competitive system as outlined in paragraph (c) of this section, or an alternative cost containment system as outlined in paragraph (d) of this section.

(c) *What is the single-supplier competitive system?* Under the single-supplier competitive system, a State agency solicits sealed bids from infant formula manufacturers to supply and provide a rebate for infant formulas. The State agency must conduct the procurement in a manner that maximizes full and open competition consistent with the requirements of this section.

(1) *How must a State agency structure the bid solicitation?* (i) *Single solicitation.* Under the single solicitation system, the State agency's bid solicitation must require the winning bidder to supply and provide a rebate on all infant formulas it produces that the State agency chooses to issue, except exempt infant formulas. Rebates must also be paid on any new infant formulas that are introduced after the contract is awarded. The solicitation must require bidders that do not produce a soy-based infant formula to subcontract with another manufacturer to supply a soy-based infant formula under the contract. In this case, the bid solicitation must require that the winning bidder pay the State agency a rebate on the soy-based infant formula supplied by the subcontractor that is issued by the State agency. The bid solicitation must require all rebates (including those for soy-based infant formula supplied by a subcontractor) to be calculated in accordance with paragraph (c)(5) of this section. All of these infant formulas are called contract brand infant formulas.

(ii) *Separate solicitations.* Under the separate solicitation system, a State agency issues two bid solicitations. The

first solicitation must require the winning bidder to supply and provide a rebate on all milk-based infant formulas it produces that the State agency chooses to issue, except exempt infant formulas. Rebates must also be paid on any new milk-based infant formulas that are introduced by the manufacturer after the contract is awarded. These infant formulas are considered to be contract brand infant formulas. The second bid solicitation must require the winning bidder to supply and provide a rebate on all soy-based infant formulas it produces that the State agency chooses to issue. Rebates must also be paid on any new soy-based infant formulas that are introduced by the manufacturer after the contract is awarded. These infant formulas are also considered to be contract brand infant formulas.

(2) *On what types and physical forms of infant formula must bids be solicited?* The bid solicitation must require bidders to specify a rebate for each of the types and physical forms of infant formulas specified in the following chart. These rebates apply proportionally to other infant formulas produced by the winning bidder(s) (see paragraph (c)(5) of this section). For purposes of this section the infant formula on which bids are solicited is the primary contract brand infant formula.

Type of infant formula	Physical forms of infant formula	Infant formula requirements
(i) For a single solicitation, the solicitation must require bidders to specify a rebate amount for the following:		
A single milk-based infant formula (primary contract brand infant formula); bidders must specify the brand name of the milk-based infant formula for which the rebate is being specified.	Concentrated liquid, powdered, and ready-to-feed.	Meets requirements under § 246.10(c)(1)(i) and suitable for routine issuance to the majority of generally healthy, full-term infants.
(ii) For separate solicitations, the solicitation must require bidders to specify a rebate amount for the following:		
(A) A single milk-based infant formula (primary milk-based contract brand infant formula); bidders must specify the brand name of the milk-based infant formula for which the rebate is being specified.	Concentrated liquid, powdered, and ready-to-feed.	Meets requirements under § 246.10(c)(1)(i) and suitable for routine issuance to the majority of generally healthy, full-term infants.
(B) A single soy-based infant formula (primary soy-based contract brand infant formula); bidders must specify the brand name of the soy-based infant formula for which the rebate is being specified.	Concentrated liquid, powdered, and ready-to-feed.	Meets requirements under § 246.10(c)(1)(i).

(3) *How are contracts awarded?* A State agency must award the contract(s) to the responsive and responsible bidder(s) offering the lowest total monthly net price for infant formula or the highest monthly rebate (subject to paragraph (c)(3)(ii) of this section) for a standardized number of units of infant formula. The State agency must calculate the lowest net price using the lowest national wholesale cost per unit for a full truckload of the infant formula on the date of the bid opening.

(i) *Calculating the standardized number of units of infant formula.* The State agency must specify a standardized number of units (*e.g.,* cans) of infant formula by physical form (*e.g.,* concentrated liquid, powdered, and ready-to-feed) to be bid upon. The standardized number of units must contain the equivalent of the total number of ounces by physical form needed to give the maximum allowance to the average monthly number of infants using each form. The number of infants does not include infant participants who are exclusively breastfed and those who are issued exempt infant formula. The average monthly number of infant using each physical form must be based on at least 6 months of the most recent participation and issuance data. In order to calculate the standardized number of units of infant formula by form to be bid upon, the average monthly number of infants using each physical form is multiplied by the maximum monthly allowable number of ounces for each form (as allowed under § 246.10(c)(1)(vi)), and divided by the corresponding unit size (*i.e.,* number of ounces per unit being bid). In order to compare bids, total cost is calculated by multiplying this standardized number of units by the net price for each physical form. Alternative calculations that arrive at a mathematically equivalent result are acceptable.

(ii) *Determining the lowest total monthly net price or highest rebate.* To determine the lowest total monthly net price a State agency must multiply the net price per unit by the established standardized amount of infant formula to be bid upon as calculated in paragraph (c)(3)(i) of this section. If the bid evaluation is based on highest rebate offered, the State agency must multiply the rebate offered by the established amount of infant formula to be bid upon as calculated in paragraph (c)(3)(i) of this section.

(iii) *Highest rebate limitation.* Before issuing the bid solicitation, a State agency that elects to evaluate bids by highest rebate must demonstrate to FNS' satisfaction that the weighted average retail prices for different brands of infant formula in the State vary by 5 percent or less. The weighted average retail price must take into account the prices charged for each type and physical form of infant formula by authorized vendors or, if a State agency elects, it may include stores that do not participate in the WIC program in the State. The State agency must also base calculations on the proportion of each type and physical form of infant formula the State agency issues based on the data provided to bidders pursuant to paragraph (c)(4) of this section.

(4) *What data must be provided to bidders?* The State agency must provide as part of the bid solicitation the participation and infant formula usage data and the standardized number of ounces by physical form of infant formula to be used in evaluating bids as described in paragraph (c)(3) of this section. The State agency must notify bidders that the participation and infant formula usage data does not necessarily reflect the actual issuance and redemption that will occur under the contract.

(5) *How is the rebate to be calculated on all other contract brand infant formulas?* All bids must specify the rebates offered by each bidder for the

primary contract brand infant formula(s). After the contract is awarded, the State agency must calculate the percentage discount for all other contract brand infant formulas (*i.e.,* all other infant formulas produced by the bidder other than exempt infant formulas) approved for issuance by the State agency. The State agency must use the following method in calculating the rebates:

(i) *Calculation of percentage discounts.* Rebates for contract brand infant formulas, other than the primary contract brand infant formula(s) for which bids were received, must be calculated by first determining the percentage discount for each physical form (*e.g.,* concentrated liquid, powdered, and ready-to-feed) of the primary contract brand infant formula(s). The percentage discount must be calculated by dividing the rebate for the primary contract brand infant formula by the manufacturer's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of the primary contract infant formula. The percentage discounts must be used to determine the rebate for all other contract brand infant formulas approved for issuance by the State agency.

(ii) *Calculation of rebate amount.* The rebate for each type and form of all other contract brand infant formulas must be calculated by multiplying the percentage discount by the manufacturer's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of the other contract brand infant formula. The percentage discount used for each of the other contract brand infant formulas depends on the physical form of the infant formula. For example, if the percentage discount provided for the primary contract brand powdered infant formula is 80 percent of its wholesale price, the same percentage discount must be applied to all other contract brand powdered infant formulas. The rebate for any types or forms of contract brand infant formulas that are introduced during the contract period must be calculated using the wholesale prices of these new contract brand infant formulas at the time the infant formulas are approved for issuance by the State agency.

(iii) *Calculation of rebates during contract term.* The rebates resulting from the application of the percentage discount must remain the same throughout the contract period except for the inflation adjustments required in paragraph (c)(5)(iv) of this section.

(iv) *Inflation provisions.* Bid solicitations must require the manufacturer to adjust for price changes subsequent to the bid opening. The inflation provision may require either a cent-for-cent increase in the rebate amounts whenever there is any change in the lowest national wholesale price for a full truckload of the particular infant formula, or may require another equally effective cost adjustment mechanism for inflation as established by the State agency in the bid solicitation.

(6) *Does a State agency have to approve the issuance of all contract brand infant formulas?* No, the State agency may choose to approve for issuance, in addition to the primary contract brand infant formula(s), none, some, or all of the winning bidder's other infant formula(s). In addition, the State agency may require medical documentation before issuing any contract brand infant formula (see § 246.10(c)(1)(i)) and must require medical documentation before issuing any WIC formula covered by § 246.10(c)(1)(iii).

(d) *What is an alternative cost containment system?* Under an alternative cost containment system, a State agency elects to implement an infant formula cost containment system of its choice. The State agency may only implement an alternative system if such a system provides a savings equal to or greater than a single-supplier competitive system. A State agency must conduct a cost comparison demonstrating such savings as described in paragraphs (d)(1) and (d)(2) of this section.

(1) *How must the State agency structure the bid solicitation?* The State agency must solicit bids simultaneously using the single-supplier competitive system described in paragraph (c) of this section and the alternative cost containment system(s) the State agency has selected. The State agency may prescribe standards of its choice for the alternative cost containment system(s), provided that conditions established for each system addressed in the bid solicitation include identical bid specifications for the contract period length and the types and forms of infant formula(s) to be included in the systems. In addition, the alternative cost containment system must cover the types and forms of infant formulas routinely issued to the majority of generally healthy, full-term infants. The State agency must use the procedure outlined in paragraph (d)(2) of this section in conducting a cost comparison to determine which system offers the greatest savings over the entire contract period specified in the bid solicitation.

(2) *How does the State agency conduct the cost comparison?* (i) *Establishing infant formula cost containment savings.* (A) *Savings under the single-supplier competitive system.* The State agency must project food cost savings in the single-supplier competitive system based on the lowest monthly net price or highest monthly rebate, as described in paragraph (c)(3) of this section.

(B) *Savings under an alternative cost containment system.* The State agency must project food cost savings under alternative cost containment systems based on the lowest monthly net cost or highest monthly rebate, as described in paragraph (c)(3) of this section. Food cost savings must be based on the standardized amount of infant formula expected to be issued as calculated for a single-supplier competitive system, prorated by the percentage of anticipated total infant formula purchases attributable to each manufacturer. The State agency must use the aggregate market share of the manufacturers submitting bids in calculating its cost savings estimate.

(C) *General.* In establishing the potential food cost savings under each system, the State agency must take into consideration in its estimate of savings any inflation factors which would affect the amount of savings over the life of the contract. Further, the State agency must not subtract any loss of payments which would occur under the terms of a current contract as a result of any State agency action to be effective after expiration of the contract.

(ii) *Nutrition services and administration cost adjustment.* The State agency must deduct from the food cost savings projected for each system under this paragraph (d) the nutrition services and administration costs associated with developing and implementing—but not operating—each cost containment system. This includes any anticipated costs for modifying its automated data processing system or components of its food delivery system(s), and of training participants, local agencies, vendors, and licensed health care professionals on the purpose and procedures of the new system. For contracts of two years or less, such costs must be proportionately distributed over at least a two year period. The State agency must not deduct any costs associated with procurement. The State agency must itemize and justify all nutrition services and administration cost adjustments as necessary and reasonable for the development and implementation of each system.

(iii) *Final cost comparison.* The State agency must calculate the food costs

savings and deduct the appropriate nutrition services and administration costs for each system for which bids were received. The State agency must implement the single-supplier competitive system, unless its comparative cost analysis shows that, over the length of the contract stipulated in the bid solicitation, an alternative cost containment system offers savings at least equal to, or greater than, those under the competitive single-supplier system. If the comparative cost analysis permits selection of the alternative cost containment system and the State agency wishes to implement that system, it must first submit a State Plan amendment with the calculations and supporting documentation for this cost analysis to FNS for approval. Only after the calculations are approved by FNS may the State agency award the contract or contracts under the alternative cost containment system.

(e) *How does a State agency request a waiver of the requirement for a single-supplier competitive system?* A State agency which, after completing the cost comparison in paragraphs (d)(2)(i) through (d)(2)(iii) of this section, is required to implement the single-supplier competitive cost containment system for infant formula procurement, may request a waiver from FNS to permit it to implement an alternative system. State agencies must support all waiver requests with documentation in the form of a State Plan amendment as required under § 246.4(a)(14)(xi) and may submit such requests only in either of the following circumstances:

(1) The difference between the single-supplier competitive system and the alternative cost containment system is less than 3 percent of the savings anticipated under the latter system and not more than $100,000 per annum.

(2) The single-supplier competitive system would be inconsistent with the efficient or effective operation of the program. Examples of justifications FNS will not accept for a waiver, include, but are not limited to: preservation of participant preference for otherwise nutritionally equivalent infant formulas; maintenance of health care professionals' prerogatives to prescribe otherwise nutritionally equivalent infant formulas for non-medical reasons; potential loss of free or otherwise discounted materials to WIC clinics and other health care facilities; potential inability of a manufacturer selected in accordance with applicable State procurement procedures to supply contractually-specified amounts of infant formula; and the possibility of interrupted infant formula supplies to retail outlets as a consequence of entering into a contract with a single manufacturer.

(f) *How does a State agency request a postponement of the requirement for a continuously operated cost containment system for infant formula?* A State agency may request a postponement of the requirement to continuously operate a cost containment system for infant formula that has been implemented in accordance with this section. However, a State agency may only request a postponement when it has taken timely and responsible action to implement a cost containment system before its current system expires but has been unable to do so due to procurement delays, disputes with FNS concerning cost containment issues during the State Plan approval process or other circumstances beyond its control. The written postponement request must be submitted to FNS before the expiration of the current system. The postponement period may be no longer than 120 days. If a postponement is granted, the State agency may extend, renew or otherwise continue an existing system during the period of the postponement.

(g) *May a State agency implement cost containment systems for other supplemental foods?* Yes, when a State agency finds that it is practicable and feasible to implement a cost containment system for any WIC food other than infant formula, the State agency must fully implement that system in accordance with the time frames established by the State agency and notification must be given to FNS by means of the State agency's State Plan.

(h) *What are the implementation time frames for Indian State agencies that lose their exemption from the infant formula cost containment requirement?* If an Indian State agency operating a retail food delivery system expands its program participation above 1000 and thereby loses its exemption from the requirements of paragraph (a) of this section regarding the method of cost containment for infant formula, then the Indian State agency must begin compliance with paragraph (a) of this section in accordance with time frames established by FNS.

(i) *What are the penalties for failure to comply with the cost containment requirements?* Any State agency that FNS determines to be out of compliance with the cost containment requirements of this part must not draw down on or obligate any Program grant funds, nor will FNS make any further Program funds available to such State agency, until it is in compliance with these requirements.

(j) *What provisions are prohibited to be included in cost containment contracts?* A State agency may not issue bid solicitations or enter into contracts which:

(1) Prescribe conditions that would void, reduce the savings under or otherwise limit the original contract if the State agency solicited or secured bids for, or entered into, a subsequent cost containment contract to take effect after the expiration of the original contract;

(2) Does not include the registration and certification requirements in § 246.10(f); or

(3) Require infant formula manufacturers to submit bids on more than one of the systems specified in the invitation for bids.

(k) *What are the requirements for the national cost containment bid solicitation and selection for infant formula?* FNS will solicit and select bids for infant formula rebates on behalf of State agencies with retail food delivery systems based on the following guidelines:

(1) FNS will solicit bids and select the winning bidder(s) for infant formula cost containment contracts only if two or more State agencies with retail food delivery systems request FNS to conduct bid solicitation and selection on their behalf. FNS will conduct the bid solicitation and selection process only and will not award or enter into any infant formula cost containment contract on behalf of the individual State agencies. Each State agency will individually award and enter into infant formula cost containment contract(s) with the winning bidder(s). State agencies must obtain the rebates directly from the infant formula manufacturer(s). FNS will conduct the bid solicitation in accordance with this paragraph (k) and the competitive bidding procurement procedures of the State agency with the highest infant participation in the bid group on whose behalf bids are being solicited. Any bid protests and contractual disputes are the responsibility of the individual State agencies to resolve.

(2) FNS will make a written offer to all State agencies to conduct bid solicitation and selection on their behalf at least once every 12 months. FNS will send State agencies a copy of the draft Request for Rebates when making the offer to State agencies. Only State agencies that provide the information required by this paragraph (k)(2) in writing, signed by a responsible State agency official, by certified mail, return receipt requested or by hand delivery with evidence of receipt within 15 days of receipt of the offer will be included

in the national bid solicitation and selection process. Each interested State agency must provide:

(i) A statement that the State agency requests FNS to conduct bid solicitation and selection on its behalf;

(ii) A statement of the State agency's minimum procurement procedures applicable to competitive bidding (as defined in § 246.2) for infant formula cost containment contracts and supporting documentation;

(iii) A statement of any limitation on the duration of infant formula cost containment contracts and supporting documentation;

(iv) A statement of any contractual provisions required to be included in infant formula cost containment contracts by the State agency;

(v) The most recent available average monthly number of infant participants less those infant participants who are exclusively breastfed and those who are issued exempt infant formula. The average monthly participation level must be based on at least 6 months of participation data.

(vi) Infant formula usage rates by type (e.g., milk-based or soy-based), form (e.g., concentrated, powdered, ready-to-feed), container size, and supporting documentation;

(vii) A statement of the termination date of the State agency's current infant formula cost containment contract; and

(viii) Any other related information that FNS may request.

(3) If FNS determines that the number of State agencies making the request provided for in paragraph (k)(2) of this section so warrants, FNS may, in consultation with such State agencies, divide such State agencies into more than one group and solicit bids for each group. These groups of State agencies are referred to as ''bid groups''. In determining the size and composition of the bid groups, FNS will, to the extent practicable, take into account the need to maximize the number of potential bidders so as to increase competition among infant formula manufacturers and the similarities in the State agencies' procurement and contract requirements (as provided by the State agencies in accordance with paragraphs (k)(2)(ii), (k)(2)(iii) and (k)(2)(iv) of this section). FNS reserves the right to exclude a State agency from the national bid solicitation and selection process if FNS determines that the State agency's procurement requirements or contractual requirements are so dissimilar from those of the other State agencies in any bid group that the State agency's inclusion in the bid group could adversely affect the bids.

(4) For each bid group formed pursuant to paragraphs (k)(2) and (k)(3) of this section, FNS will use for soliciting bids the competitive bidding procurement procedures of the State agency in the group with the highest infant participation. To the extent not inconsistent with the requirements of this paragraph (k), FNS will use that set of procedures in soliciting the bids for that bid group of State agencies. FNS will notify each State agency in the bid group of the choice and provide them each a copy of the procurement procedures of the chosen State agency. Each State agency must provide FNS a written statement, signed by a responsible State agency official, by certified mail, return receipt requested or by hand delivery with evidence of receipt stating whether that State agency is legally authorized to award an infant formula cost containment contract pursuant to that set of procedures within 10 days of the receipt of the notification. If the State agency determines it is not legally authorized to award an infant formula cost containment contract pursuant to those procedures, that State agency may not continue in that round of the national bid solicitation and selection.

(5) At a minimum, in soliciting bids FNS will address the following:

(i) Unless FNS determines that doing so would not be in the best interest of the Program, bids will be solicited for either:

(A) A single contract for each State agency under which the winning bidder will be required to supply and provide rebates on all infant formulas produced by that manufacturer (except exempt infant formulas) that are issued by the State agency. If that manufacturer does not produce a soy-based infant formula, the winning bidder will be required to subcontract with another manufacturer for a soy-based infant formula and the winning bidder will be required to pay a rebate on the soy-based infant formula; or

(B) Two separate contracts for each State agency. Under the first contract, the winning bidder will supply and provide a rebate on all the milk-based infant formulas the winning bidder produces (except exempt infant formulas) that are issued by the State agency and under the second contract the winning bidder will supply and provide a rebate on all the soy-based infant formulas the winning bidder produces (except exempt infant formulas) that are issued by the State agency.

(ii) The infant formula cost containment contract(s) to be entered into by the State agencies and infant formula manufacturers must provide for a constant net price for infant formula for the full term of the infant formula cost containment contract(s).

(iii) The duration of the infant formula cost containment contracts for each bid group will be determined by FNS in consultation with the State agencies. The term will be for a period of not less than 2 years, unless the law applicable to a State agency regarding the duration of infant formula cost containment contracts is more restrictive than this paragraph (k)(5)(iii). In such cases, the term of the contract for only that State agency will be for one year, with the option provided to the State agency to extend the contract for a specified number of additional years (to be determined by FNS in consultation with the State agency). The date on which the individual State agencies' current infant formula cost containment contracts terminate may vary, so the infant formula cost containment contracts awarded by the State agencies within a bid group may begin on different dates.

(iv) FNS will not prescribe conditions that are prohibited under paragraph (j) of this section.

(v) FNS will solicit bids for rebates only from infant formula manufacturers. FNS may limit advertising to contacting in writing each infant formula manufacturer which has registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*).

(6) FNS will select the winning bidder(s). The winning bidder(s) will be the responsive and responsible bidder(s) meeting the specifications and all bid terms and conditions which offers the lowest net price weighted to take into account infant formula usage rates and infant participation. In all instances the winning bidder(s) will be those which singly or in combination yield the greatest aggregate savings based on the net price weighted to take into account the infant formula usage rates. To break a tie between 2 equally low bids, FNS will select the bidder to be awarded the infant formula cost containment contract by a drawing by lot limited to the bidders which submitted those bids.

(7) Once FNS has conducted bid selection, a State agency may decline to award the infant formula cost containment contract(s) only if the State agency determines that awarding the contract(s) would not be in the best interests of its Program, taking into account whether the national bid solicitation and selection would achieve a lower aggregate savings.

(8) As soon as practicable after selecting the winning bid(s), FNS will notify the affected State agencies in writing of the bid results, including the name(s) of the winning bidder(s). If a State agency chooses to request approval to decline to award the infant formula cost containment contract(s) in accordance with paragraph (k)(7) of this section, it must notify FNS in writing, signed by a responsible State agency official, together with supporting documentation, by certified mail, return receipt requested or by hand delivery with evidence of receipt within 10 days of the State agency's receipt of this notification of bid results.

(9) If FNS approves any State agency's request to decline to award the infant formula cost containment contract(s) in accordance with paragraphs (k)(7) and (k)(8) of this section, FNS will notify the bidders of the decision. If two or more State agencies remain in the group, FNS will require the bidders to indicate in writing whether they wish to withdraw or modify their bids within 5 days of receipt of this notification. FNS will again permit State agencies to decline to award the infant formula cost containment contract(s) in accordance with paragraphs (k)(7) and (k)(8) of this section. If FNS approves these additional State agency requests to decline contract awards, FNS may conduct a resolicitation of bids in accordance with this paragraph (k).

Dated: August 10, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 00–21423 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–05–AD; Amendment 39–11804; AD 2000–13–05]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2000–13–05 applicable to Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines that was published in the **Federal Register** on July 3, 2000 (65 FR 40983). The statement regarding the reports of fan blade failures in the Summary section and the Internet address for AD comments in the Addresses section are incorrect. This document corrects that statement and that address. In all other respects, the original document remains the same.

EFFECTIVE DATE: August 23, 2000.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176; fax 781–238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines, was published in the **Federal Register** on July 3, 2000 (65 FR 40983).

The following corrections are needed:

1. On page 40983, in the second column, in the **SUMMARY** section, in the eleventh and twelfth lines, ''fan blade failures due to dovetail root cracks.'' is corrected to read ''fan blade root cracks in a factory engine.''.

2. On page 40983, in the second column, in the **ADDRESSES** section, in the first paragraph, in the ninth and tenth lines, ''9-ad-engineprop@faa.gov'' is corrected to read ''9-ane-adcomment@faa.gov''.

Issued in Burlington, MA, on August 16, 2000.

David A. Downey,

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

[FR Doc. 00–21314 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–02]

Modification of Class E Airspace; Marquette, MI; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects two errors in the legal description of a final rule that was published in the **Federal Register** on Wednesday, July 26, 2000 (65 FR 45842), Airspace Docket No. 00–AGL–02. The final rule modified Class E Airspace at Marquette, MI.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 00–18893, Airspace Docket No. 00–AGL–02, published on July 26, 2000 (65 FR 45842), modified Class E Airspace at Marquette, MI. Two errors in the legal description for the Class E airspace for Marquette, MI, were published. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace, Marquette, MI, as published in the **Federal Register** July 26, 2000 (65 FR 45842, FR Doc. 00–18893), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

On page 45842, Column 3, line 9 from the top of the column, correct ''7.1-miles'' to read ''7.1-mile'' and on page 45842, Column 3, line 16 from the top of the column, correct ''east'' to read ''west''.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–21492 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1880

[WO–880–9500–PF–24–1A]

RIN 1004–AD23

Financial Assistance, Local Governments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing procedures for disbursing Payments in Lieu of Taxes (PILT) to units of general local government for entitlement lands within their boundaries. In addition, this final rule incorporates statutory changes to the authorizing legislation.

EFFECTIVE DATE: This rule is effective on September 22, 2000.

FOR FURTHER INFORMATION CONTACT: Bill Howell, Budget Group, (202) 452–7721 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, seven days a week, to contact Mr. Howell.

SUPPLEMENTARY INFORMATION:

I. Background
II. Responses to Comments
III. Final Rule as Adopted
IV. Procedural Matters

I. Background

This final rule updates the existing regulations to incorporate the following statutory changes to the PILT Act in the 103rd, 104th, and 105th Congresses (Public Law 103–397, October 22, 1994; Public Law 104–333, November 12, 1996; and Public Law 105–83, November 14, 1997):

1. Public Law 103–397 amended the PILT Act to indicate increases to the per acre values used to compute ''6902 payments'' and to the population table used to determine each unit of general local government's population ceiling. The public law also indexed payments for inflation, increased payments for entitlement lands based on the Consumer Price Index, and authorized payments for certain land exchanges and acquisitions.

2. Public Law 104–333 further amended the Act to redefine the meaning of ''unit of general local government'' and also stipulated which units of general local government are eligible to receive a PILT payment.

3. Public Law 105–83 amended the Act to exclude cities in Alaska from the definition of unit of general local government eligible to receive PILT payments.

Also, this final rule conforms the existing regulations to plain language format.

II. Responses to Comments

On April 24, 2000 (65 FR 21688), the Bureau of Land Management (BLM) published the Financial Assistance, Local Governments proposed rule in the **Federal Register**. The 60-day public comment period ended on June 23, 2000. We received no public comments on the proposed rule.

III. Final Rule as Adopted

BLM adopts the revisions to 43 CFR part 1880, Subpart 1881, of the proposed rule which was published in the **Federal Register** on April 24, 2000 (65 FR 21688), as a final rule with one change. We modified the language in the proposed rule by adding paragraph (b) to § 1881.41 describing how BLM will disburse section 6905 deferred payments. This is a technical correction.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant rule and was not subject to review by the Office of Management and Budget under Executive Order 12866. We have determined that this final rule: does not have an annual economic impact of $100 million or more; will not have an adverse impact in a material way on the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; does not pose a serious inconsistency or interfere with an action taken or planned by another agency; does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; and will not have novel legal or policy implications. Therefore, we do not have to assess the potential costs and benefits of the rule under section 6(a)(3) of this order.

National Environmental Policy Act (NEPA)

This final rule is subject to a categorical exclusion under NEPA. The final rule would incorporate statutory changes to the PILT Act. The PILT Act authorizes BLM to disburse PILT payments annually to counties and other units of general local government to compensate for the exemption of real estate taxes on entitlement lands within their boundaries. BLM has determined that this action to update existing regulations to incorporate statutory changes to the authorizing legislation is a regulation of financial, technical, and legal nature under section 101(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual, Chapter 2, Appendix 1, Item 1.10. The environmental effects of the regulation are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Therefore, pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, BLM has found that neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

This final rule does not require a regulatory flexibility analysis. Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended (5 U.S.C. 601–612), to ensure that Government regulations do not necessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This final rule would not have significant economic impacts on small entities under the RFA (5 U.S.C. 601 *et seq.*). The final rule would update existing regulations to incorporate statutory changes to the authorizing legislation. The Acts do not affect small entities as they address transfer of funds from BLM to States. Accordingly, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a ''major rule'' as defined by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This final rule will not have a significant impact on the economy or on small businesses in particular. As discussed above, this final rule would update existing regulations to incorporate statutory changes to the authorizing legislation and do not affect small businesses.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local or tribal governments or the private sector of more than $100 million per year. This final rule does not have a significant or unique effect on State, local or tribal governments or the private sector. Therefore, we are not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*). This final rule would explain how BLM disburses PILT payments to States and units of general local government and update the existing regulations to incorporate statutory changes to the authorizing legislation.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This final rule does not represent a government action capable of interfering with constitutionally protected property rights. Therefore, we have determined that the regulation would not cause a taking of private property. No further discussion of takings implications are required under this Executive Order.

Executive Order 13132, Federalism

We have considered the effect of the final rule in accordance with Executive Order 13132 and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The final rule does 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. The rule does not preempt State law. However, we consulted with the National Association of Counties staff to discuss the general framework of this rule making.

Paperwork Reduction Act

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB). The OMB approved the information collection requirements under Approval No. 1004–0109 which expires on May 31, 2003, for the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Executive Order 12988, Civil Justice Reform

The Office of the Solicitor has determined that this final rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Author: The principal author is Bill Howell, Budget Group, assisted by Shirlean Beshir, Regulatory Affairs Group.

List of Subjects in 43 CFR Part 1880

Administrative practice and procedure, Financial assistance—local governments, Grant programs—natural resources, Land Management Bureau, Loan programs—natural resources, Payments in lieu of taxes, Public lands, Public lands—mineral resources.

Dated: August 1, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

Accordingly, under the authority of 43 U.S.C. 1740, BLM revises 43 CFR Part 1880, subpart 1881, as set forth below:

PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

Subpart 1881—Payments in Lieu of Taxes

Sec.

General Information

1881.10 What is the purpose of this subpart?
1881.11 What is the authority for this subpart?
1881.12 How does BLM define terms used in this subpart?
1881.13 Who is eligible to receive PILT payments?

Payments to Local Governments Containing Entitlement Lands (31 U.S.C. 6902)

1881.20 How does BLM process section 6902 payments?
1881.21 What information does BLM need to calculate these payments?
1881.22 Are there special circumstances that affect the way BLM calculates PILT payments?
1881.23 How does BLM certify payment computations?

Payments to Local Governments for Acquisitions or Interest in Lands Acquired for Addition to the National Park System or National Forest Wilderness Areas (31 U.S.C. 6904)

1881.30 How does BLM process section 6904 payments?
1881.31 How does BLM calculate section 6904 payments?

Payments to Local Governments for Interest in Lands in the Redwood National Park or Lake Tahoe Basin (31 U.S.C. 6905)

1881.40 How does BLM process section 6905 payments?
1881.41 How does BLM calculate section 6905 payments?

State and Local Governments' Responsibilities After BLM Distributes Pilt Payments

1881.50 What are the local governments' responsibilities after receiving sections 6902, 6904, and 6905 PILT payments?
1881.51 Are there general procedures applicable to all PILT payments?
1881.52 May a State enact legislation to reallocate or redistribute PILT payments?
1881.53 What is BLM's procedure on PILT payments to a State that enacts distribution legislation?
1881.54 What happens if a State repeals or amends distribution legislation?
1881.55 Can a unit of general local government protest the results of payment computations?
1881.56 How does a unit of general local government file a protest?
1881.57 Can a unit of general local government appeal a rejection of a protest?

Subpart 1881—Payments in Lieu of Taxes

Authority: Public Law 94–565, 90 Stat. 2662, as amended, 31 U.S.C. 6901–6907.

General Information

§ 1881.10 What is the purpose of this subpart?

This subpart sets forth procedures the Bureau of Land Management uses in disbursing Federal payments in lieu of taxes to units of general local government for entitlement lands within their boundaries.

§ 1881.11 What is the authority for this subpart?

Public Law 94–565, 90 Stat. 2662, as amended, 31 U.S.C. 6901–6907 continues as authority for this subpart.

§ 1881.12 How does BLM define terms used in this subpart?

Entitlement land means land owned by the United States:

(1) That is in the National Park System or the National Forest System, including wilderness areas, and national forest lands in northern Minnesota described in 16 U.S.C. 577d—577d–1;

(2) That is administered by the Secretary of the Interior through the Bureau of Land Management;

(3) That is dedicated to the use of the Government for water resource development projects;

(4) On which there are semi-active or inactive installations, excluding industrial installations, that the Department of Army keeps for mobilization and reserve component training;

(5) That is a dredge disposal area under the jurisdiction of the Army Corps of Engineers;

(6) That is located in the vicinity of Purgatory River Canyon and Pinon Canyon, Colorado, and acquired by the United States after December 23, 1981, to expand the Fort Carson military installation; or

(7) That is a reserve area as defined in 16 U.S.C. 715s(g)(3), which is an area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary of the Interior, through the Fish and Wildlife Service.

Payments in lieu of taxes (PILT) means Federal payments disbursed to units of general local government to compensate for the exemption of real estate taxes on entitlement lands within their boundaries.

Section 6902 (31 U.S.C. 6902) payments means Federal payments disbursed to units of general local government containing entitlement lands.

Section 6904 (31 U.S.C. 6904) payments means Federal payments disbursed to units of general local government for acquisitions or interest in lands acquired for addition to the National Park System or National Forest Wilderness Areas.

Section 6905 (31 U.S.C. 6905) payments means Federal payments disbursed to units of general local

government for lands in the Redwood National Park or Lake Tahoe Basin.

Unit of general local government means:

(1) A county, parish, township, borough, or city, (other than in Alaska), where the city is independent of any other unit of general local government, that:

(i) Is within the class(es) of such political subdivision in a State that the Secretary of the Interior determines, in his discretion, to be the principal provider(s) of governmental services within the State; and

(ii) Is a unit of general local government, as determined by the Secretary of the Interior on the basis of the same principles as were used by the Secretary of Commerce on January 1, 1983, for general statistical purposes.

(2) Any area in Alaska that is within the boundaries of a census area used by the Secretary of Commerce in the decennial census, but that is not included within the boundaries of a governmental entity described under paragraph (1) of this definition.

(3) The Governments of the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

§ 1881.13 Who is eligible to receive PILT payments?

(a) Each unit of general local government containing entitlement lands may receive a PILT payment.

(b) A unit of general local government may not receive a payment for land owned or administered by a State or unit of general local government that was exempt from real estate taxes when the land was conveyed to the United States. However, a unit of general local government may receive a PILT payment for land when:

(1) A State or unit of general local government acquires from a private party to donate to the United States within eight years of acquisition;

(2) A State acquires through an exchange with the United States if the land acquired was entitlement land; or

(3) In the State of Utah, that the United States acquires for Federal land, royalties or other assets if, at the time of acquisition, a unit of general local government was entitled to receive payments in lieu of taxes from the State of Utah for the land; provided that the payment to the local government does not exceed the payment the State would have disbursed if the land had not been acquired.

Payments to Local Governments Containing Entitlement Lands (31 U.S.C. 6902)

§ 1881.20 How does BLM process section 6902 payments?

(a) The BLM:

(1) Determines the eligibility of units of general local governments, conferring when necessary, with the Bureau of the Census, officials of appropriate State and local governments, and officials of the agency administering the entitlement land;

(2) Computes the amount of the payment disbursed to each unit of general local government; and

(3) Certifies the amount of the payment disbursed to each unit of general local government.

(b) The BLM disburses a payment each fiscal year to each unit of general local government containing entitlement lands.

(c) The State of Alaska is required to distribute the payment it receives to home rule cities and general law cities (as such cities are defined by the State) that are located within the boundaries of the unit of general local government entitled to the payment.

§ 1881.21 What information does BLM need to calculate these payments?

(a) The BLM obtains the necessary data on Federal and State payments from several sources:

(1) Federal agencies provide the amount of entitlement land within the boundaries of each unit of general local government as of the last day of the fiscal year preceding the fiscal year for which BLM disburses the payment.

(2) The Governor or designated official provides the amount of money transfers (land revenue sharing payments) disbursed by the State during the previous fiscal year to eligible units of general local government under the following payment laws listed under 31 U.S.C. 6903(a)(1):

(i) The Act of June 20, 1910 (Arizona and New Mexico Enabling Acts) (ch. 310, 36 Stat 557);

(ii) Section 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012);

(iii) The Act of May 23, 1908 (Knutson-Vandenberg Act regarding Forest Service timber sales contracts) (16 U.S.C. 500);

(iv) Section 5 of the Act of June 22, 1948 (Payments to Minnesota from northern Minnesota National Forest receipts) (16 U.S.C. 577g–l);

(v) Section 401(c)(2) of the Act of June 15, 1935 (Payments to local governments from National Wildlife Refuge System receipts) (16 U.S.C. 715s(c)(2));

(vi) Section 17 of the Federal Power Act (16 U.S.C. 810);

(vii) Section 35 of the Act of February 25, 1920 (Mineral Leasing Act) (30 U.S.C. 191);

(viii) Section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355);

(ix) Section 3 of the Act of July 31, 1947 (Materials Act of 1947) (30 U.S.C. 603); and

(x) Section 10 of the Act of June 28, 1934 (Taylor Grazing Act) (43 U.S.C. 315i).

(3) The Bureau of the Census provides statistics on the population of each unit of general local government.

(b) The BLM consults with the affected unit of general local government and the administering agency to resolve conflicts in land records and other data sources.

(c) The BLM uses the amount of actual appropriations, the formula set forth in 31 U.S.C. 6903(b)(1), which includes inflation adjustments, and Federal and State payments disbursed during the previous fiscal year to units of general local government under the land payment laws listed under 31 U.S.C. 6903(a)(1).

§ 1881.22 Are there any special circumstances that affect the way BLM calculates PILT payments?

If a unit of general local government eligible for payments under this subpart reorganizes, BLM will calculate payments for the fiscal year in which the reorganization occurred as if the reorganization had not occurred. BLM will disburse any payment due to each new unit based on the amount of eligible acreage in that unit.

§ 1881.23 How does BLM certify payment computations?

(a) The BLM will certify a computation for payment only after the Governor of the State or designated official in which the unit of general local government is located provides the BLM with:

(1) A statement of the amount of all money transfers (land revenue sharing payments) that each entitled unit of general local government has received from the State during the previous fiscal year from revenues derived from the payment law(s) listed under 31 U.S.C. 6903(a)(1);

(2) A certification, in writing, signed by a State Auditor, an independent Certified Public Accountant or an independent public accountant that the statements furnished by the Governor or designated official have been audited in accordance with auditing standards established by the U.S. Comptroller General in Standards of Audit of

Governmental Organizations, Programs, Activities and Functions, available through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, and in accordance with the Audit Guide for Payments in Lieu of Taxes issued by the Department of the Interior.

(b) The Office of the Inspector General, U.S. Department of the Interior, will provide appropriate assistance to the Director, BLM, under the provisions of sections 4 and 6 of the Inspector General Act of 1978 (5 U.S.C. Appendix), to facilitate implementing and administering the audit requirements specified in paragraph (a)(2) of this section.

(c) The Office of the Inspector General will:

(1) Develop appropriate audit guides which State auditors, independent Certified Public Accountants or independent public accountants, must use to audit the statements of the Governors or their designated officials and to certify the audits; and

(2) Furnish copies of the guides to the Governor or designated official each year. You should send questions on the use or application of this guide to the Office of Inspector General, U.S. Department of the Interior, Washington, DC 20240.

(d) The BLM may waive the requirement to certify audits if the General Accounting Office or the Office of the Inspector General verifies the information in statements the Governor or designated official furnishes or if BLM determines it is not necessary.

Payments to Local Governments for Acquisitions or Interest in Lands Acquired for Addition to the National Park System or National Forest Wilderness Areas (31 U.S.C. 6904)

§ 1881.30 How does BLM process section 6904 payments?

(a) The BLM disburses payments to qualified units of general local government provided that the administering agency supplies the following information for each qualified unit of general local government:

(1) Acreage or interests in land for which the payments are authorized; and

(2) Any other information BLM may require to certify payments to each qualified unit of general local government.

(b) BLM only disburses payments for a period of five years from the date the land was conveyed to the United States.

§ 1881.31 How does BLM calculate section 6904 payments?

BLM calculates payments by determining 1% of the fair market value of the purchased land and comparing the result to the amount of real estate taxes paid on the land in the year prior to Federal acquisition. The payment to qualified units of general local government will be the lesser of the two.

Payments to Local Governments for Interest in Lands in the Redwood National Park or Lake Tahoe Basin (31 U.S.C. 6905)

§ 1881.40 How does BLM process section 6905 payments?

(a) The BLM disburses payments to qualified units of general local government provided the administering agency supplies the following information for each qualified unit of general local government:

(1) Acreage or interests in land for which the payments are authorized; and

(2) Any other information BLM may require to certify payments to each qualified unit of general local government.

(b) BLM disburses payments until 5% of the fair market value is paid in full.

§ 1881.41 How does BLM calculate section 6905 payments?

(a) BLM calculates payments by determining 1% of the fair market value of the purchased land and comparing the result to the amount of real estate taxes paid on the land in the year prior to Federal acquisition. The payment to qualified units of general local government will be the lesser of the two.

(b) BLM disburses payments annually for a period of five years beginning in the year immediately following the year of Federal acquisition of the land or interest. The difference, if any, between the amounts actually paid during each of the five years and 1% of the fair market value will be deferred to future years. However, a payment or any portion of a payment not paid because Congress appropriated insufficient monies will not be deferred. BLM will begin annual payment of the deferred amount (calculated the same as in paragraph (a) of this section) starting with the sixth fiscal year following Federal acquisition. BLM disburses payment of the deferred amount until the total amount deferred during the first five years is paid in full.

State and Local Governments' Responsibilities After BLM Distributes Pilt Payments

§ 1881.50 What are the local governments' responsibilities after receiving sections 6902, 6904, and 6905 PILT payments?

(a) The local government may use section 6902 payments for any governmental purpose.

(b) Within 90 days of receiving sections 6904 and 6905 payments, the local government must distribute the funds to the affected units of general local government and affected school districts. The affected units of general local government and school districts may use sections 6904 and 6905 payments for any governmental purpose.

(c) The local government must distribute sections 6904 and 6905 payments in proportion to the tax revenues assessed and levied by the affected units of general local government and school districts in the Federal fiscal year before the Federal Government acquired the entitlement lands. The Redwoods Community College District in California is an affected school district for this purpose.

(d) Within 120 days of receiving payments, the local government must certify to BLM that it has made an appropriate distribution of funds.

§ 1881.51 Are there general procedures applicable to all PILT payments?

(a) The minimum payment that the BLM will disburse to any unit of general local government is $100.00 (one hundred dollars).

(b) If Congress appropriates insufficient monies to provide full payment to each unit of general local government during any fiscal year, the BLM will reduce proportionally all payments in that fiscal year.

§ 1881.52 May a State enact legislation to reallocate or redistribute PILT payments?

A State may enact legislation to reallocate or redistribute PILT payments. If a State does enact legislation, it must:

(a) Notify the BLM if it enacts legislation which requires reallocating or redistributing payments to smaller units of general local government (see 31 U.S.C. 6907);

(b)Provide the BLM a copy of the legislation within 60 days of enactment;

(c) provide the name and address of the State government office to which BLM should send the payment;

(d) distribute to its smaller units of general local government within 30 days of receiving the payment; and

(e) not reduce the payment made to smaller units of general local government to pay the cost of State legislation which reallocates or redistributes payments.

§ 1881.53 What is BLM's procedure on PILT payments to a State that enacts distribution legislation?

The BLM would:

(a) Notify the State that a single payment will be disbursed to the

designated State government office beginning with the Federal fiscal year following the fiscal year in which the State enacted legislation; and

(b) Provide the State with appropriate information that identifies the entitlement lands data on which BLM bases the payment.

§ 1881.54 What happens if a State repeals or amends distribution legislation?

(a) The State must immediately notify the BLM in writing that it has repealed or amended the legislation and furnish BLM with a copy of the new law.

(b) The BLM must:

(1) Determine if the State's process complies with 31 U.S.C. 6907. If BLM determines that it does not, we must notify the designated State government office that BLM will disburse payment directly to eligible units of general local government; and

(2) Start the payments with the Federal fiscal year in which the BLM receives a copy of the State's amendatory legislation. If BLM receives a copy of the legislation after July 1, payments made directly to eligible units of general local government will not begin until the next Federal fiscal year.

§ 1881.55 Can a unit of general local government protest the results of payment computations?

Any affected unit of general local government may file a protest with the BLM.

§ 1881.56 How does a unit of general local government file a protest?

The protesting unit of general local government must:

(a) Submit evidence to indicate the possibility of error(s) in the computations or the data on which BLM bases the computations; and

(b) File the protest by the first business day of the calendar year following the end of the fiscal year for which BLM made the payments.

§ 1881.57 Can a unit of general local government appeal a rejection of a protest?

Any affected unit of general local government may appeal BLM's decision to reject a protest to the Interior Board of Land Appeals under the provisions of 43 CFR part 4.

[FR Doc. 00–21419 Filed 8–22–00 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 00–1784]

Freedom of Information Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's rules that implements the Freedom of Information Act (FOIA) Fee Schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

DATES: Effective September 22, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn Abbate, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 1A827, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, (202) 418–0440 or via Internet at kabbate@fcc.gov.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission is modifying § 0.467(a) of the Commission's rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA Fee Schedule on the grade level of the employee who processes the request. Thus, the Fee Schedule was computed at a Step 5 of each grade level based on the General Schedule effected January 1987. The revisions correspond to modifications in the rate of pay recently approved by Congress.

Regulatory Procedures

This rule has been reviewed under Executive Order No. 12866 and has been determined not to be a ''significant rule'' since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: 47 U.S.C. 155, unless otherwise noted.

2. Section 0.467 (a) (1) is amended by revising the last sentence, the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and Review Fees.

(a)(1) * * * The fee is based on the grade level of the employee(s) who conduct(s) the search or review, as specified in the following schedule:

Grade	Hourly fee
GS–1	9.85
GS–2	10.73
GS–3	12.10
GS–4	13.57
GS–5	15.18
GS–6	16.93
GS–7	18.80
GS–8	20.83
GS–9	23.00
GS–10	25.34
GS–11	27.84
GS–12	33.37
GS–13	39.68
GS–14	46.88
GS–15	55.15

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a)(1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 2000 and include 20 percent for personnel benefits.

* * * * *

[FR Doc. 00–21341 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1757; MM Docket No. 00–29; RM–9821]

Radio Broadcasting Services; Big Pine Key, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239A to Big Pine Key, FL, in response to a petition filed by Satellite Broadcasting Company. *See* 65 FR 11541, March 3, 2000. The coordinates for Channel 239A at Big Pine Key are 24–40–00 NL and 81–21–00 WL. A filing window for Channel 266A at Big Pine Key will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 18, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 00–29, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036; (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 239A at Big Pine Key.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21399 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1755; MM Docket No. 00–24; RM–9781]

Radio Broadcasting Services; Red Lodge and Joliet, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257C1 for Channel 257A at Red Lodge, MT, and modifies the license for Station KMXE–FM, to specify operation on Channel 257C1 in response to a petition filed by Silver Rock Communications, Inc. *See* 65 FR 10043, February 25, 2000.

The coordinates for Channel 257C1 at Red Lodge are 45–11–39 and 109–20–32.

To accommodate the substitution at Red Lodge, we shall also substitute Channel 292C3 for vacant Channel 259C3 at Joliet, Montana. The coordinates for Channel 292C3 are 45–29–06 and 108–58–18.

A filing window for Channel 292C3 at Joliet will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 18, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 00–24, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036; (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 257A and adding Channel 257C1 at Red Lodge and by removing Channel 259C3 and adding Channel 292C3 at Joliet.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21400 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1770; MM Docket No. 98–97; RM–9287, RM–9609]

Radio Broadcasting Services; Hudson and Ten Sleep, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Windy Valley Broadcasting, allots Channel 275C to Hudson, Wyoming, as the community's first local aural service and, at the request of Mount Rushmore Broadcasting, Inc., allots Channel 286C3 to Ten Sleep, Wyoming, as the community's first local aural service. *See* 63 FR 34620 (June 25, 1998).

Channel 275C can be allotted at Hudson in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 14.8 kilometers (9.2 miles) at coordinates 42–49–28 and 108–26–21. Channel 286A can be allotted at Hudson at coordinates 42–54–24 and 108–35–00 and Channel 286C3 can be allotted at Ten Sleep at coordinates 44–02–16 and 107–27–00 in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments without a site restriction.

Filing windows for Channels 275C and 286A at Hudson and 286C3 at Ten

Sleep will not be opened at this time. Instead, the issue of opening a filing window for each channel will be addressed by the Commission in a subsequent *Order*.

DATES: Effective September 18, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–97, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Hudson, Channel 275C and Channel 286A, and Ten Sleep, Channel 286C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21402 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1756; MM Docket No. 98–88; RM–9285, RM–9654]

Radio Broadcasting Services; Wright and Clearmont, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain Tower Broadcasting, allots Channels 268C at Wright, Wyoming, as the community's first local aural transmission service (RM–9285). See 63 FR 34620, June 25, 1998. At the request of Mount Rushmore Broadcasting, Inc., we also allot Channel 287A at Wright, Wyoming, as the community's second local aural transmission service; and Channel 287A at Clearmont, Wyoming as the community's first local aural transmission service (RM–9654).

Channel 268C can be allotted at Wright in compliance with the Commission's minimum distance separation requirements at city reference coordinates; and Channel 287A can also be allotted to Wright at city reference coordinates. Additionally, Channel 287A can be allotted to Clearmont in compliance with the Commission's minimum distance separation requirements at city reference coordinates.

The coordinates for Channel 268C at Wright are 43–45–02 North Latitude and 105–29–53 West Longitude. Additionally, the coordinates for Channel 287A at Wright are 43–44–49 North Latitude and 105–28–12 West Longitude; and the coordinates for Channel 287A at Clearmont are 44–38–18 North Latitude and 106–22–48 West Longitude.

DATES: Effective September 18, 2000. A filing window for Channels 268C and 287A at Wright, and Channel 287A at Clearmont, will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–88, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming is amended by adding Wright, Channels 268C and 287A; and Clearmont, Channel 287A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21404 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 553

[Docket No. NHTSA–00–7817]

RIN 2127–AH29

Agency Policy Goals and Public Participation in the Implementation of the 1998 Agreement on Global Technical Regulations; Statement of Policy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; statement of policy.

SUMMARY: This final rule adopts a policy statement describing the agency's activities and practices for facilitating public participation concerning issues that arise in the implementation of an international agreement for establishing global technical regulations on the safety, emissions, energy efficiency and theft prevention of wheeled vehicles, equipment and parts. The policy statement also sets forth the general substantive policy goals regarding vehicle safety that the agency will pursue in participating in the implementation of the agreement. This final rule adds the statement as a new appendix to the agency's rulemaking procedure regulation.

DATES: This final rule takes effect on September 22, 2000. Petitions for reconsideration must be received by October 10, 2000.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice

number of this notice and be submitted to: The Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Ms. Julie Abraham, Director, Office of International Policy and Harmonization, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2114. Fax: (202) 366–2559.

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SUPPLEMENTARY INFORMATION

Table of Contents

I. Background
II. January 1999 Request for Comments on Draft Policy Statement
III. Summary of Issues Raised by Comments on Draft Policy Statement
A. Binding regulation versus policy statement
B. NHTSA's policy goals
C. Opportunities for public comment and briefings
1. NHTSA's selection of subjects for global technical regulations
2. NHTSA's development and submission of proposals for global technical regulations
3. Technical consultations regarding proposed global technical regulations being considered by WP.29
D. NHTSA's voting policy with respect to establishing global technical regulations
E. Public participation in U.S. delegations attending WP.29 meetings
F. Dissemination of information to the public
G. Location of NHTSA's public meetings
H. Ex parte contacts
I. Other comments
IV. Post-Comment Period Events
A. Adoption of Terms of Reference and Rules of Procedures for Implementing the 1998 Global Agreement and other Agreements Implemented by WP.29
B. April 1999 Transatlantic Consumer Dialogue Meeting and Resolution
V. Final Policy Statement—Discussion of and Response to Comments
A. Binding regulation versus policy statement
B. NHTSA's policy goals
C. Opportunities for public comment and briefings
1. NHTSA's selection of subjects for global technical regulations
2. NHTSA's development and submission of proposals for global technical regulations
3. Technical consultations regarding proposed global technical regulations being considered by WP.29
D. NHTSA's voting policy with respect to establishing global technical regulations
E. Public participation in U.S. delegations attending WP.29 meetings
F. Dissemination of information to the public
G. Location of NHTSA's public meetings
H. Ex parte contacts
I. Other comments
VI. Rulemaking Analyses and Notices
Appendix—Highlights of the 1998 Global Agreement Text to be added to CFR

I. Background

On June 25, 1998, the U.S. became the first signatory to the United Nations/Economic Commission for Europe (UN/ECE)[1] Agreement Concerning the Establishing of Global and Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted And/or Be Used On Wheeled Vehicles (the ''1998 Global Agreement''). The 1998 Global Agreement provides for the establishment of global technical regulations regarding the safety, emissions, energy efficiency and theft prevention of wheeled vehicles, equipment and parts.[2] The Agreement contains procedures for establishing global technical regulations by either harmonizing existing regulations or developing a new regulation.[3]

The establishment of global technical regulations is expected to lead to a significant degree of convergence in motor vehicle regulations at the regional and national levels. However, while in some instances the result may be the adoption of identical or substantially identical regulations at those levels, in other instances, the result may be regulations that, although dissimilar in some respects, do not conflict with each other. While the Agreement obligates the Contracting Parties, under certain circumstances, to *consider* adopting the global technical regulations within their own jurisdictions, it does not obligate the Parties to adopt them. The Agreement recognizes that governments have the right to determine whether the global technical regulations established under the Agreement are suitable for their own particular safety needs. Those needs vary from country to country due to differences in the traffic environment, vehicle fleet composition, driver characteristics and seat belt usage rates. Further, the Agreement explicitly recognizes the right of governments to adopt and maintain technical regulations that are more stringently protective of safety and the environment than the global technical regulations.

This Agreement was negotiated under the auspices of the UN/ECE's World Forum for Harmonization of Vehicle Regulations (WP.29)[4] under the leadership of the United States (U.S.),[5] the European Community (EC), and Japan. Becoming a Contracting Party to the 1998 Global Agreement accomplishes several purposes for the U.S. First, it provides the U.S. with a vote in the establishment of global technical regulations for wheeled vehicles, equipment and parts under the UN/ECE and enables the U.S. to take a leading role in effectively influencing the selection of the level of vehicle safety regulations world wide.[6] Second, it ensures that U.S. standards and their benefits will be properly considered in any effort to adopt a harmonized global technical regulation.

The 1998 Global Agreement will enter into force on August 25, 2000. The Agreement provides that it will enter into force 30 days after the number of Contracting Parties[7] reaches eight. On July 26, 2000, the number of Contracting Parties reached eight.[8] A ninth country, the Republic of South Africa, has signed subject to ratification. In addition,

[1] The Economic Commission for Europe was established by the United Nations (UN) in 1947 to help rebuild post-war Europe, develop economic activity and strengthen economic relations between European countries and between them and the other countries of the world.

[2] The covered equipment and parts include, but are not limited to, exhaust systems, tires, engines, acoustic shields, anti-theft alarms, warning devices and child restraint systems.

[3] To aid persons unfamiliar with the 1998 Global Agreement in gaining an understanding of its provisions, this agency has summarized the key aspects in an appendix to the preamble of this notice. The complete text of the Agreement may be found on the Internet at the following address: http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29glob.html.

[4] Formerly, ''Working Party on the Construction of Vehicles (WP.29).'' The Forum's website is http://www.unece.org/trans/main/welcwp29.htm

[5] The U.S. was represented in those negotiations by this agency and the U.S. Environmental Protection Agency (EPA).

[6] The U.S. does not have a vote under an existing earlier UN/ECE agreement regarding wheeled vehicles, equipment and parts, known as the ''1958 Agreement'' because it is not a contracting party to that agreement. Historically, the United States did not become a contracting party to the 1958 Agreement because (1) it was not feasible to develop regulations regarding motor vehicle safety in what was then a primarily common European regulatory development forum and (2) NHTSA's enforcement procedures precluded the U.S. from engaging in the 1958 Agreement's mutual recognition obligations. Although the 1958 Agreement was amended in late 1995 to reduce the impediments to becoming a contracting party, the U.S. determined that further amendments were necessary. Ultimately, it determined in talks with the contracting parties to the 1958 Agreement that the most desirable course of action was to develop a new, parallel agreement.

[7] As used here and in the balance of this notice, ''Contracting Parties'' refers to Contracting Parties to the 1998 Global Agreement.

[8] The first eight Contracting Parties are: Canada, the EC, France, Germany, Japan, the Russian Federation, United Kingdom, and the U.S.

according to the UN/ECE, Spain has decided to sign the Agreement.

In anticipation of the Agreement's entry into force, NHTSA recently published a notice (65 FR 44565; July 18, 2000) seeking public comment on the agency's preliminary recommendations for first motor vehicle safety technical regulations to be considered for establishment under that Agreement.

II. January 1999 Request for Comments on Draft Policy Statement

On January 5, 1999, NHTSA published a notice seeking public comments on a draft statement of policy concerning the agency's goals, and its activities and practices for public participation, in the implementation of the 1998 Global Agreement. (64 FR 563). NHTSA issued the notice in recognition of the importance of obtaining public input before making decisions regarding activities under matters arising under the Agreement. In addition, the agency was mindful that various public interest groups had expressed concerns about the opportunities for the public to participate in activities related to the 1998 Global Agreement. Similar concerns had been expressed by other groups about other international agreements providing for the establishment of international standards by organizations that meet outside the U.S. The common concern was that global technical regulations will be established abroad without adequate involvement of the American public. In the case of the 1998 Global Agreement, groups had also expressed the view that the decisions made in Geneva about global technical regulations could predetermine the outcome of subsequent rulemaking proceedings in the U.S. regarding Federal Motor Vehicle Safety Standards (FMVSSs) even though FMVSSs cannot be amended or established without adhering to the Administrative Procedure Act and the statutory provisions governing those standards.

The agency developed the draft policy statement based on the comments from a public meeting held by NHTSA in June 1998 and other available information. The draft policy statement had two purposes. First, it set forth a list of policy goals that would guide this agency during its participation in activities under the 1998 Global Agreement. Second, it set forth the practices and activities that this agency could use to ensure that the public has the information and opportunity necessary to follow the development of global technical regulations under the 1998 Global Agreement and to provide its views, beginning at the earliest stages, regarding those regulations.

More specifically, the agency described its proposal as follows:

> This agency will publish an annual calendar of [WP.29] meetings and listing of global technical regulations under consideration [by WP.29]
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> This agency plans to seek public comment at two points during the development of global technical regulations. In the case of a proposal to be submitted by the U.S. for a global technical regulation, the first point would be before the proposal is submitted. In the case of a proposed global technical regulation submitted by a Contracting Party other than the U.S., the first point at which the agency would solicit public comment would be when the proposal is referred under the 1998 Agreement to a working party of experts for consideration. In all cases, the second point would be when and if a working party of experts issues a report recommending the adoption of a global technical regulation.
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> This agency plans to hold informal meetings to brief the public about recent and anticipated deliberations and standards development work under the 1998 Agreement at those meetings. In addition, interested parties may raise questions related to those subjects. The public meetings would be scheduled so that one would precede each of the three annual * * * meetings [of WP.29 participants] (*i.e.,* in March, June and November).

NHTSA said that it had tentatively chosen not to issue the policy statement in the form of a binding regulation. The agency requested comments on several specific issues considered pertinent to the draft policy statement. One of the specific requests was for comments on what specific lessons should be drawn from the involvement of U.S. agencies in several other international harmonization fora. In particular, NHTSA asked about the experiences of the Food and Drug Administration (FDA) and the Department of Agriculture's Food Safety Inspection Service (FSIS) as members of the U.S. Codex delegation in the international food safety standard activities of the Codex Alimentarius Commission (Codex). It also asked about the FDA's experiences in the international drug safety activities of the International Conference of Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). Finally, the agency solicited comments on the extent of the interest and ability of the public to serve as private sector advisors at WP.29 meetings.[9]

In addition, the agency announced a February 1999 public workshop to discuss the draft policy statement with interested persons.

III. Summary of Issues Raised by Comments on Draft Policy Statement

The February 1999 workshop was attended by representatives of U.S. governmental agencies, motor vehicle manufacturer groups, insurance groups, and consumer interest groups. Prepared statements were presented by Joan Claybrook (Public Citizen), Vann Wilber (Alliance of Automobile Manufacturers (AAM)), and Byron Bloch (Auto Safety Design (ASD)).

Subsequently, written comments were received from the following organizations: AAM, Motorcycle Industry Council (MIC), Rubber Manufacturers Association (RMA), the Society of Automotive Engineers (SAE), American Insurance Association (AIA), Advocates for Highway and Auto Safety (Advocates), ASD, Center For Auto Safety (CAS), Consumers Union (CU), and Public Citizen.

AAM, SAE, MIC, and RMA expressed support for the draft policy statement. These organizations generally agreed that (1) The agency, through the policy statement, provides adequate opportunity for all interested parties to voice opinions and otherwise participate in the 1998 Global Agreement process, (2) the regulatory process under the Vehicle Safety Act provides additional procedural safeguards for all interested parties, and (3) the policy statement must provide the agency with sufficient flexibility to consult with other countries.

Consumer group commenters (AIA, Advocates, ASD, CAS, CU and Public Citizen) disagreed, expressing concern that global technical regulations will be established abroad without adequate involvement of the American public. Consumer group comments regarding public participation fell generally within the following categories: (A) Issuance of binding regulation instead of policy statement, (B) NHTSA's policy goals, (C) Opportunities for public comment and briefings, (D) NHTSA's voting policy with respect to establishing global technical regulations, (E) Public participation in U.S. delegations attending WP.29 meetings, (F) Dissemination of information to the public, (G) Location of NHTSA's public meetings, (H) Ex parte contacts, and (I) Other comments.

[9] In the interest of simplicity, this notice uses the term ''WP.29 meetings'' to refer to sessions of WP.29, meetings of WP.29 working parties of experts, and meetings of the Executive Committee.

A. Binding Regulation Versus Policy Statement

All consumer group commenters stated that NHTSA's policy regarding its participation under the 1998 Global Agreement should be issued in the form of a regulation, not a policy statement. For example, Public Citizen asserted that unlike a policy statement that could be easily ignored or summarily revoked by a new administration, a regulation provides the public with greater reliability, clarity and specificity and that these considerations far outweigh NHTSA's purported need for the ''flexibility'' of a policy statement based on the ''newness both of the Agreement and of NHTSA's involvement in activities under an international agreement to which the U.S. is a contracting party.'' Further, Public Citizen suggested that ''NHTSA can always propose amendments to the policy regulation through notice and comment rulemaking.'' Other commenters urged that a binding regulation would ensure that the public is aware of the issues to be decided, is able to provide regular input that can effect agency determinations, and is appraised of the reasons for the positions taken by the agency.

B. NHTSA's Policy Goals

All consumer groups said that the first of NHTSA's proposed goals under the 1998 Global Agreement, *i.e.*, advancing vehicle safety, by either adopting best safety practices from around the world or developing new global technical regulations reflecting technological advances, should be restated to make it clear that it is the most important of the agency's goals. Several of those consumer groups said further that that first goal should focus solely on global technical regulations reflecting current and anticipated technology. Seeking to harmonize NHTSA's standards for non-safety reasons, *i.e.*, achieving economic efficiency and cutting costs in the design and production of vehicles, should only be a secondary concern. Some suggested that the commitment in the 1998 Global Agreement to continuous improvement of safety should be reaffirmed to ensure that international standards are kept up-to-date.

Consumer group commenters requested NHTSA not to harmonize existing standards with any foreign standard or add a foreign standard to a FMVSS as a functionally equivalent compliance alternative if: (1) agency resources could be used more productively in developing a significantly improved standard; (2) the agency would have to develop new test procedures or purchase new testing equipment or facilities and if such work or expenditures would detract from other agency activities; or (3) it is simply for the purpose of integrating existing standards. Others stated that harmonization efforts should focus on test procedures and devices, not on performance requirements.

C. Opportunities for Public Comment and Briefings

Consumer groups said that it is essential that NHTSA use procedures similar to the notice and comment rulemaking procedures of the Administrative Procedure Act (APA) at all stages of its harmonization activities under the 1998 Global Agreement including: (1) NHTSA's selection of subjects for global technical regulations, (2) NHTSA's development of proposals for global technical regulations, and (3) negotiations regarding proposed global technical regulations. A key element of this request is that the agency respond in writing to the public's comments. Advocates said that the proposed two opportunities for written public input are insufficient. That organization said that more must be done to provide for public participation throughout the WP.29 process and during the negotiations among the working parties of experts.

1. NHTSA's Selection of Subjects for Global Technical Regulations

Consumer group commenters stated that NHTSA should use notice and comment procedures and hold public meetings in selecting the subjects for which it will develop proposed global technical regulations. More specifically, several consumer groups also suggested that NHTSA publish a notice (1) requesting comments on whether, for each FMVSS, (a) there are any counterpart foreign standards with significantly higher benefits, or (b) there is practicable technology that would make possible developing and implementing a higher FMVSS, (2) discussing comments on any preceding notice regarding harmonization priorities, and (3) requesting comments on the priorities that should be adopted by NHTSA. Alternatively, they suggested that NHTSA publish a notice announcing its tentative decisions regarding the agency's priorities and soliciting comments.

2. NHTSA's Development and Submission of Proposals for Global Technical Regulations

Consumer group commenters stated that when NHTSA publishes a draft proposed global technical regulation for comment, it should also publish a regulatory analysis and identify comparable or related foreign standards. They also said that NHTSA should request public comments on the draft global standards that it plans to propose to WP.29 regardless of whether the agency has previously received comments on similar issues in response to notices published by the agency under the Vehicle Safety Act (subsequently codified under Title 49 of the U.S. Code in Chapter 301, Motor Vehicle Safety).

3. Technical Consultations Regarding Proposed Global Technical Regulations Being Considered by WP.29

Consumer group commenters recommended that the agency establish a public docket for each proposed regulation referred to a working party of experts. They said that the policy statement should state that the agency will provide at least two opportunities for public comment on each regulation under development by WP.29, accept public comments before developing negotiating positions, respond to public comments explaining acceptance or rejection of comments, and announce the agency's negotiating positions in advance of negotiations. Further, they stated that NHTSA should publish a notice requesting comments every time that a substantive change is made or proposed at a meeting of a WP.29 working party of experts or a meeting of WP.29, publish a notice summarizing events and developments and inviting public comments after each such meeting, and not deviate from any announced negotiating position after the agency has solicited and responded to comments. Also, negotiators should return to U.S. to seek public comments if negotiations lead the agency to want to change a previously declared U.S. negotiating position.

Consumer groups commented that, in addition to publishing notices and responding to comments, NHTSA should hold public meetings to solicit comments prior to at least some WP.29 meetings and to receive public comments when significant changes occur in a global technical regulation under consideration by WP.29 or in the U.S. position regarding that regulation. CU urged the establishment of an on-going public forum regarding the implementation of the 1998 Global Agreement, including pre- and post-negotiation meetings. Advocates questioned whether NHTSA would provide timely debriefings of past WP.29 meetings and whether a single agency meeting could provide sufficient

time to comment on and discuss, in detail, the issues discussed at the most recent WP.29 meetings.

CU also urged NHTSA to follow the practices of the U.S. Codex delegation in promoting public participation while Advocates and Public Citizen argued that U.S. Codex does not provide for sufficient public participation. They said that under U.S. Codex all steps taken to involve the public are voluntary and that U.S. Codex maintains complete discretion as to the formulation of policy. Further, they stated that notification of Codex activities are limited to parties who have previously expressed an interest in the activities and there is not obligation for the government to respond to comments or provide a statement of basis and purpose for its position on agenda items.

D. NHTSA's Voting Policy With Respect to Establishing Global Technical Regulations

Consumer group commenters urged that NHTSA consider public comments and all factors legally relevant to rulemaking under the Vehicle Safety Act before voting on a recommended global technical regulation. They said that the U.S. should vote affirmatively on a global technical regulation only if the following three conditions are met: (1) the level of safety of the new global standard would be at least equal to that in existing FMVSSs; (2) the global standard fully reflects the Best Available Technology (BAT); and (3) future technology is considered.

E. Public Participation in U.S. Delegations Attending WP.29 Meetings

Public Citizen argued that (1) NHTSA is not legally precluded from paying for the attendance of nongovernmental representatives, (2) 1979 State Department regulations do not preclude the agency from requesting budget authority to pay for consumer or environmental representations at WP.29, (3) NHTSA should investigate other governmental efforts to pay for nongovernmental representatives and request such appropriations, and (4) the agency must ensure that if there is any nongovernmental participation in the U.S. delegation it must be equally divided between industry and consumer representatives. Other commenters expressed concern regarding the fairness of the selection process for participation on U.S. delegations. Further, consumer groups stated that if NHTSA cannot pay the travel expenses of consumer groups so that they are able to participate in the U.S. delegations, there should not be any nongovernmental organization (NGO) delegates in the U.S. delegation.

F. Dissemination of Information to the Public

Dissemination of information to the public can be improved, according to consumer group commenters, by expediting the availability of documents available under the 1958 Agreement and the 1998 Global Agreement. They suggested placing WP.29 materials on the international page on the NHTSA website. Advocates called for the agency to make publicly available all key documents stating positions of other Contracting Parties to the 1998 Global Agreement. Commenters suggested that NHTSA investigate and establish alternative means, such as mailing/facsimile lists and media outlets, to notify interested persons who do not have electronic access of WP.29 activities and documents.

G. Location of NHTSA's Public Meetings

Consumer commenters urged that NHTSA hold its meetings in Washington, D.C., not Detroit, because of the travel and expense associated with attending these meetings. They urged further that those meetings not be combined with existing industry and public meetings since the latter meetings would provide insufficient time for a full discussion of the issues.

H. Ex Parte Contacts

Commenters asked that NHTSA disclose ex parte contacts in which nongovernmental persons or entities such as industry representatives express views concerning activities under the 1998 Global Agreement. Some commenters stated that such ex parte contacts between NHTSA and industry are undesirable and should not be allowed.

I. Other Comments

Consumer group commenters urged that at least one of the three annual meetings of WP.29 should be held in Washington, DC and that stronger provisions for NGO participation in substantive policymaking discussions in the WP.29 be adopted. They said that the new terms of reference should permit NGOs to observe the substantive discussions of the Executive Committee, receive Executive Committee documents, and ''participate'' in the activities of the working parties of experts. Also, some commenters argued that representation of U.S. consumer groups and the U.S. public at WP.29 meetings is not satisfied by the involvement of international organizations that have been granted consultative status by the UN Economic and Social Council parties, noting that all but two of the organizations which have obtained that status represent the interests of manufacturers.

AIA said that other countries could use the Technical Barriers to Trade Agreement (TBT Agreement) to challenge U.S. efforts to maintain or promulgate better safety standards by bringing action under the World Trade Organization (WTO) dispute resolution system. It suggested that the policy statement should provide assurance that there will be a vigorous defense of any U.S. standard which is challenged under the TBT Agreement.[10] Likewise, Public Citizen expressed concern that the U.S. motor vehicle standards would be subject to a trade challenge under the TBT Agreement. It said further that, even if the U.S. were to defend its standards vigorously, the U.S. might not prevail in such a challenge despite the fact that the U.S. motor vehicle standards are amply supported by ''substantial evidence'' for purposes of the United State's domestic administrative law. Public Citizen asked NHTSA to define the term ''international standard for Uruguay Round TBT purposes,'' and specifically to explain whether a WP.29 standard would be considered an ''international standard'' if only the United States and some European countries participate in WP.29.

IV. Post-Comment Period Events

A. Adoption of Terms of Reference and Rules of Procedures for Implementing the 1998 Global Agreement and other Agreements Implemented by WP.29

At its 119th session in November 1999, WP.29 adopted revised ''Terms of Reference and Rules of Procedure.'' The new terms and rules were endorsed by the Inland Transport Committee at its 62nd session in February 2000 and became effective beginning with WP.29's 120th session in March 2000. In addition to creating procedures for the coordinated implementation of the 1998 Global Agreement and other related agreements administered by WP.29, such as the 1958 Agreement, the new Terms of Reference enhance the

[10] One of the agreements of the Uruguay Round administered by the WTO is the TBT Agreement. (http://www.wto.org) The purpose of the TBT Agreement is to ensure that product-standards, technical regulations, and related procedures do not create unnecessary obstacles to trade. At the same time, the TBT Agreement clearly recognizes that each country has the right to establish and maintain national technical regulations for the protection of human, animal, and plant life and health and the environment, and for prevention against deceptive practices.

transparency of and public participation in the activities of WP.29.

B. April 1999 Transatlantic Consumer Dialogue Meeting and Resolution

Following the Transatlantic Consumer Dialogue (TACD) meeting in Brussels on April 23–24, 1999, the TACD submitted its ''Resolution On Auto Safety Standards'' to NHTSA. This document, which was placed on the public docket for the January 1999 notice, contains comments that are the same or substantially similar to those discussed above.

V. Final Policy Statement—Discussion of and Response to Comments

We have made a variety of changes in response to the public comments. We have decided to add the statement as a new appendix to the agency's rulemaking procedure regulation. In addition, we have expanded our description of the public participation procedures. In a number of instances, we have drawn on our discussions in the preamble of the January 1999 notice to add detail to our descriptions in the statement of the actions we will take to provide for public participation. To promote a continuing public dialogue, the policy statement now provides an opportunity for public comment on NHTSA's tentative selection of technical regulations for establishment under the 1998 Global Agreement. Further, NHTSA has provided an explicit list of the general agenda items for its public meetings relating to activities under the Agreement.

The following section discusses the comments summarized in Section III and describes the changes made to the 1999 draft policy statement in response to some of those comments.

A. Binding Regulation Versus Policy Statement

NHTSA is issuing these goals and processes in the form of a non-binding policy statement which provides a general outline of the intentions of this agency and which does not create or confer any rights, privileges, or benefits. As discussed in its January 1999 notice, NHTSA must ensure, particularly at the beginning of these processes, that there is enough flexibility to allow a sufficient degree of experimentation and to allow the specific aspects of its activities and procedures to evolve easily and quickly as the U.S. and other Contracting Parties gain experience in utilizing limited resources to implement the Agreement in a manner that advances safety and environmental protection and involves the public in that effort. Taking this approach, rather than issuing a binding regulation in the Code of Federal Regulations (CFR), also recognizes the novelty for NHTSA of its involvement in activities under an international agreement to which the U.S. is a contracting party.

However, while we are not issuing a binding regulation, we are giving the policy statement additional visibility by adding it to the Code of Federal Regulations as Appendix C to Part 553, ''Rulemaking Procedures.''

We emphasize that our adoption of this policy statement will not change the process by which we adopt FMVSSs and put them into effect. We will continue to issue FMVSSs in accordance with the Vehicle Safety Act and through rulemaking proceedings conducted under the Administrative Procedure Act and any other applicable statute.

B. NHTSA's Policy Goals

In the draft policy statement, the agency listed the goal of advancing safety first because it regarded that as its most important goal. To emphasize that goal's primacy, NHTSA has revised the statement so that it explicitly states that the agency's foremost goal under the 1998 Global Agreement is to advance vehicle safety, particularly by developing and adopting technical regulations reflecting consideration of existing technology as well as anticipated technological advances and safety problems. The agency has also revised its goal regarding the harmonization of existing standards to state that the emphasis in its harmonization activities would be on raising U.S. standards at least to the level of the best practices in the safety standards of other Contracting Parties. In response to suggestions by commenters that the agency ensure that international standards are kept up-to-date, this agency has revised its policy goals to reaffirm its commitment in the 1998 Global Agreement to continuous improvement of safety. NHTSA's other two priority goals, as also revised by this final rule, are adopting and maintaining U.S. standards that fully meet the need in the U.S. for vehicle safety and enhancing regulatory effectiveness through regulatory cooperation with other countries and regions, thereby providing greater safety protection with available government resources.

C. Opportunities for Public Comment and Briefings

The policy statement makes extensive provision for the public to make its views known to the agency. However, the agency will not use APA-like notice and comment procedures because they are impracticable for the activities under the policy statement. Our decisionmaking under the 1998 Global Agreement and our course of action in WP.29 will reflect our consideration of the input from a broad spectrum of the public.

We have expanded our description in the policy statement of the activities and procedures for public participation by incorporating some of the details in the preamble to the January 1999 notice. There will be two opportunities for written public comment on each global technical regulation under development by WP.29 during. The first opportunity will be provided in connection with the proposal of a global technical regulation. In the case of U.S. proposals, this opportunity will be provided during the development of the proposal. In the case of proposals by other Contracting Parties, it will be provided after the proposal had been submitted to WP.29 and referred to a working party of experts. The second opportunity will be provided after a working party of experts has issued a report and a recommended global technical regulation.

In addition, there will be other ongoing opportunities for public participation. The policy statement provides for holding public meetings during which public can discuss and comment on consultations regarding proposed global technical regulations under the 1998 Global Agreement. The agency may also use those meetings periodically to brief the public on any other significant international activities, such as developments under International Harmonized Research Activities (IHRA). Under the IHRA, working groups have been formed to address six issues: (1) Biomechanics, (2) Side Impact, (3) Advanced Offset Frontal Crash Protection, (4) Vehicle Compatibility, (5) Pedestrian Safety, and (6) Intelligent Transportation Systems.

1. NHTSA's Selection of Subjects for Global Technical Regulations

NHTSA will periodically publish a notice seeking public comments on the subjects for which new global technical regulations should be considered for establishment under the 1998 Global Agreement. A subsequent notice will identify the priorities on which NHTSA will focus in the future under the Agreement.

2. NHTSA's Development and Submission of Proposals for Global Technical Regulations [11]

NHTSA's proposals under the 1998 Global Agreement will derive largely from the agency's rulemaking under the Vehicle Safety Act. Thus, NHTSA's development of proposals for global technical regulations will be based on the results of its existing and ongoing efforts to develop FMVSSs. The research and analyses in support of new or revised FMVSSs will be used to develop and justify the proposed global technical regulations.

When NHTSA develops a draft U.S. proposal for a global technical regulation, it will publish a notice discussing the merits of the proposal and providing the public with the opportunity to comment on the draft regulation.[12] The notice will generally discuss the safety problem addressed by the draft regulation, the rationale for the proposed approach for addressing the problem, and the impacts (*e.g.*, benefits and cost-effectiveness) of the draft regulation. It will also compare the draft regulation with any existing counterpart U.S. standard and generally discuss the relative merits of the draft regulation and standard. Additionally, NHTSA will consider the comments and revise the proposal and any of its supporting documentation as it deems appropriate before submitting the proposal to WP.29.

3. Technical Consultations Regarding Proposed Global Technical Regulations Being Considered by WP.29 [13]

With regard to a proposal submitted to WP.29 by a Contracting Party other than the U.S., the final policy statement specifies that the agency will publish a notice requesting public comments on the proposal after it has been referred to a working party of experts and has been made available by WP.29. The agency will consider the comments in developing a U.S. position on the proposal.

If a working party of experts recommends a global technical regulation (whether proposed by the U.S. or another Contracting Party) and sends the regulation and an explanatory report to the Executive Committee, NHTSA will publish a notice requesting public comment on the recommended global technical regulation and report. NHTSA will consider the comments in developing or revising its position on the recommended regulation, and in subsequently voting within the Executive Committee on whether to establish the recommended regulation.

The final policy statement also incorporates explanatory details from the preamble to January 1999 notice about the public meetings that the agency will hold regarding activities under the 1998 Global Agreement and about its solicitation of comments prior to WP.29 sessions and meetings of the working parties of experts. The public meeting before the annual November session of WP.29 participants may be held separately from or in conjunction with the agency's quarterly meeting on its vehicle rulemaking and research and development held in the Washington, DC area in September of each year. The public meetings will be held during the 60-day period before each of the three annual sessions of WP.29 participants.

To the extent possible and appropriate, each notice announcing one of these public meetings will discuss the agenda of the upcoming session of WP.29 participants and discuss the agency's general positions on the pending work to be discussed at that session. However, the agency cautions that its ability to discuss upcoming sessions of WP.29 participants and to develop and announce any positions will, in part, be dependent upon the timely availability of the provisional agenda for each upcoming WP.29 session. The provisional agendas are distributed by the WP.29 Secretariat according to the WP.29 Terms of Reference and Rules of Procedure. At present, they are rarely available more than 30 days before the sessions of WP.29 participants.

In response to the concern of the consumer group commenters that the breadth of the agenda for the public meetings would preclude detailed discussion of any particular issues, NHTSA has revised its statement of policy to make more explicit the details of those meetings, including their timing, agenda, and the opportunity for public comment at the meetings, and the dissemination of information prior to those meetings. Specifically, at its public meetings, NHTSA will: (1) Brief the public on the significant developments that occurred at the WP.29 meetings held since the most recent previous public meeting, (2) inform the public about the issues to be addressed at upcoming WP.29 meetings and any votes scheduled at the next meeting of the Executive Committee on recommended technical regulations, and (3) invite public comment on those past developments and upcoming issues and votes and on possible U.S. positions regarding those votes. The agendas for these meetings and NHTSA's reports discussing prior WP.29 meetings will be filed in the public docket to keep the public updated and familiar with WP.29 activities and to allow the members of the public to determine which particular issues they wish to discuss at the meetings. Further, the agency may hold ad hoc meetings to discuss particular issues.

NHTSA cannot, due to its limited resources and the practical necessities involved in conducting effective consultations with other Contracting Parties, provide notice and comment or hold public agency meetings every time that a substantive change is made or proposed in a proposed global technical regulations under consideration or that a substantive change occurs in the U.S. position regarding that regulation. Significant changes, such as the introduction of a new proposal or an amendment to a proposal, will not occur during a meeting of the Executive Committee. Instead, if the Committee concludes that a recommended global technical regulation needs substantive revision, it will refer the matter back to the appropriate working party of experts. If the working party of experts responds with significant revisions to a previous recommendation, NHTSA may publish a notice seeking public comments on the revisions.

D. NHTSA's Voting Policy With Respect to Establishing Global Technical Regulations

NHTSA will be guided in its voting to establish global technical regulations by the priority goals in its policy statement:

- Continuously improve safety and seek high levels of safety, particularly by developing and adopting new global technical regulations reflecting consideration of current and anticipated technology and safety problems.
- Harmonize U.S. standards with those of other countries or regions, particularly by raising U.S. standards at least to the level of the best practices in those other safety standards.
- Enhance regulatory effectiveness through regulatory cooperation with other countries and regions, thereby providing greater safety protection with available government resources. Further, NHTSA will consider the suitability of the regulation for adoption as a FMVSS under the Vehicle Safety Act.

[11] This step is diagramed in Figure 1 of the Appendix.

[12] Given the close relationship between activities under the 1998 Global Agreement and the Vehicle Safety Act, NHTSA may combine its notice requesting comments on a draft proposal for a global technical regulation with a notice of proposed rulemaking under the Vehicle Safety Act.

[13] These processes are diagramed in the Flowcharts in Figures 1 and 2 of the Appendix.

E. Public Participation in U.S. Delegations Attending WP.29 Meetings

We initially explored the inclusion of private entities on U.S. delegations to WP.29 in the January 1999 notice and in the February 1999 public meeting. Currently, there are no private sector representatives serving as participants in the NHTSA delegation. The agency, upon further consideration and research into this issue, has determined that it will not seek, through the Department of State, to include such participants at this time. We are guided in this decision by the Department of State guidelines, which describe the objectives of private sector participation and the factors to be considered in the justification process. We believe that these objectives will be satisfied by the activities and processes described in the policy statement. Should we later determine that private sector participation in the delegation is desirable, we would follow the guidelines and procedures of the Department of State. In response to comments urging balanced representation, we note that the guidelines address this concern, and we are committed to full compliance, in the event of any future decision to include private sector participation. The guidelines do not permit the payment of travel expenses for private sector participants, absent specific authorization and appropriations. As the agency does not currently plan to include private sector participants in U.S. delegations, NHTSA will not seek specific appropriations to fund such participants.

F. Dissemination of Information to the Public

NHTSA will promote the availability of documents under the 1958 Agreement and the 1998 Global Agreement to the public. This effort will include placing WP.29-related materials, including summaries of WP.29 meetings, in the Internet-accessible DOT docket (*http://dms.dot.gov/*) and, to the extent possible, on the NHTSA international website (*http://www.nhtsa.dot.gov/cars/rules/international/index.html*). NHTSA will also establish a public docket for each proposed regulation referred to a working party of experts. While it is beyond the resource capabilities of NHTSA to establish and maintain a mailing/facsimile list or utilize media outlets for those who do not have electronic access, as suggested by some commenters, all docket materials are available in the public docket for public viewing from 10:00 am to 5:00 pm, Monday through Friday, in Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

G. Location of NHTSA's Public Meetings

In response to the public comments and in recognition of the need to facilitate the attendance of agency personnel involved in WP.29 activities, NHTSA anticipates holding these meetings in Washington, DC.

H. Ex parte Contacts

All ex parte communications and contacts with nongovernmental representatives regarding WP.29 activities will be handled in accordance with DOT Order 2100.2 governing ex parte communications.

I. Other Comments

NHTSA was urged that the Terms of Reference for WP.29, which were still being negotiated at the time of the written comments, should permit NGOs to observe the substantive discussion of the WP.29 Executive Committee and receive Executive Committee documents, as well as provide for NGO participation in the activities of the working parties of experts. Further, consumer groups expressed the view that the international organizations that have been granted consultative status by the Economic and Social Council of the United Nations provide no substantive opportunity for participation by the U.S. public and that all but two of the organizations represent the interests of manufacturers. Article 2, section 2.3 of the Agreement states that,

> any specialized agency and any organization, including intergovernmental organizations and non-governmental organizations, that have been granted consultative status by the Economic and Social Council of the United Nations, may participate in that capacity in the deliberations of any Working Party during consideration of any matter of particular concern to that agency or organization.

Because WP.29 operates under the auspices of the UN/ECE, whose arrangements for consultations with nongovernmental organizations are governed by guidelines that the Economic and Social Council set in Resolution 1296 (XLIV) of May 1968, NHTSA does not have the authority to include NGOs that have not been granted consultative status in deliberations of Working Parties. However, all sessions of WP.29 and its subsidiary bodies, including the working parties, will be held in public and all NGOs may attend as allowed under Rule 19 of the Terms of Reference for WP.29.[14] Further, as any NGO has the opportunity, as per Article 1 and Annex A of the 1998 Global Agreement, to have its views and arguments presented at meetings of the WP.29 working parties of experts and of the Executive Committee through pre-meeting consulting with representatives of Contracting Parties, NHTSA affirms that it will entertain and consider all views and arguments presented to it in a timely manner before the beginning of those meetings. Further, NHTSA, when possible, will promote the availability of Executive Committee documents when they are made public, as discussed in Section VI. F. of this notice.

Commenters also asked NHTSA to (1) define ''international standard'' for the purposes of the TBT Agreement within the policy statement, (2) explain whether a WP.29 standard would be considered an ''international standard,'' and (3) assure vigorous defense of any U.S. standard which is challenged under the TBT Agreement.

The term ''international standard'' is not defined under the TBT Agreement, and it is beyond the purview of NHTSA's discretion to issue a definition for its use under the TBT Agreement. We note, however, that the term ''international body or system'' is defined under the Agreement as a ''body or system whose membership is open to the relevant bodies of at least all Members.'' We note further that that term has been deemed relevant by parties to the TBT Agreement, such as the U.S. and the EC, in examining the meaning of ''international standardizing bodies of international standards'' in their official submissions to the WTO Committee on TBT. The EC for example, has proposed that the key criterion for determining whether a body should be accepted as producing international standards is that of ''international impartiality.'' [15] ''International impartiality,'' as defined by the EC, means that ''all countries with an interest in standardization must have access to the work, and international control over the results, without either discrimination or privilege as to the nationality of the participants.'' Id. In its submissions, the U.S. has stated that it is important to ensure that the international standardization process is representative of the interests of all parties concerned and that ''bodies

[14] Rule 19 provides that ''(t)he sessions of WP.29 and its subsidiary bodies shall be held in public.''

[15] G/TBT/W/87, 14 September 1998 (98–3468), Committee on Technical Barriers to Trade, ''On the Conditions for Acceptance and Use of International Standards in the Context of the WTO Technical Barriers to Trade Agreement,'' Note from the European Community.

which operate with open and transparent procedures which afford an opportunity for consensus among all interested parties will result in standards which are relevant on a global basis and prevent unnecessary barriers to trade.'' [16]

While it is premature to examine whether global technical regulations under the 1998 Global Agreement could be characterized as ''international standards,'' the WP.29, as an international standards body, will remain accountable to an entire range of interested parties and should achieve a high degree of effectiveness in the role assigned to it by the 1998 Global Agreement.

Finally, the Office of the U.S. Trade Representative is responsible for coordinating and developing policy regarding U.S. standards challenged under the TBT Agreement. Accordingly, questions regarding the defense of U.S. standards under that Agreement should be directed to that Office.

VI. Rulemaking Analyses and Notices

Since this final rule establishes a statement of policy (as opposed to a regulation or rule) that will not have the force and effect of law, it is not subject to the requirements of the various Executive Orders (*e.g.*, Executive Order 12866), statutes or DOT regulatory policies and procedures for analysis of the impacts of rulemaking. Further, it was not subject to the notice and comment requirements of the Administrative Procedure Act. Nevertheless, this agency sought public comment on the statement of policy before publishing a final version.

Appendix—Highlights of the 1998 Global Agreement

- The Agreement establishes a global process under the United Nations, Economic Commission for Europe (UN/ECE), for developing global technical regulations ensuring high levels of environmental protection, safety, energy efficiency and anti-theft performance of wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles. Motor vehicle engines are included. (Preamble, Art. 1)
- Members of the ECE, as well as member countries of the United Nations that participate in certain ECE activities, are eligible to become Contracting Parties to the 1998 Global Agreement. Specialized agencies and organizations that have been granted consultative status may participate in that capacity. (Art. 2)
- The Agreement explicitly recognizes the importance of continuously improving and seeking high levels of safety and environmental protection and the right of national and subnational authorities, *e.g.*, California, to adopt and maintain technical regulations that are more stringently protective of safety and the environment than those established at the global level. (Preamble)
- The Agreement explicitly states that one of its purposes is to ensure that actions under the Agreement do not promote, or result in, a lowering of safety and environmental protection within the jurisdiction of the Contracting Parties, including the subnational level. (Art. 1)
- To the extent consistent with achieving high levels of environmental protection and vehicle safety, the Agreement also seeks to promote global harmonization of motor vehicle and engine regulations. (Preamble)
- The Agreement recognizes that governments have the right to determine whether the global technical regulations established under the Agreement are suitable for their needs. (Preamble)
- The Agreement emphasizes that global technical regulations will be developed using transparent procedures. (Art. 1)

Annex A provides that the term ''transparent procedures'' includes the opportunity to have views and arguments represented at:

(1) meetings of working parties of experts through organizations granted consultative status; and

(2) meetings of working parties of experts and of the Executive Committee (*i.e.*, the Contracting Parties to the 1998 Global Agreement) through pre-meeting consulting with representatives of Contracting Parties.

- The Agreement provides two different paths to the establishment of global technical regulations. The first is the harmonization of existing standards. The second is the establishment of a new global technical regulation where there are no existing standards. (Article 6.2 and 6.3)
- The process for developing a harmonized global technical regulation includes a technical review of existing regulations of the Contracting Parties and of the UN/ECE regulations, as well as relevant international voluntary standards (*e.g.,* standards of the International Standards Organization [17]). If available, comparative assessments of the benefits of these regulations (also known as functional equivalence assessments) are also reviewed. (Art. 1.1.2, Article 6.2)
- The process for developing a new global technical regulation includes the assessment of technical and economic feasibility and a comparative evaluation of the potential benefits and cost effectiveness of alternative regulatory requirements and the test method(s) by which compliance is to be demonstrated. (Article 6.3)
- To establish any global technical regulation, there must be a consensus vote, *i.e.*, all Contracting Parties present and voting must vote for establishment. Thus, if any Contracting Party votes against a recommended global technical regulation, it would *not* be established. (Annex B, Article 7.2)
- The establishment of a global technical regulation does not obligate Contracting Parties to adopt that regulation into its own laws and regulations. Contracting Parties retain the right to choose whether or not to adopt any technical regulation established as a global technical regulation under the Agreement. (Preamble, Article 7)
- Consistent with the recognition of that right, Contracting Parties have only a limited obligation when a global technical regulation is established under the Agreement. If a Contracting Party voted to establish the regulation, that Contracting Party must initiate the procedures used by the Party to adopt such a regulation as a domestic regulation. (Article 7)

For the U.S., this would likely entail initiating the rulemaking process by issuing an Advanced Notice of Proposed Rulemaking (ANPRM) or a Notice of Proposed Rulemaking (NPRM). If the U.S. were to adopt a global technical regulation into national law, it would do so in accordance with all applicable procedural and substantive statutory provisions, including the Administrative Procedure Act, 5 U.S.C. § 553 *et seq.*, the Vehicle Safety Act, and comparable provisions of other relevant statutes, such as the Clean Air Act.

- The Agreement allows the inclusion in global technical regulations of a ''global'' level of stringency for most parties and ''alternative'' levels of stringency for developing countries. In this way, all countries, including the developing ones, will have an interest in participating in the development, establishment, adoption and implementation of global technical regulations. It is anticipated that a developing country may wish to begin by adopting one of the lower levels of stringency and later successively adopt higher levels of stringency. (Article 4)

List of Subjects in 49 CFR Part 553

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 553 is amended as follows:

PART 553—RULEMAKING PROCEDURES

1. The authority citation for Part 553 continues to read as follows:

Authority: 49 U.S.C. 322, 1657, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33103 and 33107; delegation of authority at 49 CFR 1.50.

[16] G/TBT/W/75, 30 June 1998 (98–2611), Committee on Technical Barriers to Trade, ''Transparency in International Standards Draft U.S. Proposal for a Decision,'' Contribution from the United States.

[17] The International Standards Organization (ISO) is a nongovernmental, worldwide federation of national standards bodies from approximately 130 countries. (*http://www.iso.ch/*) It was established in 1947. Its mission is to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity. Its work is carried out through a hierarchy of technical committees, subcommittees, and working groups.

2. Part 553 is amended by adding the following new Appendix C:

Appendix C to Part 553—Statement of Policy: Implementation of the United Nations/Economic Commission for Europe (UN/ECE) 1998 Agreement on Global Technical Regulations—Agency Policy Goals and Public Participation

I. Agency Policy Goals for the 1998 Global Agreement and International Motor Vehicle Safety Harmonization

A. Paramount Policy Goal Under the 1998 Global Agreement

Continuously improve safety and seek high levels of safety, particularly by developing and adopting new global technical regulations reflecting consideration of current and anticipated technology and safety problems.

B. Other Policy Goals

1. Adopt and maintain U.S. standards that fully meet the need in the U.S. for vehicle safety.

2. Harmonize U.S. standards with those of other countries or regions, particularly by raising U.S. standards at least to the level of the best practices in those other safety standards.

3. Enhance regulatory effectiveness through regulatory cooperation with other countries and regions, thereby providing greater safety protection with available government resources.

II. Public Participation and the Establishing of Global Technical Regulations for Motor Vehicle Safety, Theft, and Energy Efficiency

A. Summary of the Process Under the 1998 Global Agreement for Establishing Global Technical Regulations

1. Proposal Stage

A Contracting Party submits a proposal for either a harmonized or new global technical regulation to the Executive Committee of the 1998 Global Agreement (*i.e.*, the Contracting Parties to the Agreement). If appropriate, the Committee then refers the proposal to a working party of experts to develop the technical elements of the regulation.

2. Recommendation Stage

When a working party of experts recommends a harmonized or new global technical regulation, it sends a report and the recommended regulation to the Executive Committee. The Committee then determines whether the recommendations are adequate and considers the establishment of the recommended regulation.

3. Establishment Stage

If the Executive Committee reaches consensus in favor of that recommended global technical regulation, the global technical regulation is established in the Global Registry.

B. Notice of Annual Work Program of WP.29

Each year, NHTSA will publish a notice concerning the motor vehicle safety, theft, and energy efficiency aspects of the annual program of work for the UN/ECE's World Forum for Harmonization of Vehicle Regulations (WP.29). Each notice will include:

1. A calendar of scheduled meetings of WP.29 participants and working parties of experts, and meetings of the Executive Committee; and

2. A list of the global technical regulations that:

a. Have been proposed and referred to a working party of experts, or

b. Have been recommended by a working party of experts.

Periodically, the notice will also include a request for public comments on the subjects for which global technical regulations should be established under the 1998 Global Agreement. The agency will publish a subsequent notice identifying the priorities on which NHTSA will focus in the future under the 1998 Global Agreement.

C. Public Meetings

NHTSA will hold periodic public meetings on its activities under the 1998 Global Agreement. If the extent of recent and anticipated significant developments concerning those activities so warrant, NHTSA will hold a public meeting within the 60-day period before each of the three sessions of WP.29 held annually. At each of these public meetings, NHTSA will:

1. Brief the public on the significant developments that occurred at the session of WP.29, the meetings of the working parties of experts and the meetings of the Executive Committee since the previous public meeting;

2. Based on the availability of provisional agendas, inform the public about the significant issues to be addressed at upcoming session of WP.29 and meetings of the working parties of experts and any votes scheduled at the next session of the Executive Committee on recommended global technical regulations; and

3. Invite public comment and questions concerning those past developments and upcoming issues and votes and the general positions that the U.S. could take regarding those votes, and concerning any other significant developments and upcoming matters relating to pending proposed or recommended global technical regulations.

Appropriate agency officials will participate in the public meetings. These public meetings may be held separately from or in conjunction with the agency's quarterly meetings on its vehicle rulemaking and research and development programs. The agency may hold additional public meetings.

D. Notices Concerning Individual Global Technical Regulations

1. Notice Requesting Written Comment on Proposed Global Technical Regulations

a. *Proposals by the U.S.* (See Figure 1.)

Before submitting a draft U.S. proposal for a global technical regulation to WP.29, NHTSA will publish a notice requesting public comments on the draft proposed global technical regulation. In the case of a draft proposal for a harmonized global technical regulation, the notice will compare that regulation with any existing, comparable U.S. standard, including the relative impacts of the regulation and standard. In the case of a draft proposal for a new global technical regulation, the notice will generally discuss the problem addressed by the proposal, the rationale for the proposed approach for addressing the problem, and the impacts of the proposal. NHTSA will consider the public comments and, as it deems appropriate, revise the proposal and any of its supporting documentation and then submit the proposal to WP.29.

b. *Proposals by a Contracting Party other than the U.S.* (See Figure 2.)

After a proposal by a Contracting Party other than the U.S. has been referred to a working party of experts and has been made available in English by WP.29, NHTSA will make the draft proposal available in the DOT docket (*http://dms.dot.gov/*). The agency will then publish a notice requesting public comment on the draft proposal and will consider the comments in developing a U.S. position on the proposal.

2. Notice Requesting Written Comment on Recommended Global Technical Regulations

If a working party of experts recommends a global technical regulation and sends a report and the recommended regulation to the Executive Committee, NHTSA will make an English language version of the report and the regulation available in the DOT docket (*http://dms.dot.gov/*) after they are made available by WP.29. The agency will publish a notice requesting public comment on the report and regulation. Before participating in a vote of the Executive Committee regarding the establishment of the regulation, the agency will consider the comments and develop a U.S. position on the recommended technical regulation.

3. Notice Requesting Written Comment on Established Global Technical Regulations

If a global technical regulation is established in the Global Registry by a consensus vote of the Executive Committee, and if the U.S. voted for establishment, NHTSA will publish a notice requesting public comment on adopting the regulation as a U.S. standard. Any decision by NHTSA whether to issue a final rule adopting the regulation or to issue a notice terminating consideration of that regulation will be made in accordance with applicable U.S. law and only after careful consideration and analysis of public comments.

E. Availability of Documents

As we obtain English versions of key documents relating to motor vehicle safety, theft or energy conservation that are generated under the 1998 Agreement (e.g., proposals referred to a working party of experts, and reports and recommendations issued by a working party), we will place them in the internet-accessible DOT docket (*http://dms.dot.gov/*). Within the limits of available resources, we will also place the documents on an international activities page that will be included in our Website (*http://www.nhtsa.dot.gov/cars/rules/international/index.html*).

BILLING CODE 4910–59–P

Figure 1

Public Participation

US Proposal

for a Harmonized or New Global Technical Regulation

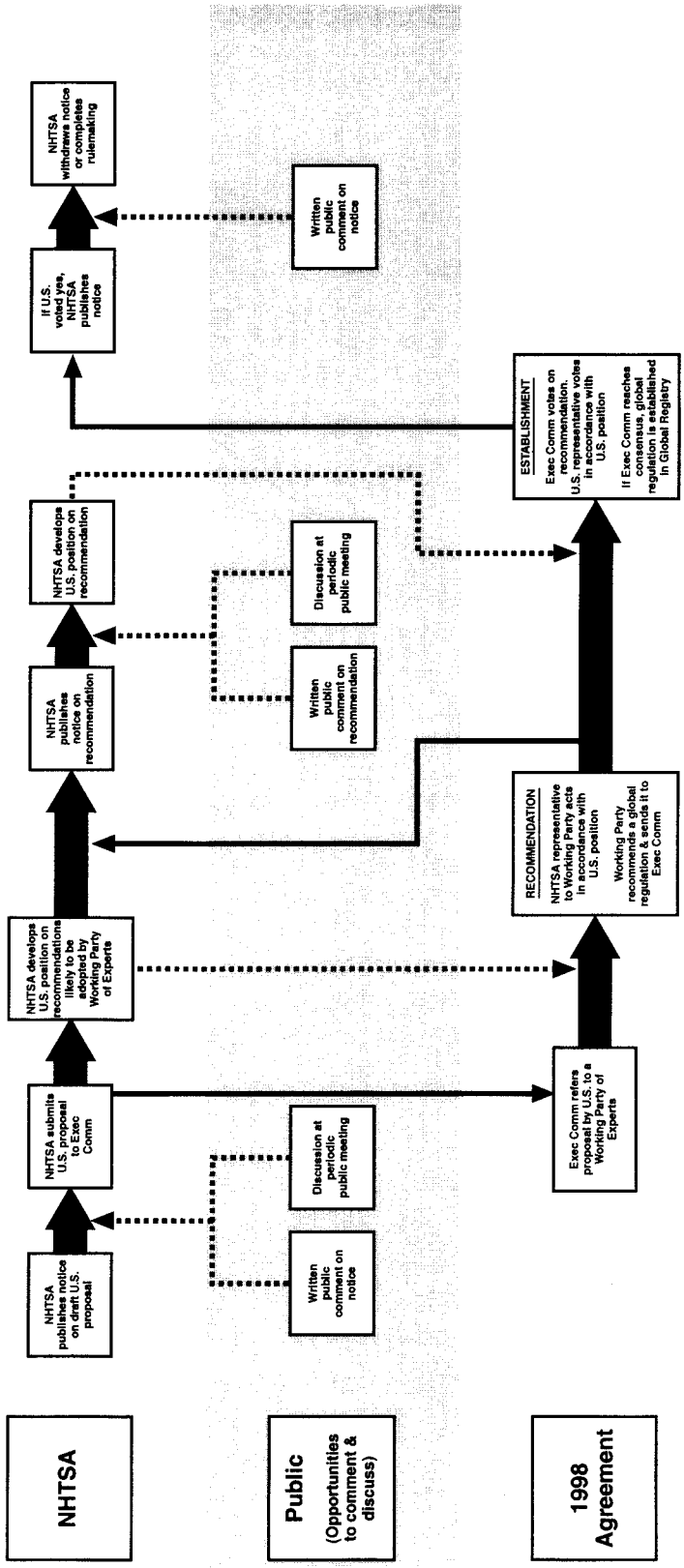
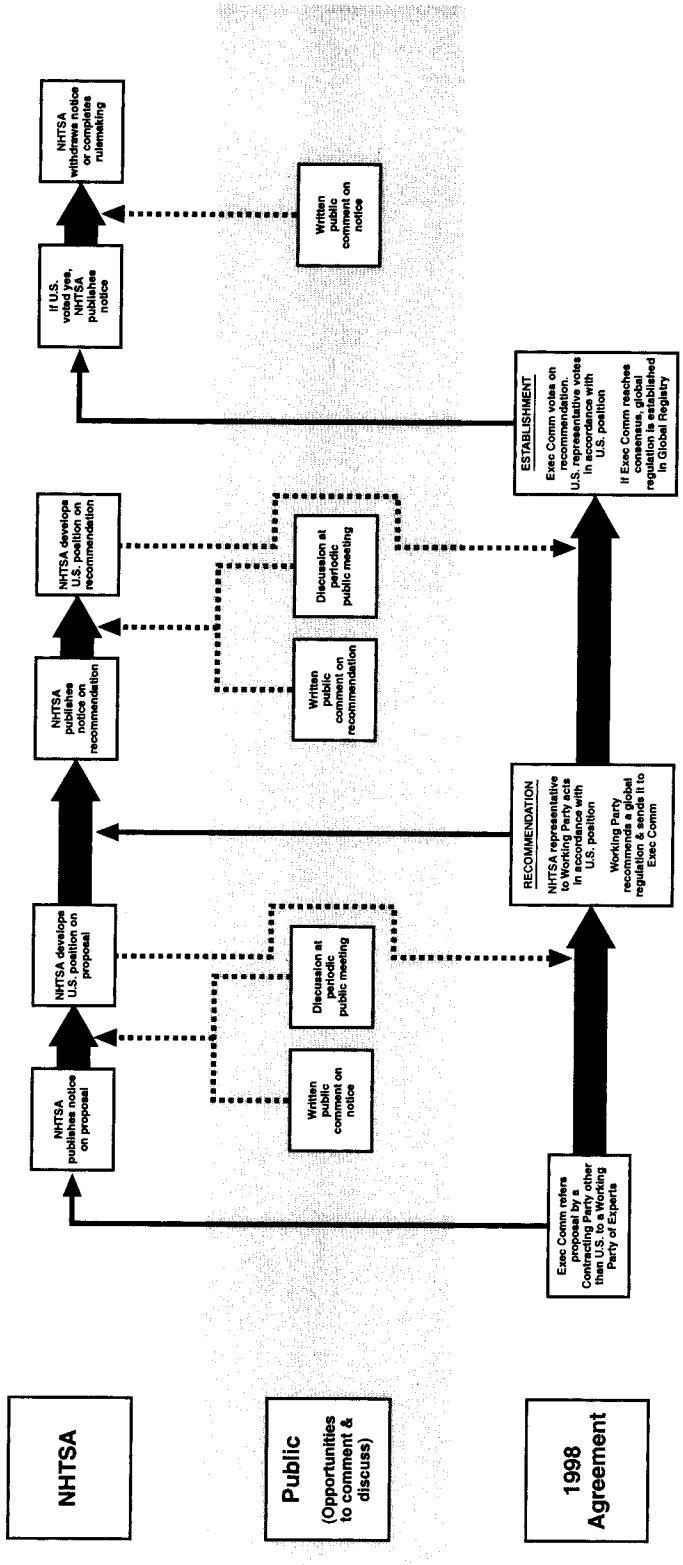


Figure 2

Public Participation

Non-US Proposal

for a Harmonized or New Global Technical Regulation



Issued on August 17, 2000.

L. Robert Shelton,

Executive Director.

[FR Doc. 00–21450 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000502120–0215–02; I.D. 041000E]

RIN 0648–AN39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 12

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 12 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule limits the harvest and possession of red porgy in or from the exclusive economic zone (EEZ) off the southern Atlantic states to specified incidental catch amounts, adds to the parameters that may be established or modified via the FMP's framework procedure for regulatory adjustments (framework procedure), and modifies the snapper-grouper limited access system to allow transfers of a trip-limited permit among vessels owned by the same person regardless of vessel size (length and tonnage). The intended effect is to protect and rebuild the currently overfished red porgy resource; to facilitate timely implementation of measures for the protection of snapper-grouper essential fish habitat (EFH) and essential fish habitat areas of particular concern (EFH HAPCs) through the framework procedure; and to remove an unnecessary restriction on the transfer of snapper-grouper trip-limited permits.

DATES: This final rule is effective September 22, 2000, except for the amendments to §§ 622.39(d)(1)(vi), 622.39(d)(2), and 622.44(c)(4)(i) which are effective August 29, 2000.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments regarding the collection-of-information requirements contained in this rule should be sent to F/SER22, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). Comments on any ambiguity or unnecessary complexity arising from the language used in this rule should be directed to the Southeast Regional Office, NMFS, at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Eldridge, 727–570–5305; fax 727–570–5583; e-mail *Peter.Eldridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 19, 2000, NMFS announced the availability of Amendment 12 and requested comments on the amendment (65 FR 20939). A proposed rule to implement the measures in Amendment 12, with a request for comments through July 6, 2000, was published on June 6, 2000. (65 FR 35877). NMFS approved Amendment 12 on July 19, 2000. The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

The red porgy resource is overfished. In an emergency interim rule (EIR) published September 3, 1999 (64 FR 48324), NMFS prohibited the harvest and possession of red porgy in or from the EEZ off the southern Atlantic states. NMFS extended the prohibition on harvest and possession of red porgy through August 28, 2000 (65 FR 10039, February 25, 2000). The detailed analysis that led to the conclusion that the red porgy resource is overfished was summarized in the EIR (64 FR 48324) and is not repeated here.

Comments and Responses

Comment 1: One commenter supports the management measures in Amendment 12 and notes that the management actions have over a 50-percent probability of rebuilding the red porgy resource during the specified rebuilding time frame. The commenter believes that the actions taken in Amendment 12, coupled with the limited entry provisions of Amendment 8, are more than adequate to address the Council's concerns with red porgy. The commenter opposes an extension of the harvest moratorium, as established by the emergency interim rule, because continuing the moratorium would result in excessive discard mortality of red porgy due to the depth at which fish are captured (depending upon the depth caught, many or most fish are dead when brought to the boat). The commenter notes that the bycatch allowance will provide valuable size and age information which can be used to evaluate the effectiveness of the rebuilding program for red porgy. Also, the commenter suggests that anecdotal accounts by North Carolina fishermen indicate that the red porgy resource may not be in as serious an overfished condition as indicated in the most recent NMFS stock assessment.

Response: NMFS agrees that the management measures in Amendment 12 should lead to recovery of the red porgy resource within the prescribed stock rebuilding time frame. Specifically, if one assumes a total release mortality of 18 percent, there is over a 75-percent probability that the management measures in Amendment 12 will result in a complete recovery of the red porgy resource within the prescribed rebuilding period. NMFS also believes that the information obtained from sampling the catch associated with the bycatch allowance will provide useful information on the size and age structure of the red porgy resource as it recovers. These size and age data, along with limited fishery-independent information, will allow the Council (and NMFS) to evaluate the status of the recovery of the red porgy resource every 2 years and propose appropriate management actions based upon the assessed condition of the resource. The bycatch allowance should mitigate some of the temporary, negative economic impacts on headboats and commercial vessels, while allowing the red porgy resource to recover within the prescribed time frame. As for the comment that red porgy is not overfished, see response to Comment 4.

Comment 2: The Environmental Protection Agency (EPA) commented on the final supplemental environmental impact statement for Amendment 12. While EPA supports Amendment 12 overall (including the 14-inch (35.6-cm) minimum size limit, the one fish recreational bag limit, the one fish per person possession limit for charter and commercial vessels during the period January through April, and the Council's intent to review the status of the red porgy resource every two years, it prefers to maintain the moratorium on harvest and possession of red porgy (no commercial trip limit), as implemented under the emergency regulations. EPA references the possible adverse impacts on stock recovery of the bycatch allowance and notes that the stock

recovery period of red porgy should be shorter with a harvest moratorium.

Response: While NMFS agrees that harvest moratorium could result in a quicker recovery of red porgy, the commercial trip limit will still allow the resource to recover during the prescribed stock rebuilding time frame. Additionally, NMFS believes that the bycatch allowance will provide useful information for scientists to evaluate the rate of recovery of this resource and that it will mitigate some of the temporary, negative economic impacts on headboats and commercial vessels. As noted before, depending upon the depth caught, many or most red porgy are dead when brought to the boat.

Comment 3: Two commenters support the management measures in Amendment 12, but recommend that the commercial trip limit be increased from 50 to 100 lb (22.7 to 45.4 kg).

Response: Under the Magnuson-Stevens Act, NMFS, when reviewing an FMP amendment proposed by a Council, can only approve or disapprove a management measure, it can not alter it. Thus, NMFS can only approve or disapprove the 50-lb (22.7-kg) commercial trip limit in Amendment 12. It cannot change it.

Comment 4: Six commenters oppose the conservation measures in Amendment 12 because they believe that the red porgy resource is not overfished, that large red porgy are abundant, and that red porgy caught in deep water will not survive (i.e., whatever conservation measures are established, they will not prevent this bycatch mortality). They prefer no trip limit.

Response: The Council and NMFS agree that many red porgy that are taken in deep water may not survive. It follows that these dead fish will not help the resource to recover and would be considered wasted if not utilized. The Council considered this and, in part to prevent such waste, allowed a 1-fish recreational bag limit (year-round) and a 50-lb (22.7-kg) commercial trip limit from May through December. Additionally, the commercial trip limit will provide fishery-dependent data that will allow scientists to evaluate the status of recovery of the resource. The Council and NMFS disagree with the belief that red porgy are not overfished. NMFS' 1999 stock assessment clearly shows that red porgy are overfished and that there is a clear need to rebuild this resource. Commercial and recreational landings have declined substantially. A failure to act at this time would exacerbate the resource decline as older fish die and are not replaced by younger fish. Further, national standard 1 of the Magnuson-Stevens Act requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

Comment 5: Three commenters wanted to subdivide the South Atlantic EEZ into several zones and have different management measures for each zone. They inferred that one zone could be off Georgia and Florida and another could be off South Carolina and North Carolina.

Response: The red porgy resource is managed as one stock throughout the South Atlantic region. Although adults may not move great distances, they appear to move inshore and offshore depending upon environmental conditions. Further, eggs and larvae do move depending upon prevailing currents. Catch information indicates that the abundance of red porgy has been reduced more or less over the entire area, even though the center of abundance appears to be in the northern portion of the region. Given that the best available scientific information indicates that there is only one stock of red porgy, national standard 3 of the Magnuson-Stevens Act requires that, to the extent practicable, the individual stock of fish be managed as a unit throughout its range. Because fishing zones were not included included in Amendment 12, they are not addressed further.

Comment 6: Four hundred and ninety identical comments were received from individuals. They stated that the moratorium on harvest of red porgy (as established by the emergency rule) should be continued and that the 50-lb (22.7-kg) commercial trip limit and 1-fish recreational bag limit in Amendment 12 should be disapproved. They recommended that ''no take'' zones be established where fishing would not be allowed. Finally, they recommended that an interim rule be issued that would prevent any harvest of red porgy should NMFS be unable to implement Amendment 12 prior to the expiration of the emergency interim rule on August 28, 2000.

Response: Amendment 12 does not contain a management measure to implement ''no take'' zones, so such a measure cannot be approved and implemented under Amendment 12. Consequently, this comment is not addressed further. At this time, it appears that the approved measures of Amendment 12 to conserve and rebuild the red porgy resource can be implemented prior to the expiration of the current EIR. If this expectation changes, NMFS will consider implementing an interim rule to ensure that red porgy are not further overfished.

Red porgy are one of several species that occur in relatively deep water. Thus, fishing for other species at those depths will result in an incidental bycatch of red porgy. Most fish, including red porgy, that are hooked in deep water and hauled to the surface will not survive. The 1-fish recreational bag limit and the 50-lb (22.7-kg) commercial trip limit will allow recovery of this resource according to the approved stock rebuilding plan. In addition, those fish caught and retained as bycatch will provide useful information on the size and age structure of the red porgy resource. This information will facilitate the determination of the effectiveness of the red porgy stock rebuilding program. Additionally, the bycatch allowance will mitigate the temporary, economic hardship on fishermen due to the reduced harvests.

Comment 7: Three commenters recommended that NMFS: (1) issue an interim rule extending the closure of the red porgy fishery until long-term management measures are implemented that will clearly prevent overfishing, minimize bycatch, and help the population rebuild; (2) disapprove Amendment 12 and return it to the Council for revision of the 50-lb (22.7-kg) commercial trip limit for May 1 through December 31, the 1-fish commercial trip (possession) limit for January through April, and the year-round 1-fish recreational bag limit, in accordance with the precautionary approach to fisheries management; and (3) require the Council to establish marine reserves to prevent bycatch of red porgy. They commented that an interim rule should be in place prior to the expiration of the current emergency rule on August 28, 2000. Further, they commented that Amendment 12 will not prevent overfishing and, thus, violates national standard 1. They also believe that Amendment 12 will not minimize bycatch and may actually increase bycatch in violation of national standard 9. Also, they commented that Amendment 12 may violate the rebuilding requirements of the Magnuson-Stevens Act for overfished stocks because it adopts an 18-year rebuilding schedule. They believe it may be possible, in some instances, to rebuild the stock within 10 years. Finally, they commented that NMFS' alleged position in favor of Amendment 12 resulted in private discussions among Council staff and others and that there was no public involvement or access to these discussions, which, they further allege, resulted in NMFS

changing its position from opposing to supporting the measures in Amendment 12. They also stated that all information, including a scientific assessment of the management measures and alternatives in Amendment 12, should have been made available to the public prior to permanent rulemaking.

Response: Because of the complexity of these comments, a brief chronology of events is provided to orient the reader regarding the issues. In March 1999, the Council received NMFS' comprehensive assessment of the red porgy resource, which showed that overfishing was occurring and that conservation measures were required. The Council requested that NMFS issue an EIR to prohibit all harvest and possession of red porgy, and immediately began development of Amendment 12 that would establish permanent measures to prevent overfishing and to rebuild the overfished resource. Based on the Council's request and the condition of the red porgy resource, NMFS issued an EIR, effective September 8, 1999, through March 1, 2000. Because of the shortage of time and the need to safeguard the red porgy resource, the Council took final action on Amendment 12 at its December 1999 meeting and also requested that the EIR be extended through August 28, 2000. At its December 1999 meeting, the Council was briefed on the likely economic consequences of the red porgy harvest moratorium, received input on bycatch mortality of red porgy from its Snapper-Grouper Advisory Panel and others, discussed the NMFS stock assessment, and heard various opinions concerning the status of the resource. During the meeting, the NMFS Regional Administrator (RA) commented that he supported rebuilding the red porgy resource but that NMFS had not taken a position on a harvest moratorium under Amendment 12, if that was the Council's preferred choice. After considering all of the above factors, the Council adopted the measures in Amendment 12 at its December 1999 meeting, with the expectation that the red porgy resource would recover from its currently overfished state within the prescribed recovery time frame. Subsequent to the Council's December 1999 meeting and prior to its March 2000 meeting, discussions continued among NMFS and state scientists regarding the red porgy data and assessment assumptions. In particular, scientists and managers scrutinized two different growth rates for red porgy and considered whether fishing effort had declined in recent years. NMFS then held a conference call among Council staff, NMFS staff, and state personnel to identify issues of concern and to determine whether these issues should be reviewed by the Council at its March 2000 meeting. The conference call results were discussed at the Council's Snapper-Grouper Committee meeting on March 8, 2000, as well as at the Council meeting on March 9, 2000. Primarily, these discussion were regarding the age and growth model used in the virtual population analysis, recent levels of fishing effort, and possible Council action, given the present status of the scientific information. (This is summarized on page 65 of the Council minutes from its March 2000 meeting.) As a result of this discussion, the RA stated that he would encourage the scientists to meet and discuss the scientific issues, perform whatever analyses are appropriate, and obtain a peer review of any analyses outside the NMFS Southeast Region. He also suggested that the Council's Scientific and Statistical Committee review any new information and analyses, preferably before the Council's September 2000 meeting. In summary, Council members had an opportunity to discuss publicly these red porgy scientific and related management issues and take any further necessary and appropriate action at their March 2000 meeting. In this context, it should be noted that the Council took final action on Amendment 12 at the December 1999 meeting, subject to the understanding that it would consider and address any critical comments received on the draft supplemental environmental impact statement at the March 2000 meeting.

The statement that NMFS underwent an ''apparent'' change of view regarding the management measures in Amendment 12 is incorrect. As noted previously, the Council took final action at the December 1999 meeting. Subsequently, a discussion among NMFS and state scientists revealed differences of opinion concerning the data base and interpretation of the 1999 stock assessment. The RA was aware of this discussion and attempted to determine whether there were issues that should be brought to the attention of the Council at its March 2000 meeting. As previously explained, the resulting conference call was fully described for the public at the Council's March 2000 meeting, and the RA described a course of action to improve the red porgy data base so that the Council could take appropriate action in the future, should it be required. It should be noted that NMFS does not make decisions to approve or disapprove management measures proposed by the Council until after considering the public comment received on such measures during Secretarial review, as provided by the Magnuson-Stevens Act. In this case, the public comment period for the amendment ended on June 19, 2000; the public comment period for the proposed rule ended on July 6, 2000. Under Magnuson-Stevens Act provisions, NMFS was required to take final action on Amendment 12 no later than July 19, 2000. Amendment 12 does not contain a management measure to implement ''no take'' zones, so such a measure can not be approved and implemented under Amendment 12. Although both the Council and NMFS believe that ''no take'' zones can be an appropriate management tool, Amendment 12 does not address them. Consequently, this comment is not addressed further.

At this time, it appears that permanent measures to rebuild the red porgy resource can be implemented prior to the expiration of the current EIR.

The best scientific information available, including the NMFS 1999 stock assessment, indicates that the red porgy resource could not be rebuilt within 10 years, even with a harvest moratorium. Because of this, the Council selected and NMFS supports the 18-year rebuilding schedule based on advice from the Southeast Fisheries Science Center. As noted earlier, both the Council and NMFS will be evaluating new information at least every 2 years, and acting accordingly to ensure that the resource recovers in accordance with the established stock rebuilding plan. Amendment 12 is consistent with national standards 1 (prevent overfishing and achieve optimum yield on a continuing basis) and 9 (minimize bycatch to the extent practicable) because there is no practical way to eliminate bycatch in the multi-species snapper-grouper fishery that harvest red porgy. Nonetheless, the Council and NMFS encourage fishermen to change location should they encounter red porgy, so that bycatch and bycatch mortality can be minimized. Since the majority of incidentally taken red porgy will be dead when captured, measurements from these individuals can be used to obtain size and age data.

Comment 8: Two commenters expressed concern that the wording of the commercial trip limit section of the proposed rule, § 622.44(c)(4)(ii), appeared, indirectly, to include charterboats and headboats in the commercial category, thus, entitling

them to the commercial trip limit from May through December.

Response: The applicability of commercial trip limits is addressed in the introductory text of § 622.44(c), which states that the vessel trip limits apply, provided persons aboard the vessel are not subject to the bag limits. Vessels operating as charterboats or headboats are subject to the bag limits; therefore, the commercial trip limits would not apply.

Classification

The Administrator, Southeast Region, NMFS determined that Amendment 12 is necessary for the conservation and management of the snapper-grouper fishery off the South Atlantic states and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

The Council prepared a final supplemental environmental impact statement for the FMP; a notice of availability was published on May 12, 2000 (65 FR 30587).

The amendment implemented by this final rule was prepared by the Council and submitted to NMFS for review, approval, and implementation under authority of the Magnuson-Stevens Act.

An initial regulatory flexibility analysis (IRFA) was prepared for the proposed rule. The actions having an economic impact on small entities include restricting commercial landings of red porgy to a maximum of 50 lb (22.7 kg) per trip from May through December, prohibiting the sale or purchase of red porgy from January through April, reducing the bag limit from 5 to 1 red porgy per person per day or per trip (whichever is more restrictive) and allowing the owner of a vessel having a 225-lb (102-kg) trip-limited permit for snapper-grouper to transfer the permit to a larger vessel under the same ownership. An FRFA based on the IRFA and on the public comments received on the proposed rule and the IRFA was prepared. A summary of the FRFA follows.

There are about 1,200 fishing craft (boats and vessels combined) that are operated by entities that hold permits for commercial snapper-grouper fishing, and all such entities are considered to represent small business entities. About 330 of the fishing craft have a history of red porgy landings, and of these, about 270 are determined to be directly impacted by the proposed actions. The average length of these fishing craft is 37.2 ft (11.4 m); they generate annual average gross revenues of about $42,000, and have net operating revenues of about $29,000 per year. The 1-fish bag limit will affect about 33 headboat operations that are also defined as small business entities. The headboats have an average length of 63 ft (19 m), involve a total capital investment of $220,000, and generate annual average gross revenue of about $123,000. No additional reporting, record keeping, or other compliance requirements by small entities are contained in the final rule.

NMFS received about 500 comments, of which 490 were identical, on the proposed action. The comments that alluded to economic impacts on small entities generally suggested that the red porgy resource was in better biological condition than indicated by the Council and NMFS and that the restrictions on commercial harvest were too severe. NMFS disagreed with the comments about the condition of the red porgy stock. However, NMFS pointed out that while the emergency rule did not allow any level of take, the final rule does allow for some level of commercial incidental catch and allows for some red porgy to be harvested by customers of for-hire vessels. NMFS indicated that the level of take allowed by the final rule will help mitigate the negative economic impacts from the rule. There were no changes to the proposed rule that resulted from public comments.

The Council defined the red porgy actions, including the commercial trip limit, the seasonal prohibition on sale or purchase, and the bag limit, as a single action and considered three alternatives to the action. One alternative was the status quo. Status quo is considered to be the set of management regulations in place before NMFS took an interim emergency action to close the fishery for all users while a permanent change in the regulations was being considered. Although the status quo would have no short-term negative economic impacts on small entities, it was rejected because the Magnuson-Stevens Act specifically requires the Council to take actions to rebuild this severely overfished fishery. Another rejected alternative would prohibit all commercial and recreational fishing for red porgy. The Council rejected this alternative because of the increased short-term negative impacts of a total and indefinite prohibition on all fishing for red porgy. The other rejected alternative was to adopt the commercial trip limit of 50 lb (22.7 kg), but not to have a seasonal prohibition on sale or purchase or a reduction in the bag limit. The Council rejected this alternative because the biological analyses indicated that a more restrictive approach was necessary to meet the specific goal of rebuilding the red porgy stock within an 18-year period. The status quo was considered as an alternative to the action to allow the owner of a vessel with a trip-limited permit for snapper-grouper to transfer the permit to a larger vessel under the same ownership but was rejected because it was not the Council's original intent to have that transfer restriction.

The primary fishery management plan objective addressed by the rule is the objective to ''Prevent overfishing in all species by maintaining the spawning potential ratio (SPR) at or above target levels.'' The rule is needed because the red porgy stock is severely overfished and the Magnuson-Stevens Act requires the Council and NMFS to take action to resolve the overfished status of the stock.

Copies of the FRFA are available (see **ADDRESSES**).

The amendments to §§ 622.39(d)(1)(vi) and 622.39(d)(2) establish, respectively, a daily bag limit of one red porgy per person per day and a possession limit of one red porgy per person per day or one per trip, whichever is more restrictive. The amendment to § 622.44(c)(4)(i) establishes a 50-lb (22.7-kg) commercial trip limit for red porgy, from May 1 through December 31 each year. All three of these amendments relieve restrictions on fishers relative to the regulations prohibiting all harvest of red porgy that have been in place since September 8, 1999.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 0648–0365. The requirement specifies that dealers possessing red porgy, gag, or black grouper during seasonal closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the

burden, to NMFS and OMB (see **ADDRESSES**).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be directed to NMFS Southeast Regional Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 17, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.18, paragraph (e)(2) is revised to read as follows:

§ 622.18 South Atlantic snapper-grouper limited access.

* * * * *

(e) * * *

(2) *Trip-limited permits.* An owner of a vessel with a triplimited permit may request that the RA transfer the permit to another vessel owned by the same entity.

* * * * *

3. In § 622.36, paragraph (b)(5) is revised to read as follows:

§ 622.36 Seasonal harvest limitations.

* * * * *

(b) * * *

(5) *Red porgy.* During January, February, March, and April, each year, the harvest or possession of red porgy in or from the South Atlantic EEZ, and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued without regard to where such red porgy were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such red porgy are subject to the prohibition on sale or puchase, as specified in § 622.45(d)(5).

4. In § 622.39, paragraphs (d)(1)(vi) and (d)(2) are revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(d) * * *

(1) * * *

(vi) Red porgy—1.

* * * * *

(2) *Possession limits.* (i) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

(A) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits of species other than red porgy.

(B) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits of species other than red porgy.

(ii) A person aboard a vessel may not possess red porgy in or from the EEZ in excess of one per day or one per trip, whichever is more restrictive.

* * * * *

5. In § 622.44, paragraph (c)(4) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(4) *Red porgy.* (i) From May 1 through December 31, 50 lb (22.7 kg).

(ii) From January 1 through April 30, the seasonal harvest limit specified in § 622.36(b)(5) applies.

* * * * *

6. In § 622.45, paragraph (d)(5) is revised and paragraph (d)(7) is added to reaad as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) * * *

(5) During January, February, March, and April, no person may sell or purchase a red porgy harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during January through April does not apply to red porgy that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the red porgy;

(iii) The port and date of offloading from the vessel harvesting the red porgy; and

(iv) A statement signed by the dealer attesting that the red porgy was harvested from an area other than the South Atlantic.

* * * * *

(7) During March and April, no person may sell or purchase a gag or black grouper harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during March and April does not apply to gag or black grouper that were harvested, landed ashore, and sold prior to March 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of gag or black grouper harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the gag or black grouper;

(iii) The port and date of offloading from the vessel harvesting the gag or black grouper; and

(iv) A statement signed by the dealer attesting that the gag or black grouper was harvested from an area other than the South Atlantic.

* * * * *

7. In § 622.48, paragraph (f) is revised to read as follows:

§ 622.48 Adjustment of management measures.

(f) *South Atlantic snapper-grouper and wreckfish.* Biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, definitions of essential fish habitat, essential fish habitat, essential fish habitat HAPCs or Coral HAPCs, and restrictions on gear and fishing activities applicable in essential fish habitat and essential fish habitat HAPCs.

* * * * *

[FR Doc. 00–21545 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 164
Wednesday, August 23, 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–202–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes Equipped with Dowty Ram Air Turbines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300–600 series airplanes, that would have superseded an existing AD that currently requires repetitive deployment tests of the ram air turbine (RAT) and checks of the adjustment of the locking rod. The proposed AD would also have required modification of the RAT, which would terminate the repetitive tests and checks. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action would revise the proposed rule by expanding the applicability and by referencing revised procedures for accomplishment of the required actions. The actions specified by this new proposed AD are intended to ensure the availability of the RAT in case of need.

DATES: Comments must be received by September 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–202–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 99–NM–202–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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–202–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–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 27, 1999 (64 FR 57796). That NPRM proposed to supersede AD 94–04–05, amendment 39–8823 (59 FR 7208, February 15, 1994), which is applicable to certain Airbus Industrie Model A300, A310, and A300–600 series airplanes. That NPRM would have continued to require repetitive deployment tests of the ram air turbine (RAT) and checks of the adjustment of the locking rod. That NPRM would have added a requirement for modification of the RAT, which would terminate the repetitive tests and checks. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. That NPRM was intended to ensure the availability of the RAT in case of need.

Due consideration has been given to the comments received in response to the NPRM.

Revisions to the Applicability

One commenter, the manufacturer, has advised that additional RAT part numbers (P/N) 768336 and 768338 should be included in the effectivity of

the AD. Two of the RAT P/N's specified in the applicability of the proposed AD, RAT 16C 109 VG and RAT 16C 110 VG, may have been previously modified at the option of operators to install redesigned plungers, springs, and an O-ring seal. After such modification, the RAT P/N's are re-identified as 768336 and 768338, respectively. However, airplanes having these re-identified P/N's installed also should be subject to the requirements of the AD. The commenter notes that the related service information is being revised, and that the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, will be revising or issuing new French airworthiness directives to address the two additional P/N's.

The same commenter advises that reference to P/N RAT 16C 104 VG should be removed from the applicability. The commenter states that the RAT manufacturer has confirmed that this P/N was never installed on Airbus Model A300, A310, and A300–600 series airplanes.

The FAA concurs that the applicability of the AD must be revised to include references to RAT P/N's 768336 and 768338 and to delete the reference to P/N RAT 16C 104 VG. The AD has been revised accordingly.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletins A300–29–0106 (for Model A300 series airplanes), A310–29–2078 (for Model A310 series airplanes), and A300–29–6039 (for Model A300–600 series airplanes); all Revision 03, all dated June 28, 2000. These service bulletins describe procedures for modification of the RAT by installing a grease nipple and a scraper seal assembly, replacing the locking rod spring with a stronger spring, and re-identifying the RAT with a new part number. These revisions contain procedures equivalent to those in the previous revisions of the service bulletins (which were cited as the appropriate sources of service information in the proposed AD), but reference additional P/N's and correct certain other references.

The manufacturer also has issued Airbus Service Bulletins A300–29–0101 (for Model A300 series airplanes), A310–29–2039 (for Model A310 series airplanes), and A300–29–6030 (for Model A300–600 series airplanes); all Revision 02, all dated June 28, 2000. These service bulletins describe procedures for repetitive deployment tests of the ram air turbine (RAT) and checks of the adjustment of the locking rod; corrective actions, if necessary; and greasing of the RAT leg at the entry and exit positions of the locking rod spring housing. The service bulletins contain equivalent procedures to those contained in Airbus All Operator Telex (AOT) 29–09, dated November 16, 1993 (which was cited as an appropriate source of service information in the proposed AD), but provide additional references to other service information necessary for accomplishment of the procedures.

The Direction Generale de l'Aviation Civile (DGAC) classified these service bulletins as mandatory and issued French airworthiness directive 2000–259–315(B), dated June 28, 2000, in order to assure the continued airworthiness of these airplanes in France.

Other Change to NPRM

The FAA has revised the compliance time for accomplishment of the modification of the RAT to ''within 24 months after the effective date of this AD.'' In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. This compliance time is also consistent with the DGAC's requirement for accomplishment of the modification prior to December 21, 2002.

Conclusion

Since the previously described changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 126 airplanes of U.S. registry that would be affected by this proposed AD.

The repetitive tests and checks that are required by AD 94–04–05, and retained in this proposed AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement of this proposed AD on U.S. operators is estimated to be $15,120, or $120 per airplane, per test/check cycle.

The new modification that is proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,995 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $548,730, or $4,355 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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 removing amendment 39–8823 (59 FR 7208, February 15, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–202–AD. Supersedes AD 94–04–05, Amendment 39–8823.

Applicability: Model A300, A310, and A300–600 series airplanes; certificated in any category; equipped with Dowty ram air turbines (RAT) having the following part numbers:

RAT 16C 100 VG
RAT 16C 101 VG
RAT 16C 102 VG
RAT 16C 103 VG
RAT 16C 105 VG
RAT 16C 109 VG
RAT 16C 110 VG 768336
768338

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 (e)(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 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 ensure the availability of the RAT in case of need, accomplish the following:

Restatement of Requirements of AD 94–04–05:

Repetitive Tests and Checks

(a) Within 60 days after March 2, 1994 (the effective date of AD 94–04–05, amendment 39–8823), or 500 hours time-in-service after March 2, 1994, whichever occurs first, perform a deployment test of the RAT and check the adjustment of the locking rod, in accordance with Airbus All Operator Telex (AOT) 29–09, dated November 16, 1993. Repeat the deployment test and adjustment check thereafter at intervals not to exceed 10 months.

(1) If no discrepancy is found, prior to further flight, apply grease to the RAT leg at the entry and exit positions of the locking rod spring housing, in accordance with the AOT.

(2) If any discrepancy is found, prior to further flight, correct it and apply grease to the RAT leg at the entry and exit positions of the locking rod spring housing, in accordance with the AOT.

New Requirements of This AD:

New Service Bulletin Revisions

(b) As of the effective date of this new AD, Airbus Service Bulletin A300–29–0101 (for Model A300 series airplanes), A310–29–2039 (for Model A310 series airplanes), or A300–29–6030 (for Model A300–600 series airplanes); all Revision 02, all dated June 28, 2000; as applicable; must be used for accomplishment of the actions required by paragraph (a) of this AD.

Modification

(c) Within 24 months after the effective date of this AD, modify the RAT by installing a grease nipple and a scraper seal assembly, replacing the locking rod spring with a stronger spring, and re-identifying the RAT with a new part number; in accordance with Airbus Service Bulletin A300–29–0106 (for Model A300 series airplanes), A310–29–2078 (for Model A310 series airplanes), or A300–29–6039 (for Model A300–600 series airplanes); all Revision 03, all dated June 28, 2000; as applicable. Accomplishment of the modification constitutes terminating action for the repetitive tests and checks required by paragraph (a) of this AD.

Note 2: The service bulletins refer to Sundstrand Service Bulletin ERPS26T–29–1 for modification instructions and new part numbers.

Note 3: Accomplishment of the actions specified in Airbus Service Bulletin A300–29–0106, A310–29–2078, or A300–29–6039; Revision 01; all dated September 8, 1997; or Revision 02, all dated January 26, 1999; as applicable; prior to the effective date of this AD, is acceptable for compliance with paragraph (c) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install a RAT having the following part numbers on any airplane:

RAT 16C 100 VG
RAT 16C 101 VG
RAT 16C 102 VG
RAT 16C 103 VG
RAT 16C 105 VG
RAT 16C 109 VG
RAT 16C 110 VG
768336
768338

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 94–04–05, amendment 39–8823, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) 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.

Note 5: The subject of this AD is addressed in French airworthiness directive 2000–259–315(B), dated June 28, 2000.

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

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–21464 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–359–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –301 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, and –-301 series airplanes, that currently requires a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. The existing AD also requires installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights. This action would add a requirement for a one-time inspection to determine if teflon spiral wrap is installed on the wiring of the lavatory lighting system, and installation, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the possibility of a fire on an airplane due to such chafing and consequent short circuiting, overheating, and smoking of the wires on the aircraft structure.

DATES: Comments must be received by September 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–359–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. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 99–NM–359–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, New York Aircraft Certification Office, Systems & Flight Test Branch (ANE–172), FAA, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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–359–-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–359–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 20, 1998, the FAA issued AD 98–11–21, amendment 39–10546 (63 FR 29546, July 6, 1998), applicable to certain de Havilland Model DHC–8–102, –103, and –301 series airplanes, to require a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. That AD also requires installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights. That action was prompted by reports of chafing found on the electrical wiring of the cabin ceiling lighting system. The requirements of that AD are intended to prevent the possibility of a fire on an airplane due to such chafing and consequent short circuiting, overheating, and smoking of the wires on the aircraft structure.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has advised the FAA that the procedures for rework described in de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995, could have been misinterpreted. (That service bulletin was cited as the appropriate source of service information in AD 98–11–21). The misinterpretation could have resulted in failure to install teflon spiral wrap on the wiring of the lavatory lighting system as part of Modification 8/2158.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 8–33–35, Revision 'B', dated September 25, 1998, which describes procedures for a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. The service bulletin also describes procedures for installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights (Modification 8/2158). Revision 'B' of the service bulletin contains essentially equivalent procedures to those specified in the original issue of the service bulletin, but has been revised to clarify that teflon spiral wrap should also be installed on the wiring of the lavatory lighting system. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–95–18R1, dated January 8, 1999, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–11–21 to continue to require the actions specified in that AD. The proposed AD would also add a requirement for a one-time inspection to determine if teflon spiral wrap is installed on the wiring of the lavatory lighting system, and installation, if necessary. The new actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 73 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 98–11–21 take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $250 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $149,650, or $2,050 per airplane.

The new inspection that is proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $8,760, or $120 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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 removing amendment 39–10546 (63 FR 29546, July 6, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 99–NM–359–AD. Supersedes AD 98–11–21, Amendment 39–10546.

Applicability: Model DHC–8–102, –103, and –301 series airplanes; certificated in any category; serial numbers 002 though 010 inclusive, 012 through 201 inclusive, 203 through 209 inclusive, 211 through 215 inclusive, 217 through 220 inclusive, 222, and 223; except those airplanes on which de Havilland Modification 8/1114 or 8/1110 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 prevent the possibility of a fire on an airplane due to chafing of the electrical wiring of the cabin ceiling lighting system, accomplish the following:

Restatement of Requirements of AD 98–11–21

Inspection for Wire Wear and Breakage

(a) Within 1,000 hours time-in-service or 6 months after July 6, 1998 (the effective date of AD 98–11–21, amendment 39–10546), whichever occurs first: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995, or Bombardier Service Bulletin S.B. 8–33–35, Revision 'B', dated September 25, 1998.

(1) Perform a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights. Prior to further flight, replace any damaged wiring.

(2) Install teflon spiral wrap on the wiring of the ceiling and sidewall lights (Modification 8/2158).

Note 2: Accomplishment of the actions required by paragraph (a) of this AD in accordance with Bombardier Service Bulletin S.B. 8–33–35, Revision 'A', dated July 28, 1998, is acceptable for compliance with that paragraph.

New Requirements of This AD

Inspection for Installed Teflon Spiral Wrap

(b) Within 1,000 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first: Perform a one-time inspection to determine if teflon spiral wrap is installed on the wiring of the lavatory lighting system, in accordance with Bombardier Service Bulletin S.B. 8–33–35, Revision 'B', dated September 25, 1998.

(1) If teflon spiral wrap is not installed, prior to further flight, install teflon spiral wrap on the wiring of the lavatory lighting system in accordance with the service bulletin.

(2) If teflon spiral wrap is installed, no further action is required by this paragraph.

Alternative Methods of Compliance

(c)(1) 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, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–11–21, Amendment 39–10546, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(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 airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–95–18R1, dated January 8, 1999.

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

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–21461 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–68–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

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 Bombardier Model CL–600–2B19 series airplanes. This proposal would require repetitive eddy current inspections for cracking of the main landing gear (MLG) main fittings, and corrective action, if necessary. This action is necessary to prevent failure of the MLG main fitting, which could result in collapse of the MLG upon landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–68–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. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 2000–NM–68–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, ANE–171, FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 2000–NM–68–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. 2000–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 series airplanes. TCCA advises that three cases of premature failure of the main landing gear (MLG) main fitting have been reported. The reports indicated that a circumferential crack was found on the MLG main fitting at the radius between the fitting cylinder area and the upper attachment lug for the shock strut. The exact cause of the cracking is not known at this time. Such cracking, if not corrected, could result in failure of the MLG main fitting, and consequent collapse of the MLG upon landing.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–32–079, Revision 'B', including Appendix 1, dated June 1, 2000. The alert service bulletin describes procedures for a one-time visual inspection and repetitive eddy current inspections to detect cracking of the MLG main fittings, and replacement of any cracked fitting with a new or serviceable fitting. TCCA issued Canadian airworthiness directive CF–99–32, dated December 21, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below. The proposed AD also would require that operators report results of inspection findings to the manufacturer.

Difference Between Proposed Rule and Related Service Bulletin

The alert service bulletin recommends that a visual inspection for cracking of

the MLG main fitting be accomplished as an interim measure, prior to accomplishment of the eddy current inspection. However, this AD requires only the eddy current inspection to detect cracks, prior to the accumulation of 1,500 total flight cycles or within 150 flight cycles after the effective date of this AD, whichever occurs later. Consistent with the findings of TCCA, the FAA considers that a visual inspection in this area of the landing gear would not be reliable or effective in determining the existence of a crack at this location.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 236 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $14,160, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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:

Bombardier, Inc. (Formerly Canadair): Docket 2000–NM–68–AD.

Applicability: Model CL–600–2B19 series airplanes certificated in any category, serial numbers 7003 and subsequent.

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 (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 prevent failure of the main fitting of the main landing gear (MLG), which could result in collapse of the MLG upon landing, accomplish the following:

Inspection and Replacement

(a) Prior to the accumulation of 1,500 total flight cycles, or within 150 flight cycles after the effective date of this AD, whichever occurs later: Perform an eddy current inspection to detect cracking of the MLG main fittings, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision 'B', including Appendix 1, dated June 1, 2000. If any cracking is found, prior to further flight, replace the cracked fitting with a new or serviceable fitting in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 500 flight cycles.

Reporting Requirement

(b) Within 14 days after each inspection required by paragraph (a) of this AD, report all findings, positive or negative, to: Bombardier Aerospace, Regional Aircraft, CRJ Action Desk, fax number 514–855–8501. 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.

Alternative Methods of Compliance

(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, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

Special Flight Permits

(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 airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–99–32, dated December 21, 1999.

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

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–21462 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–273–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Aerospatiale Model ATR72 series airplanes, that would have required a revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate inspections to detect fatigue cracking in certain structure, inspection intervals, and life limits for certain components. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule to require the incorporation of revised and new inspections and life limits. The actions specified by this new proposed AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Comments must be received by September 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–273–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. Comments may be submitted via fax to (425) 227–1232.

Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 97–NM–273–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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 97–NM–273–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, ANM–114, Attention: Rules Docket No. 97–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Aerospatiale Model ATR72 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 3, 1999 (64 FR 42054). That NPRM would have required a revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate inspections to detect fatigue cracking in certain structure, inspection intervals, and life limits for certain components. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. Such fatigue cracking, if not corrected, would adversely affect the structural integrity of these airplanes.

Comments

Due consideration has been given to the comments received in response to the NPRM.

Necessity for Rulemaking

One commenter, an operator, questions the need to issue the proposed AD. The commenter notes that a listing of airworthiness limitations is required for type certification, as specified by section 25.1529 of the Federal Aviation Regulations (14 CFR 25.1529) and Appendix H, paragraph H25.4. The commenter states that this listing is included in its Operations Specifications, and that such specifications would never be approved with any airworthiness limitations that were beyond the limits specified by the manufacturer. In light of this, the commenter considers the actions required by the proposed rule to be redundant.

The FAA infers that the commenter requests that the proposed AD be withdrawn. The FAA does not concur. As stated in the NPRM, all products certificated to comply with the airworthiness standards requiring ''damage tolerance assessments'' must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals), that include an Airworthiness Limitations Section (ALS).

Based on in-service data or post-certification testing and evaluation, the manufacturer may revise the ALS to include new or more restrictive life limits and structural inspections, or it may become necessary for the FAA to impose new or more restrictive life limits and structural inspections, in order to ensure continued structural integrity and continued compliance with damage tolerance requirements. However, in order to require compliance with these new inspection requirements and life limits for previously certificated airplanes, the FAA must engage in rulemaking; namely, the issuance of an AD. Because loss of structural integrity would constitute an unsafe condition, it is appropriate to impose such requirements through the AD process.

Although prudent operators already may have incorporated the latest revisions of the ALS, issuance of this AD ensures that all operators take appropriate action to correct the identified unsafe condition.

The practice of requiring a revision to the ALS, rather than requiring individual inspections, has been used for several years and is not a novel or unique procedure. Requiring ALS revisions is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all airworthiness limitations, whether imposed by original certification or by the requirements of an AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion. In addition, for a large fleet of airplanes with several small operators, it is possible that operators may not receive revisions to the ALS. The AD process ensures that these operators are aware of the revisions to the ALS. No change to this proposed AD is necessary in this regard.

Request To Include Certification Maintenance Requirements Tasks

One commenter, the manufacturer, states that the ''Time Limits'' section of the Maintenance Planning Document (MPD) also includes Certification Maintenance Requirements (CMR) tasks that are applicable to the equipment and systems and are necessary to keep the certificated airworthiness standard. The commenter suggests adding a paragraph to the proposed AD to require accomplishment of the CMR tasks.

The FAA does not concur. Although the FAA agrees that accomplishment of CMR tasks is necessary to maintain these airplanes in an airworthy condition, the necessity for those actions is based on statistical safety analyses of various airplane systems prior to issuance of an airplane Type Certificate (TC). Thus, CMR tasks are undertaken for a different purpose than the actions required by this AD, and are intended to address a different unsafe condition than is addressed in this AD. However, if CMR tasks are added or made more restrictive following issuance of the TC, the FAA will consider separate rulemaking action to require accomplishment of those additional actions. No change to the AD is necessary in this regard.

Revisions to Service Information

Two commenters advise the FAA that Revision 3 of the ''Time Limits'' section of the ATR72 MPD was issued in January 1998, and suggest that the proposed AD address the use of the later revision of that document. The manufacturer also advises that Revision 4 of the ''Time Limits'' section for Model ATR72 series airplanes, dated July 1999, is in the process of review and approval by the appropriate airworthiness authorities. The manufacturer suggests delaying issuance of the final rule until approval of this latest revision is granted.

The FAA has received and reviewed the latest revision of the service information. Revision 4 differs from Revision 1, dated February 1996 (which was referenced in the proposed AD as the appropriate source of service information), in that it revises certain life limits for structural components or parts of the landing gear, engine components, and various equipment; and structural inspection times to detect fatigue cracking of certain Structural Significant Items; and, for Model ATR72–212A series airplanes, adds new life limits and inspection thresholds and intervals. The FAA has determined that the actions required by this AD must be accomplished in accordance with Revision 4 of the ''Time Limits'' section of the MPD, and is proposing such in this supplemental NPRM. Paragraph (a) of this proposed AD has been changed accordingly.

Use of Subsequent Service Information Revisions

One commenter requests that the FAA revise the proposed AD to refer to the current revision of the ''Time Limits'' section of the MPD, ''or later approved revisions.'' The commenter suggests that only referring to the current revision in the AD may lead to confusion about the validity of subsequent revisions.

The FAA does not concur. To use the phrase ''or later approved revisions'' in an AD when referring to future revisions of service information violates Office of the Federal Register (OFR) regulations regarding approval of materials that are ''incorporated by reference'' in rules. The AD may only refer to the service information that was submitted and approved by the OFR for ''incorporation by reference.'' In order for operators to use later revisions of the service information, either the AD must be revised to reference the specific later revisions, or the FAA must approve their use as an alternative method of compliance with this AD. No change to the AD is necessary in this regard.

MPD Section Reference

Two commenters state that, although the ''Time Limits'' section of the MPD is incorrectly referenced in the proposed AD as Section 9, the correct reference is Section 13. The FAA acknowledges the correction. However, to avoid any confusion in case the section number changes in the future, the FAA has removed the reference to the specific section of the ''Time Limits'' section in paragraph (a) of this AD.

Conclusion

Since the changes previously described expand the scope of the original proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 173 Aerospatiale Model ATR72 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,340, or $60 per airplane.

The cost impact figure discussed above is 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 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 proposal would not have federalism implications under Executive Order 13132.

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:

Aerospatiale: Docket 97–NM–273–AD.

Applicability: All Model ATR72 series airplanes, 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 (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 ensure continued structural integrity of these airplanes, accomplish the following:

Airworthiness Limitations Revision

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness by incorporating the ''Time Limits'' section of the ATR72 Maintenance Planning Document, Revision 4, dated July 1999, into the Airworthiness Limitations Section.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (a) of this AD.

Alternative Methods of Compliance

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(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 airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 95–105–026 (B), dated May 24, 1995.

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

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–21463 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWP–8]

Proposed Modification of Class E Airspace; Willits, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Class E airspace area at Willits, CA. A revision of the Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 16 and RWY 34 at Ells Field-Willits Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 1200 feet above the surface of the earth is needed to contain aircraft executing the RNAV RWY 16 and RWY 34 SIAP with a Terminal Arrival Area (TAA) design to Ells Field-Willits Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Ells Field-Willits Municipal Airport, Willits, CA.

DATES: Comments must be received on or before September 29, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 00–AWP–8, Air Traffic Division, 15000 Aviation boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An information docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 725–6611

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire, Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AWP–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Willits, CA. A revision to the RNAV RWY 16 and RWY 34 SIAP at Ells Field-Willits Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 1200 feet above the surface is needed to contain aircraft executing these RNAV approach procedures at Ells Field-Willits Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV RWY 16 and RWY 34 SIAP at Ells Field-Willits Municipal Airport, Willits, CA.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP CA E5 Willits, CA [Revised]

Ells Field-Willits Municipal Airport, CA
(Lat. 39°27′05″ N, long. 123°22′20″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ells Field-Willits Municipal Airport and that airspace bounded by a line beginning at lat. 39°28′00″ N, long. 123°30′15″ W; to lat. 39°48′30″ N, long. 123°42′00″ W; to lat. 39°53′30″ N, long. 123°28′30″ W; to lat. 39°32′11″ N, long. 123°17′27″ W, thence clockwise along the 6.3-mile radius of the Ells Field-Willits Municipal Airport, to the point of beginning; and that airspace extending upward from 1,200 feet above the surface within a 38-mile radius of the Ells Field-Willits Municipal Airport.

* * * * *

Issued in Los Angeles, California, on August 8, 2000.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–21491 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 000526157–0157–01]

RIN 0648–AO36

Installing and Maintaining Commercial Submarine Cables in National Marine Sanctuaries

AGENCY: Marine Sanctuaries Division (MSD), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Notice is hereby given that NOAA is evaluating whether changes to existing National Marine Sanctuary (NMS) regulations or some form of policy guidance is necessary to clarify NOAA's decision-making process regarding the installation and maintenance of commercial submarine cables within NMSs. If changes or additional guidance are appropriate, this notice requests comments on what the changes or guidance should contain. This notice also requests comments on proposed principles on the installation of commercial submarine cables within the marine and coastal environment as a whole.

DATES: Comments on this notice must be received by October 23, 2000.

ADDRESSES: Address all comments regarding this notice to Debra Malek, Conservation Policy and Planning Branch, National Marine Sanctuary Program, NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910; Attention: Submarine Cable FR Comments. Comments may also be submitted by e-mail to: submarine.cables&noaa.gov

FOR FURTHER INFORMATION CONTACT: Debra Malek, 301–713–3145 extension 162.

SUPPLEMENTARY INFORMATION:

I. Background

Through higher transmission capacity, decreased interruptions in service, greater security and cost efficiency, fiber-optic telecommunications cables are meeting demands for better productivity and quality in telephone, internet and data transmissions, education, and connectivity. In the face of this demand, global markets are expanding rapidly and domestic land-based cable routes

are becoming increasingly congested. For these and other reasons, the number of project proposals and specific permit requests for laying cables in the marine and coastal environment is increasing at a tremendous rate.

The increase in proposals for marine-based telecommunications cable projects strikingly highlights the Department of Commerce's (DOC) role as steward for both the nation's economy and the marine and coastal environment. For DOC, protecting the marine and coastal environment is as imperative as fostering the growth of telecommunications. Marine and coastal resources provide economic, cultural, and societal benefits to the nation. Yet, with the rapid growth and development of the coastal zone, many marine and coastal resources are at risk of degradation or loss. As a result, cumulative environmental impact evaluations need to be performed for cabling projects proposing transit through national marine sanctuaries, sensitive marine habitats outside of sanctuaries, submerged cultural resources, fishing zones, and areas of aesthetic value.

Federal, state, and local governments impose permitting requirements for all forms of development. The types of issues that are evaluated in seeking necessary permits for a proposed submarine cable project include, but are not limited to: cable route planning, cable installation (e.g., burial), operation, maintenance and repairs, and removal. Preparing an application for a permit, as well as the government review and authorization process, takes time and money.

II. Legal Framework

When considering a proposal to lay and operate commercial submarine cables in the marine and coastal environment, DOC must evaluate the industry's request relative to several statutes. These statutes provide the legal framework that governs decision-making. It is important to understand, however, that other federal, state, and local agencies have additional authorities that will govern the construction and operation of submarine cables.

The following describes the principal authorities governing this issue with which DOC must comply. Please refer to the full text of these laws for complete information.

National Marine Sanctuaries Act

The National Marine Sanctuaries Act (NMSA or Act), 16 U.S.C. 1431 *et seq.,* provides authority for the establishment of a unique network of marine protected areas dedicated to the conservation of specially nationally significant areas of the marine environment. Within NOAA, the National Marine Sanctuary Program (NMSP or Program) is administered by the National Ocean Service's Marine Sanctuaries Division. The NMSP comprises 13 sanctuaries around the United States, including sites in American Samoa and Hawaii.

The primary objective of the NMSA is protection of sanctuary resources. Sanctuary resource is defined at 15 CFR 922.3 as:

Any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary, including but not limited to, the substratum of the area of the sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.

The NMSP manages sanctuaries on an ecosystem approach to protect sanctuary resources and sanctuary biological, physical, the chemical qualities. When a sanctuary is designated NOAA develops a comprehensive management plan and regulations for the sanctuary. Sanctuary regulations prohibit a range of activities to protect sanctuary resources and qualities.

Consequently, when a regulation prohibits a particular activity, a determination has been made, after public notice and comment, that such activity is generally incompatible with the resource protection mandate of the NMSA, and with the purposes for which the sanctuary was designated.

Relevant to submarine cables, each sanctuary has some type of regulation that prohibits installation of such cables. Such regulatory prohibitions include those against: drilling into, dredging or otherwise altering the seabed of the sanctuary; constructing, placing or abandoning any structure, material or other matter on the seabed of the sanctuary; injuring benthic invertebrates; moving or injuring historical resources; and discharging or depositing any material or other matter in the sanctuary.

Prohibited activities may be conducted under certain limited circumstances to the extent they are compatible with the resource protection mandate and meet regulatory and other requirements for a sanctuary permit or other authorization. Sanctuary permits may be issued for research, education, management, or, in some instances, salvage activities. Some more recently designated sanctuaries have the authority to authorize another agency's permit for a specific activity, when such activity is compatible with resource protection and the purpose for which the sanctuary was designated. The NMSA also provides authority to issue special use permits for certain types of activities and NOAA may assess fees for the conduct of such activities.

Permits for commercial submarine cable projects would require applicants to adhere to certain conditions, including: collection and analysis of data on the environmental effects of cable installation, operation and maintenance. Those conditions would apply for the life of the permit. The project proponent would retain responsibility for any ''out of service'' cable that remains in the marine environment (e.g., if the cable is abandoned).

The NMSA also statutorily prohibits destroying, causing the loss of, or injuring any sanctuary resource managed under law or regulations for that sanctuary.

Section 304(d) of the NMSA section requires consultation on any Federal agency action internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resources. Thus, for some proposed submarine cable projects that do not need a sanctuary permit or other sanctuary authorization but require another Federal agency's permit, consultation under the NMSA may be required.

The NMSA is applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the U.S. is a party.

Endangered Species Act

The Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq*., protects species of plants and animals that have been listed through regulations as threatened or endangered. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is any species, other than some species of the Class Insecta, that is in danger of extinction throughout all or a significant portion of its range.

The ESA and its implementing regulations prohibit the ''taking'' of any

listed species, except under specified circumstances. A ''take'' is defined broadly and includes harassment, harm, pursuit, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any of these types of conduct. The ESA includes civil and criminal penalties for violations. The Secretaries of the Departments of the Interior and Commerce may issue permits for the incidental take of listed species.

The National Marine Fisheries Service (NMFS) of NOAA has jurisdiction over cetaceans, pinnepeds (except walruses), commercially harvested estuarine molluscs and crustaceans, marine fish, anadromous fish, certain other species (e.g., Johnson's seagrass), and sea turtles in the water. The U.S. Fish and Wildlife Service of the Department of the Interior (FWS) has jurisdiction over all other species, including seabirds. The provisions of the ESA extend to actions within the territory of the United States, state of Federal waters, and by U.S. entities on the high seas. For example, NMFS must ensure that its authorization of the conduct of a fishery is not likely to jeopardize the continued existence of any endangered or threatened species.

After a species is listed as threatened or endangered, NMFS or FWS is required to designate critical habitat and develop and implement recovery plans for the listed species. Every Federal agency must ensure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. Federal agencies must consult with NMFS and FWS to avoid, minimize, or mitigate the impacts of their activities on listed species.

Submarine cable projects will trigger this consultation process whenever a federal permit, license, or other action is needed for an activity that may affect a listed species. If a protected species or its critical habitat is present in the vicinity of the cable laying project a Biological Assessment must be prepared by the permitting agency. The permitting agency must evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat. The agency then determines whether any such species or habitat is likely to be adversely affected by the action. If they believe there are no applicable alternatives to the project and that the project will jeopardize the continued existence of a protected species they may apply to the Endangered Species Committee for an ESA exemption.

Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, establishes a moratorium on the ''taking'' of marine mammals within U.S. waters or by U.S. citizens on the high seas. ''Taking'' is statutorily defined as ''to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal.'' Through NMFS, DOC has jurisdiction over all marine mammals with the exception of manatees and dugongs, walrus, polar bears and sea otters, which the Department of the Interior manages.

The MMPA allows the Secretaries to authorize the incidental taking of a small number of marine mammals by U.S. citizens who engage in a specified lawful activity within a specified geographical region, provided that the total number of takes will have no more than a negligible impact on affected species and will not have an unmitigable adverse impact on subsistence hunting.

Laying cable on the seabed and cable repair could potentially result in the incidental taking of marine mammals due to the elevated noise levels and vessel traffic associated with the laying of cable and entanglement of whales in the cable. NMFS regulations governing the small take authorization program are at 50 CFR 216.101 *et seq*. The regulations provide for expedited one-year authorizations for takes by harassment only and for five-year authorizations covering all forms of takes.

Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), 16 U.S.C. 1801 *et seq.*, administered by NMFS is the primary federal fishery management authority. The law established a national program to conserve and manage the nation's fishery resources and their habitats so the United States can achieve the full potential of its fishery resources. In addition to the law's focus on managing fishing activities, the most recent amendments in 1996 (Pub. L. 104–297) included language to protect ''essential fish habitat'' (EFH) for each of more than 700 species under federal authority. The new EFH mandate requires consultation with NMFS for any project that may adversely affect habitats of federally-managed species.

The regulations governing EFH consultations are found at 50 CFR part 600, subpart K. Where possible, EFH will be implemented by using traditional environmental review processes associated with the National Environmental Policy Act, Fish and Wildlife Coordination Act, Endangered Species Act, or other laws, thereby eliminating the need for separate permit reviews or public comment periods.

Submarine cable projects will trigger this EFH consultation process whenever a federal permit, license, or other action is needed, if the proposed activity may adversely affect EFH. Except in rare situations, the EFH consultation will be conducted between field offices of the action agency and NMFS. Regional NMFS offices have maps, tables, and reports documenting areas designated as EFH and can work with the authorizing agency and industry to determine whether a submarine cable project affects EFH.

In combination with any documents associated with the traditional environmental review process (permit application, engineering plans, NEPA documents), an EFH Assessment must be prepared describing how the proposed project may affect EFH. The appropriate level of detail required in the consultation will depend on the proposed action and its potential impact on EFH.

Coastal Zone Management Act

States with coastal management programs approved by DOC pursuant to the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 *et seq*. (this includes all coastal states), have the authority to review federal activities affecting any land or water use or natural resource of the coastal zone for consistency with their approved state CZM program. This review authority includes the review of all federal agency permits (e.g., Army Corps of Engineers Section 10/404 permits and marine sanctuary permits). In the case of Federal permits, Federal agencies may not issue permits that are inconsistent with a state's approved program, unless, after an appeal by the applicant to DOC, an override decision is made based on certain criteria.

Companies with proposed submarine cable projects should contact the relevant state coastal management program agencies or NOAA's Office of Ocean and Coastal Resource Management, Federal Consistency Office, as early as possible in the federal application process.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* is the foundation of modern American environmental protection in

the United States and its commonwealths, territories, and possessions.

NEPA requires that Federal agency decision-makers, in carrying out their duties, use all practical means to create and maintain conditions and fulfill the social, economic, and other needs of present and future generations of Americans.

NEPA provides a mandate and a framework for Federal agencies to consider all reasonably foreseeable environmental effects of their proposed actions and to involve and inform the public in the decision-making process.

NOAA's Administrative Order 216–6 (updated May 20, 1999) describes NOAA's policies, requirements, and procedures for complying with NEPA and the implementing regulations issued by the Council on Environmental Quality (CEQ) as codified in Parts 1500–1508 of Title 40 of the Code of Federal Regulations (40 CFR parts 1500–1508) and those issued by DOC in Department Administrative Order (DAO) 216–6, Implementing the National Environmental Policy Act.

NEPA applies to any proposed action for which a federal nexus exists, such as federal funding, permitting, or approval. Examples include ACOE 404 permits, ESA section 7 consultations for incidental take statements, or authorization for actions within a national marine sanctuary. Applicants for such permits or authorizations may be an individual, a private organizations, or a Federal, state, tribal, territorial, or foreign governmental body. Based on the action and its impact on the quality of the human environment, a level of environmental review is required (*i.e.*, categorical exclusion, environmental assessment, or environmental impact statement).

NEPA documents may be stand-alone or combined with associated reviews such as those for state permits or Federal consistency certification. The latter, joint documentation, is preferred to reduce duplication and expedite review and clearance processes. When combined with other review processes, early coordination is essential to produce final documentation that is acceptable to all approving parties. NEPA documents are sometimes prepared by a contractor; in such cases, the documents must be cleared by the Federal agency prior to final action being taken.

For the purpose of a proposed submarine cable to transit the coastal zone including a portion of a national marine sanctuary, several permits or approvals may be required (*e.g.*, ACOE 404, NMSA permit or other authorization, and state permits and Federal consistency certification), each requiring federal or state environmental review. After providing sufficient background information on the proposed action to the involved agencies, the requisite level of review is determined, and a NEPA document is prepared and circulated for public review as appropriate. Upon completion, final NEPA documents are cleared by the agency(s) and a determination is made on the applicable authorization(s) or permit(s). No final action by an applicant may occur prior to completion of the NEPA review process.

National Historic Preservation Act

The National Historical Preservation Act (NHPA), 16 U.S.C. 470 *et seq.*, directs federal agencies to develop programs to protect their cultural and historic properties. Section 106 of the NHPA directs that all federal or federally-funded undertakings, including federally permitted activities, be reviewed to ensure that no historic properties are negatively affected. The federal agency (in this case NOAA) must work in cooperation with states and the Advisory Council on Historic Preservation to minimize or prevent damage to the resources.

Submarine Cable Landing License Act

Pursuant to the Submarine Cable Landing License Act (47 U.S.C. 34–39) the President must grant permission to any entity planning to land a submarine cable in the United States. This statute requires an entity to get permission before it is allowed to land and operate a submarine cable ''directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof'' * * * except for any submarine cable ''all of which, including both terminals, lie wholly within the continental United States.'' 47 U.S.C. 34.

In a related Executive Order (E.O. 10530) the President delegated authority to the Federal Communications Commission (FCC) to grant, deny, or condition submarine cable landing licenses, except that no license can be granted or revoked without the FCC first obtaining approval from the Secretary of State and advice from any executive department of the Government as the Commission may deem necessary. The National Telecommunications and Information Administration (NTIA), an agency within DOC, advises the Department of State and the FCC on all submarine cable landing license applications. The factors NTIA considers in reviewing these applications involve competition issues and consumer matters.

III. Meetings

NOAA is evaluating whether changes to existing National Marine Sanctuary regulations or some form of policy guidance is necessary to clarify NOAA's decision-making process regarding the installation and maintenance of commercial submarine cables within NMSs. This evaluation is being undertaken in response to requests from the telecommunications industry to lay cables through many U.S. coastal and ocean areas, including NMSs, as well as in response to requests from various members of the fishing industry and the environmental community for more detailed information on the processes involved in the installation and maintenance of telecommunications cables and the possible impacts these processes have on the marine and coastal environment.

Within the overall marine and coastal environment, national marine sanctuaries have been established as special places set aside as protected areas of national significance. As such, they are afforded a higher level of protection. Within each sanctuary, certain types of activities, including activities inherent to laying, operating, repairing, and removing submarine cables, have been determined to be generally incompatible with the statutory objective of resource protection and are therefore prohibited by regulation. Under certain limited circumstances some prohibited activities may be allowed.

As applications were received by NMS offices for submarine cable installation, the NMSP began internal discussions on how to deal with such proposals. DOC, as part of its efforts to build productive partnerships among government, the telecommunications industry, and non-governmental organizations, convened a series of meetings to give stakeholders a chance to provide input into the Program's evaluation of the installation of commercial submarine cables in the marine and coastal environment. Many key issues were identified at these meetings.

From the business community, we heard the following:

- Submarine cables provide high-speed broadband connectivity and capacity for large geographic areas that are often important centers of trade and communication;
- Submarine cables alleviate existing capacity constraints and meet the demand for future growth;

• Submarine cables provide emergency routing alternatives to existing land-based telecommunication systems that are susceptible to earthquakes, flooding, storms, and other natural phenomena;

• Installation can be a low impact process, especially when compared to other commercial activities currently allowed in the marine environment (cables are small in diameter, the plow cuts a narrow trench, cable is buried to one meter, etc.);

• Submarine cables carry heavy international communication traffic without the transmission delays associated with satellites;

• Speed to market is critical and competition is fierce (200 new cable systems with over 1,000 shore landings are projected by 2003);

• A more succinct and clear policy for submarine cables would alleviate the current confusion over the approval of such projects.

From the environmental community, we heard the following:

• Little data exists on the cumulative environmental impacts associated with the installation, maintenance, operation, and repair of submarine cables;

• Sanctuaries and areas of sensitive habitat should be avoided, with some declared off limits;

• NOAA needs to develop policies and regulations for non-sanctuary waters as well;

• Additional information is needed on the immediate and long-term impacts of fiber optic systems;

• Fishing conflicts and gear issues must be resolved;

• Reassurance is needed to demonstrate that impacts are indeed low, as industry claims, and that submarine cables are and will remain buried;

• Regular monitoring of installed submarine cables should be mandatory, based on a set of baseline standards;

• A more succinct and clear policy for submarine cables would alleviate the current confusion over the approval of such projects;

• Technologies should be examined to determine methods of burial and retrieval that minimize disturbance to the benthos and associated water quality;

• Mechanisms should be developed to minimize the number of submarine cable corridors permitted, including requirements to utilize existing corridors whenever possible;

• Once a cable is no longer in use, cables should be removed and disposed of rather than abandoned in place;

• All cable proposals should be subject to rigorous environmental review under NEPA including full discussion of cumulative impacts and serious consideration of alternatives;

• All monitoring of cable surveys, laying, repair, and removal should be subject to independent agency verification.

NOAA used the information obtained from these meetings to form the framework of a ''white paper.'' This document identified the concerns and issues associated with such activities and led to the development of draft guiding principles to be applied as part of the project review. (See Appendix A).

IV. Workshop

On February 28 and 29, 2000, DOC convened a workshop involving representatives from the telecommunications and fishing industries, environmental and conservation organizations, and state agencies. The white paper was distributed at the workshop and was the focus of discussion.

Participants identified many key issues they felt NOAA should further address in the Principles section of the document. NOAA has developed some initial reactions to these issues and has developed some potential approaches or ways to resolve them. The key issues are listed below and are followed in brackets by NOAA's initial reactions.

1. *Be as explicit and comprehensive as possible in terms of criteria, legal standards, and rationale for NMSP decision-making.* [Within NMSs, NOAA could base its review of projects on ensuring resource protection. It is NOAA's view that sanctuary size, unique characteristics, (e.g., fragile habitats, cultural resources, etc.), and/or existing regulations would be important criteria in project review.]

2. *Clarify NOAA's regulatory roles outside NMSs.* [With regard to areas outside of NMSs, NOAA's participation could take the form of project review will be during consultation with other federal and state agencies that have direct permitting authority over activities in the marine and coastal environment, including, for example, U.S. Army Corps of Engineers (ACOE) and other federal agencies addressing such authorities as MMPA and ESA. Other criteria for consultation review could include preferred routes, alternative routes, landside connection, site characterization, cumulative impacts, sensitive habitats, and cable removal. NOAA would follow the established public review and comment process established under existing regulations when evaluating proposed projects.]

3. *Clarify NOAA's position on cable installation in NMSs when habitat outside of a NMS may be more sensitive than the proposed cable installation route inside the NMS.* [NOAA could provide basic information to help industry identify and locate sensitive habitats to be avoided.]

4. *Clarify NOAA's definition of ''feasible alternative'' to installing a cable in a NMS.* [NOAA could address this through the use of NEPA's definition of feasible alternative.]

5. *Give further attention to and explanation of the development of a Programmatic Environmental Impact Statement (PEIS) for cable installation.* [NOAA will consider whether a PEIS could and should be prepared for the proposed installation of submarine cables in marine sanctuaries and the marine environment as a whole. Such a document would clearly describe the potential impacts of cable projects within various habitat types and sanctuaries and would set forth project limitations. Should a PEIS be developed, environmental review documents for individual projects would be tiered off of the general document.]

6. *Recognize the value of coordination between DOC and other federal agencies when issues such as cable installation in the marine environment are concerned.* [NOAA could work with ACOE to develop a Memorandum of Understanding (MOU) that addresses consultation procedures for cable laying projects. NOAA could also coordinate necessary consultations under the ESA, MSFCMA (primarily Essential Fish Habitat), and NMSA. Consultations should be initiated at the earliest possible dates so potential impacts from each project and cumulative impacts of industry actions can be minimized.]

7. *Incorporate recognition of, and provide flexibility for, possible technological and environmental changes that may occur during the life of the cable.* [Although initially addressed in the Principles section of the White Paper, NOAA is looking for further guidance on this issue.]

8. *Recognize that pre-existing data on submarine cables is available and should be consolidated as much as possible for future reference.* [NOAA will continue to work with industry, environmental organizations, and other agencies (e.g., Navy, United States Geological Survey, ACOE) to collect information about existing submarine cable projects and the known environmental effects of installation and maintenance.]

9. *Recognize the fishing industry's role as a distinct, critical and interested*

party in submarine cable issues. [NOAA could accomplish this by strongly encouraging the cable industry to initiate negotiations and develop agreements with marine and coastal resource user groups before their applications for permits and licenses are deemed complete for public review. The cable industry could then negotiate agreements and/or directly consult with fishing, mining, aquaculture, whale watching, and other marine and coastal resources user groups to minimize disruptions to other marine and coastal activities during cable installation and thereafter.]

10. *Recognize the possibility of ''cable corridors'' (fixed-location lanes for multiple cables).* [Although initially addressed in the Principles section of the White Paper, NOAA is looking for further guidance on this issue.]

11. *Should elaborate further on NOAA's position on the issue of cable removal.* [NOAA could, in issuing any permits for submarine cable projects, require that permittees collect and analyze data on the environmental effects of cable installation, operation and maintenance. Those conditions would then apply for the life of the project. At the end of the cable's service, the permittee will be required to perform a survey of the cable route and provide a report describing the status of the cable (including burial depth) and benthic communities along the cable route. The permittee would then be required to prepare a thorough evaluation of leaving the cable in place vs. removal of the cable. For any ''out of service'' cable that is allowed to remain in the marine environment, the permittee would retain full responsibility for such cable in perpetuity. Periodic monitoring by the permittee would also be required.]

V. Action Requested From the Public

As it continues its evaluation, NOAA is seeking public comment on both the guiding principles in the Workshop white paper (attached as Appendix A) and NOAA's reactions to the workshop participants' key issues articulated above in Section IV. Comments received by NOAA will help to determine its next steps, i.e., whether the NMS regulations should be amended to clarify NOAA's decision-making process regarding the installation of commercial submarine cables or if a DOC policy statement should be issued.

Regulations would be published in the **Federal Register** following appropriate National Environmental Policy Act (NEPA) and Administrative Procedure Act (APA) steps. Any proposed policy statement would be published in the **Federal Register**. It should be noted that while the white paper lists the statutory elements for imposing a fee for the issuance of a special use permit, the purpose of this request for comments does not include setting the amount for any such fee. Rather, as stated above, NOAA is seeking public input on whether it should amend its regulations or issue a policy statement. If NOAA decides to issue regulations or a policy statement which include a requirement for the issuance of a special use permit, NOAA will undertake another public process to establish, in light of the statutory elements stated in the white paper, the appropriate amount of the attendant fee.

Dated: August 17, 2000.

Ted I. Lillestolen,

Deputy Assistant Administrator for Oceans and Coastal Zone Management.

Appendix A

Principles Section from the Draft White Paper ''Proposed Principles for Laying Submarine Cables in the Marine and Coastal Environment''

Proposed Principles

1. For business, environment, and government alike, accurate information about the environmental effects of submarine cables on the marine environment, expectations for completing permit reviews, project routing and implementation, and ongoing maintenance needs are vital. In some cases, such as the environmental effects, this information is lacking. What steps can NOAA take for better information gathering and information flow?

Implementation steps:

a. NOAA will continue to work with industry, environment, and other agencies (e.g., Navy, USGS, ACOE) to collect information about existing submarine cable projects and the known environmental effects of installation and maintenance.

b. NOAA permits for submarine cable projects will require that applicants collect and analyze data on the environmental effects of cable installation, operation and maintenance. Those conditions will apply for the life of the permit. For any ''out of service'' cable that remains in the marine environment, the project proponent must retain responsibility for such cable (e.g., if the cable becomes unburied).

c. For those projects where NOAA does not have a permitting role, NOAA will work with other permitting agencies to ensure that its environmental concerns under ESA, MMPA, MSFCMA, NMSA, and other authorities are fully adopted or considered, where required or as appropriate.

d. NOAA will convene interested industry and environmental representatives from time to time to review new data and technologies, evaluate guidelines, and otherwise continue the sharing of information.

2. Industry has described ''speed to market'' as a driving force in the submarine cable business. As such, it has stated the importance of a timely and predictable review of projects, particularly where NOAA permits are required. In addition, it is in the best interest of effective management of the marine and coastal environment to be able to quickly and effectively determine the proper course of action for submarine cable projects, without compromising NOAA's trustee responsibilities. As the efficient review of proposed projects is in the best interests of all parties, what steps can NOAA take to aid in the timely and predictable review of proposed cable projects?

Implementation steps:

a. NOAA will consider whether it can as a general matter (legally and from a policy standpoint) approve projects when they are in the planning stages. NOAA would base such ''planning approvals'' on specific routes, technologies, monitoring and maintenance protocols, and other factors.

b. NOAA will coordinate necessary consultations under the ESA, MSFCMA, NMSA.

c. NOAA will consider the impacts and merits of establishing submarine cable ''routes'' that direct cable installations into and out of landing stations in such a way as to minimize individual and cumulative environmental effects.

d. NOAA will establish points of contact for submarine cable projects. These individuals will be responsible for coordinating reviews and outreach within the Department. In addition, NOAA will maintain records and data on submarine cable projects in order to further improve internal review and external compliance.

3. National marine sanctuaries are special places of the marine environment set aside as protected areas for their national significance. As such, they are afforded a higher level of protection.

Within each sanctuary certain types of activities, including activities inherent to laying, operating, repairing, and removing submarine cables, have been determined to be generally incompatible with the statutory objective of resource

protection and are therefore prohibited by regulation.

Under certain limited circumstances some prohibited activities may be allowed, but as a matter of policy laying of submarine cables within sanctuaries is discouraged. What steps can NOAA take when reviewing projects proposed within marine sanctuaries to ensure resource protection (particularly where uncertainty exists as to the extent of impact of a proposed project to the sanctuary environment)?

Implementation steps:

a. It is NOAA's review that sanctuary size, unique characteristics (e.g., fragile habitats, cultural resources, etc.) and existing regulations preclude the installation of submarine cables in the following marine sanctuaries:

(1) Cordell Bank

(2) Channel Islands (within 2 nautical miles of the islands, as prohibited)

(3) Gulf of Farallones

(4) Fagatele Bay, American Samoa

(5) Gray's Reef

(6) MONITOR

(7) Flower Garden Banks

b. Projects in those sites where cable laying activities are not prohibited (i.e., Channel Islands NMS outside of 2 nautical miles from the islands, Hawaiian Island Humpback Whale NMS, when conducted under valid State or Federal permit) are subject to the consultation provisions (sec. 304(d)) of the NMSA and will be evaluated by NOAA similarly to those projects requiring sanctuary approval.

c. NOAA will consider whether a programmatic environmental impact statement could be prepared for the proposed installation of submarine cables in marine sanctuaries. Such a document would clearly describe the permit limitations for projects in specific sanctuaries or habitat types.

d. Those sites where proposals for installation and operation of submarine cables would be considered are Monterey Bay, Olympic Coast, Florida Keys, and Stellwagen Bank sanctuaries. NOAA will identify fragile habitats and known archaeological sites wherein installation of submarine cables will be prohibited under any circumstances near the immediately surrounding area. These are expected to include the following:

(1) Rocky, hard bottom areas (habitat) where cable cannot be buried or covered)hard bottom limestone reef areas in particular;

(2) Coral reef and associated hard bottom areas;

(3) Sea grass areas;

(4) Mangrove islands;

(5) Areas likely to have cultural resources, such as historic shipwrecks;

(6) Kelp forests;

(7) Habitat for endangered or threatened species;

(8) Areas set aside as ''no take'' zones or ''marine or ecological reserves.''

e. The following minimum criteria must be met for any submarine cable to be considered in a sanctuary:

(1) There is no feasible alternative to transiting the Sanctuary;

(2) Impacts to sanctuary resources, including impacts to cultural resources and cumulative impacts, from installation, maintenance, long-term operation, and removal, are determined to be negligible and short-term. This is determined within the context of the overall environmental analysis;

(3) Appropriate mitigation, including monitoring of impacts of the activity, is included and paid for by the project proponent; and

(4) The applicant agrees to remove all or part of the cable at the end of its life, if determined appropriate by NOAA.

f. A specific proposal will be considered following the applicable review and criteria unique to the specific sanctuary in which the application is submitted. Installation of a previous cable within any given sanctuary does not ensure installation of additional cables in that sanctuary or others in the system. Exact routes and alternatives, and cumulative impacts will be evaluated in the environmental analysis.

g. For every project considered, analysis must include, but is not limited to, the following topics:

(1) Cumulative impacts;

(2) Feasible alternatives to transiting the Sanctuary, including alternative routes over land;

(3) Impacts to habitat from laying the cable (*e.g.*, trenching) and long term placement of the cable in its location;

(4) Potential for impacts on sensitive, threatened and endangered species and their habitats;

(5) Potential impact to cultural resources, using remote-sensing survey, sonar and magnetometer;

(6) Impacts of removing the cable at the end of its useful life; and

(7) Impacts on other interests (*e.g.*, fishing interests).

h. Pursuant to sanctuary regulations, a fee will be assessed for any approved project. This fee includes:

(1) Costs incurred, or expected to be incurred, of issuing the permit;

(2) Costs incurred, or expected to be incurred, as a direct results of the activities (including monitoring); and

(3) The fair market value of the use of the sanctuary and a reasonable return to the U.S. Government.

4. The Department believes that just as the submarine cable industry is growing, the principles guiding its review of submarine cable proposals must also continue to evolve. What steps can NOAA take to aid in this evolution and craft the principles into a living document?

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1250 and 1254

RIN 3095–AA72

NARA Freedom of Information Act Regulations

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: NARA proposes to revise and reorganize its regulations that govern access to NARA's archival holdings and NARA's own operational records through the Freedom of Information Act (FOIA). This proposed rule combines FOIA procedures for NARA archival records currently in 36 CFR part 1254, with those for NARA operational records currently in 36 CFR part 1250.

This proposed rule also incorporates the changes resulting from the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The proposed rule will affect individuals and organizations that file FOIA requests for NARA operational records and archival holdings.

DATES: Comments must be received on or before October 23, 2000.

ADDRESSES: Send comments to Regulation Comment Desk, NPLN, Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740–6001. You may also fax comments to 301–713–7270.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at 301–713–7360.

SUPPLEMENTARY INFORMATION: As noted in the **SUMMARY**, our current FOIA regulations are contained in two separate CFR parts that address the requirements for submitting and NARA handling of requests for NARA's own operational records and records accessioned into the National Archives of the United States. Because the definitions and most of the procedures to be followed are the same for both types of requests, we are moving the current sections that contain the rules for FOIA requests for archival records,

36 CFR 1254.38 and 1254.39, into 36 CFR part 1250 for clarity and to reduce duplication. Fees for FOIA requests continue to be different for NARA operational and archival records.

Following is a discussion of substantive changes contained in this proposed rule. Additional nonsubstantive changes are made and the proposed regulation is written in plain language in accordance with the Presidential Memorandum of June 1, 1998, Plain Language in Government Writing.

Due to the expanded scope of proposed part 1250, we are adding more explanatory material on the FOIA, its application to Federal records which NARA has in its legal and/or physical custody, how NARA provides access to records through it, and which records in NARA's holdings are subject to the FOIA.

The FOIA applies only to executive branch records and to Presidential records created since 1981. Records of executive agencies held in NARA records centers remain in the legal custody of the agencies that created them. Access to these records can only be granted by the creating agency. Presidential materials in NARA's custody that were created before 1981 were donated to the Federal government by the President who created them. Access to those records is governed by the deed of gift pertaining to those records. Legislative branch records at NARA remain in the legal custody of the Congress. Access to those records is governed by the Secretary of the Senate and the Speaker of the House. Records of the Supreme Court at NARA remain in the legal custody of the judicial branch and they control access to these records. Section 1250.6 refers requesters to other NARA regulations governing access to these records.

The proposed §§ 1250.8 and 1250.10 provide the rules governing when a requester must use the FOIA to gain access to records in NARA custody, and how NARA handles FOIA requests.

The changes resulting from EFOIA (Public Law 104–231) are found throughout the proposed rule. Proposed § 1250.12 explains which NARA operational records are available in our FOIA reading room. This section addresses the new requirements of the EFOIA that we make available records that are frequently requested under FOIA, and also that the records and an index to them are available on NARA's web site at *http://www.nara.gov/foia/*.

We are adding § 1250.24, which tells how to email a FOIA request to NARA. The proposed § 1250.26 changes the standard response time to a FOIA request from 10 to 20 working days, and also includes procedures for handling FOIA requests on an expedited basis when ''unusual circumstances'' arise. Proposed § 1250.38 explains that NARA will provide copies, after all applicable fees have been paid, in the format specified by the requester if the records already exist in that format, or are readily reproducible in the requested format.

Subpart C, Fees, governs the fees charged by NARA for FOIA requests. Proposed § 1250.50 states that requesters who file FOIA requests for NARA operational records will be charged according to Subpart C. Additionally, proposed § 1250.50 states that requesters who file FOIA requests for archival records will be charged according to the reproduction fee schedule in 36 CFR part 1258. NARA does not charge search and review fees for any requests for archival records. The fee and fee waiver provisions of the FOIA do not apply to archival records, rather our specific fee statutes (44 U.S.C. 2116(c)) serves as an alternative statute for fee issues.

Search, review, and reproduction fees for FOIA requests for NARA operational records are in proposed § 1250.56. Proposed § 1250.52 provides the types of fees that will be charged to particular types of requesters: commercial users; educational and scientific institutions and the news media; and other requesters. The proposed § 1250.58 is a new section that explains how NARA will determine if a requester is eligible for a fee waiver.

For clarity, current § 1250.58 is divided into §§ 1250.70 through 1250.76. These sections explain the requester's right to appeal an adverse decision in response to a FOIA request, the procedures for filing an appeal, and how NARA handles appeals. This proposed rule also updates references in § 1254.44 to appropriate sections in the proposed part 1250.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this regulation will affect only persons and organizations who file FOIA requests with NARA. This proposed rule does not have any federalism implications.

List of Subjects

36 CFR Part 1250

Archives and records, Confidential business information, Freedom of information.

36 CFR Part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Archives and Records Administration proposes to amend Chapter XII of title 36, Code of Federal Regulations as follows:

1. Revise part 1250 to read as follows:

PART 1250—PUBLIC AVAILABILITY AND USE OF FEDERAL RECORDS

Subpart A—General Information About Freedom of Information Act (FOIA) Requests

Sec.

1250.1 Scope of this part.
1250.2 Definitions.
1250.4 Who can file a FOIA request?
1250.6 Does FOIA cover all of the records at NARA?
1250.8 Does NARA provide access to all the executive branch records housed at NARA facilities?
1250.10 Do I need to use FOIA to gain access to records at NARA?
1250.12 What types of records are available in NARA's FOIA Reading Room?
1250.14 If I do not use FOIA to request records, will NARA treat my request differently?

Subpart B—How to Access Records Under FOIA

1250.20 What do I include in my FOIA request?
1250.22 Where do I send my FOIA request?
1250.24 Will you accept a FOIA request through email?
1250.26 How quickly will NARA respond to my FOIA request?
1250.28 Will NARA ever expedite the review of the records I requested?
1250.30 How do I request expedited processing?
1250.32 How quickly will NARA process an expedited request?
1250.34 How will I know if NARA is going to release the records I requested?
1250.36 When will NARA deny a FOIA request?
1250.38 In what format will NARA provide copies?

Subpart C—Fees

1250.50 Will I be charged for my FOIA request?
1250.52 How much will I have to pay for a FOIA request for NARA operational records?
1250.54 General information on fees for NARA operational records.
1250.56 Fee schedule for NARA operational records.

1250.58 Does NARA ever waive FOIA fees for NARA operational records?
1250.60 How will NARA determine if I am eligible for a fee waiver for NARA operational records?

Subpart D—Appeals

1250.70 What are my appeal rights under FOIA?
1250.72 How do I file an appeal?
1250.74 Where do I send my appeal?
1250.76 May I email my FOIA appeal?
1250.78 How does NARA handle appeals?

Subpart E—Special Situations

1250.80 How does a submitter identify records containing confidential commercial information?
1250.82 How will NARA handle a FOIA request for confidential commercial information?
1250.84 Service of subpoena or other legal demand for NARA operational records.

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—General Information About Freedom of Information Act (FOIA) Requests

§ 1250.1 Scope of this part.

This part implements the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, for NARA operational records and archival records that are subject to FOIA. Other NARA regulations in 36 CFR parts 1254 through 1275 provide detailed guidance for conducting research at NARA.

§ 1250.2 Definitions.

The following definitions apply to this part:

(a) *Archival records* means permanently valuable records of the United States Government that have been transferred to the legal custody of the Archivist of the United States.

(b) *Commercial use requester* means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(c) *Confidential commercial information* means records provided to NARA by a submitter that may contain material exempt from release under the FOIA because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

(d) *Educational institution request* means a request that serves the scholarly research goals of an institution or school rather than the individual goals of the requester. A request from a student seeking information for a course of instruction does not qualify as an educational institution request. Educational institution requests must come from:

(1) A preschool;

(2) A public or private elementary or secondary school;

(3) An institution of undergraduate or graduate higher education;

(4) An institution of professional education; or

(5) An institution of vocational education which operates a program or programs of scholarly research.

(e) *FOIA request* means a written request for access to records of the executive branch of the Federal Government held by NARA, including NARA operational records, or to Presidential records in the custody of NARA that were created after January 19, 1981, that cites the Freedom of Information Act.

(f) *Freelance journalist* means an individual who qualifies as a representative of the news media because the individual can demonstrate a solid basis for expecting publication through a news organization, even though not actually in its employ. A publication contract would be the clearest proof of a solid basis, but the individual's publication history may also be considered in demonstrating this solid basis.

(g) *News media representative* means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription to the general public.

(h) *Non-commercial scientific institution* means an institution that is not operated on a basis that furthers the commercial, trade, or profit interests of any person or organization, and which is operated solely for the purpose of conducting scientific research which produces results that are not intended to promote any particular product or industry.

(i) *Operational records* means those records that NARA creates or receives in carrying out its mission and responsibilities as an executive branch agency. This does not include *archival records* as defined in paragraph (a) of this section.

(j) *Other requesters* means any individual who is not a commercial-use requester, not a representative of the news media, not a freelance journalist, nor one associated with an educational or non-commercial scientific institution whose research activities conform to the definition in paragraph (h) of this section.

(k) *Submitter* means any person or entity providing potentially confidential commercial information to an agency. The term submitter includes, but is not limited to, corporations, state governments, and foreign governments.

§ 1250.4 Who can file a FOIA request?

Any individual, partnership, corporation, association, or government regardless of nationality may file a FOIA request.

§ 1250.6 Does FOIA cover all of the records at NARA?

No, FOIA applies only to the records of the executive branch of the Federal government and certain Presidential records.

If you want access to . . .	Then access is governed by . . .
(a) Records of executive branch agencies	this part and parts 1254 through 1260 of this chapter. FOIA applies to these records.
(b) Records of the Federal courts	parts 1254 through 1260 of this chapter. FOIA does not apply to these records.
(c) Records of Congress	parts 1254 through 1260 of this chapter. FOIA does not apply to these records.
(d) Presidential records (created by Presidents holding office since 1981).	this part and parts 1254 through 1270 of this chapter. FOIA applies to these records 5 years after the President leaves office. However a President may invoke exemptions under the Presidential Records Act which would extend this up to 12 years after the President leaves office.

If you want access to . . .	Then access is governed by . . .
(e) Documents created by Presidents holding office before 1981 and housed in a NARA Presidential library.	the deed of gift under which they were given to NARA. These documents are not Federal records and FOIA does not apply to these materials.
(f) Nixon Presidential materials	part 1275. FOIA does not apply to these materials.

§ 1250.8 Does NARA provide access to all the executive branch records housed at NARA facilities?

(a) NARA provides access to the records NARA creates (operational records) and records originating in other Federal agencies that have been transferred to the legal custody of the Archivist of the United States (archival records).

(b) Twentieth-century personnel and medical records of former members of the military and of former civilian employees of the Federal government are held at NARA's National Personnel Records Center (NPRC), located in St. Louis, Missouri. These records remain in the legal custody of the agencies that created them and access to them is governed by the FOIA and other access regulations of the creating agencies. The NPRC processes FOIA requests under authority delegated by the originating agencies not under the provisions of this part.

(c) In our national and regional records centers, NARA stores records that agencies no longer need for day-to-day business. These records remain in the legal custody of the agencies that created them. Access to these records is through the originating agency. NARA does not process FOIA requests for these records.

§ 1250.10 Do I need to use FOIA to gain access to records at NARA?

(a) Most archival records held by NARA are available to the public for research without filing a FOIA request. You may either visit a NARA facility as a researcher to view and copy records or you may write to request copies of specific records.

(b) If you are seeking access to archival records that are restricted and not available to the public, you may need to file a FOIA request or a mandatory review request (see part 1254 of this chapter for procedures for accessing classified records) to gain access to these materials. If you make a reference request for restricted records, we may ask that you change your reference request to a FOIA request or a mandatory review request. See 36 CFR 1254.46 for information on filing mandatory review requests.

(c) You must file a FOIA request when you request access to NARA operational records that are not already available to the public.

§ 1250.12 What types of records are available in NARA's FOIA Reading Room?

(a) NARA makes available for public inspection and copying the following materials described in subsection (a)(2) of the FOIA:

(1) Final NARA orders;

(2) Written statements of NARA policy that are not published in the **Federal Register**;

(3) Operational staff manuals and instructions to staff that affect members of the public;

(4) Copies of records requested 3 or more times under FOIA; and

(5) An index, updated quarterly, to these materials.

(b) These materials are available during normal working hours at the NARA facility where the records are located. See 36 CFR parts 1253 and 1254 for a fuller description of NARA facilities and research room procedures.

(c) Any of this material that was created after October 31, 1996 will also be placed on NARA's web site at *http://www.nara.gov/foia/*.

(d) For paper copies of the index to these materials write the NARA FOIA Officer at the address listed in § 1250.22(d).

§ 1250.14 If I do not use FOIA to request records, will NARA treat my request differently?

Whether you choose to invoke the FOIA or not, NARA will respond as promptly as possible to your request.

Subpart B—How To Access Records Under FOIA

§ 1250.20 What do I include in my FOIA request?

In your FOIA request, you must:

(a) Describe the records you wish to access in enough detail to allow NARA staff to find them. The more information you provide, the better possibility NARA has of finding the records you are seeking. Information that will help us find the records includes:

(1) The agencies, offices, or individuals involved; and

(2) The approximate date when the records were created.

(b) Include your name and full mailing address. If possible, please include a phone number or email address as well. This information will allow us to reach you faster if we have any questions about your request.

(c) Mark both your letter and envelope with the words ''FOIA Request.''

§ 1250.22 Where do I send my FOIA request?

(a) For requests for archival records in the Washington, DC, area, mail your request to the Chief, Special Access and FOIA Staff (NWCTF), Room 6350, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(b) For archival records in any of NARA's regional records services facilities, send the FOIA request to the director of the facility in which the records are located. The addresses for these facilities are listed in 36 CFR 1253.7.

(c) For Presidential records subject to FOIA, mail your request to the director of the library in which the records are located. The addresses for these facilities are listed in 36 CFR 1253.3.

(d) For the operational records of any NARA unit except the Office of the Inspector General, mail your request to the NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(e) For records of the Inspector General write to Office of the Inspector General (OIG), FOIA Request, Room 1300, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(f) If you are unable to determine where to send your request, send it to the NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. That office will forward your request to the office(s) that have the records you are seeking. Your request will be considered received when it reaches the proper office's FOIA staff.

§ 1250.24 Will you accept a FOIA request through email?

Yes, send email FOIA requests to inquire@nara.gov. You must indicate in the subject line of your email message that you are sending a FOIA request. The body of the message must contain

all of the information listed in § 1250.20.

§ 1250.26 How quickly will NARA respond to my FOIA request?

(a) NARA will make an initial response to all FOIA requests within 20 working days.

(b) In most cases, NARA will make a decision on the release of the records you requested within the 20 working days. If unusual circumstances prevent us from making a decision within 20 working days, we will inform you in writing how long it will take us to complete your request. Unusual circumstances are the need to:

(1) Search for and collect the records from field facilities;

(2) Search for, collect, and review a voluminous amount of records which are part of a single request; or

(3) Consult with another agency before releasing records.

(c) If we are extending the deadline for more than an additional 10 working days, we will ask you if you wish to modify your request so that we can meet the deadline. If you do not agree to modify your request, we will work with you to arrange an alternative time schedule for review and release.

(d) If you have requested records that we do not have the authority to release without consulting another agency (e.g. security-classified records), we will refer copies of the documents to the appropriate agency. NARA will send you an initial response to your FOIA requests within 20 working days informing you of this referral. However, the final response to your FOIA can only be made when the agency to which we have referred the documents responds to us.

(e) If you have requested Presidential records and NARA decides to grant you access, NARA must inform the incumbent and former Presidents of our intention to disclose information from those records. After receiving the notice, the incumbent and former Presidents have 30 days in which to decide whether or not to invoke Executive privilege to deny access to the information. NARA will send you an initial response to your FOIA requests within 20 working days informing you of the status of your request. However, the final response to your FOIA can only be made at the end of the 30-day Presidential notification period.

(f) If you have requested records containing confidential commercial information that is less than 10 years old, we will contact the submitter of the requested information. NARA will send you an initial response to your FOIA request within 20 working days informing you of our actions. See § 1250.82 for the time allowed the submitter to object to the release of confidential commercial information. If the records contain confidential commercial information that is 10 years old or older, NARA staff will not contact the submitter, but will process the request under normal FOIA procedures.

§ 1250.28 Will NARA ever expedite the review of the records I requested?

(a) In certain cases NARA will move your FOIA request or appeal to the head of our FOIA queue. We will do this for any of the following reasons:

(1) Imminent threat to an individual's life or physical safety;

(2) Imminent loss of a substantial due process right; or

(3) An urgent need to inform the public about an actual or alleged Federal government activity (this last criterion applies only to those requests made by a person primarily engaged in disseminating information to the public).

(b) NARA can expedite requests, or segments of requests, only for records over which we have control. If NARA must refer a request to another agency, we will so inform you and suggest that you seek expedited review from that agency. We cannot expedite requests for Presidential records or shorten the 30-day Presidential notification period.

§ 1250.30 How do I request expedited processing?

You must submit a statement, certified to be true and correct to the best of your knowledge, explaining the basis of your need for expedited processing. All such requests must be sent to the appropriate official at the address listed in § 1250.22. You may request expedited processing when you first request records or at any time during our processing of your request.

§ 1250.32 How quickly will NARA process an expedited request?

We will respond to you within 10 days of our receipt of your request for expedited processing. If we grant your request, the NARA office responsible for the review of the requested records will process your request as quickly as possible. If we deny your request for expedited processing and you decide to appeal our denial, we will also expedite our review of your appeal.

§ 1250.34 How will I know if NARA is going to release the records I requested?

Once NARA decides to release the requested records, in whole or in part, we will inform you in writing. Our response will tell you how much responsive material we found, where you may review the records, and the copying or other charges due. If the records you sought were released only in part, we will estimate, if possible, the amount of the withheld information. Also, if we deny any part of your request, our response will explain the reasons for the denial, which FOIA exemptions apply, and your right to appeal our decisions.

§ 1250.36 When will NARA deny a FOIA request?

The FOIA contains nine exemptions under which information may be exempted from release. Given the age and nature of archival records, many of these exemptions apply to only a few of the records in our custody. We will only withhold information where we must (such as information which remains classified, or information which is specifically closed by statute) or we reasonably foresee that disclosure would cause a harm. In addition if only part of a record must be withheld, NARA will provide access to the rest of the information in the record. Categories of information that may be exempt from disclosure under the FOIA are as follows:

Section of the FOIA:	Reason for exemption
5 U.S.C. 552(b)(1)	Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under the Executive order.
5 U.S.C. 552(b)(2)	Related solely to the internal personnel rules and practices of an agency.
5 U.S.C. 552(b)(3)	Specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute: (A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.
5 U.S.C. 552(b)(4)	Trade secrets and commercial or financial information obtained from a person that are privileged or confidential.
5 U.S.C. 552(b)(5)	Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

Section of the FOIA:	Reason for exemption
5 U.S.C. 552(b)(6)	Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
5 U.S.C. 552(b)(7)	Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (A) Could reasonably be expected to interfere with enforcement proceedings: (B) Would deprive a person of a right to a fair trial or an impartial adjudication; (C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source; (E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) Could reasonably be expected to endanger the life or physical safety of any individual.
5 U.S.C. 552(b)(8)	Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.
5 U.S.C. 552(b)(8)	Geological and geophysical information and data, including maps, concerning wells.

§ 1250.38 In what format will NARA provide copies?

After all applicable fees are paid, NARA will provide you copies of records in the format you request if the records already exist in that format, or if they are readily reproducible in the format you request.

Subpart C—Fees

§ 1250.50 Will I be charged for my FOIA request?

(a) Fees and fee waivers for FOIA requests for NARA operational records are listed in this subpart.

(b) Fees for FOIA requests for NARA archival records are listed in 36 CFR part 1258.

§ 1250.52 How much will I have to pay for a FOIA request for NARA operational records?

(a) If you are a commercial use requester, we will charge you fees for searching, reviewing, and copying.

(b) If you are an educational or scientific institution requester, or a member of the news media, we will charge you fees for copying. However, we will not charge you for copying the first 100 pages.

(c) If you do not fall into either of the categories in paragraphs (a) and (b) of this section, then we will charge you search and copying fees. However, we will not charge you for the first 2 hours of search time or for copying the first 100 pages.

§ 1250.54 General information on fees for NARA operational records.

(a) NARA is able to make most of its records available for examination at the NARA facility where the records are located. Whenever this is possible, you may review the records in a NARA research room at that facility.

(b) If you want NARA to supply you with copies, we will normally require you to pay all applicable fees in accordance with § 1250.52 before we provide you with the copies.

(c) NARA may charge search fees even if the records are not releasable or even if we do not find any responsive records during our search.

(d) If you are entitled to receive 100 free pages, but the records cannot be copied onto standard size (8.5″ by 11″) photocopy paper, we will copy them on larger paper and will reduce your copy fee by the normal charge for 100 standard size photocopies. If the records are not on textual media (*e.g.*, photographs or electronic files) we will provide the equivalent of 100 pages of standard size paper copies for free.

(e) We will not charge you any fee if the total costs are $10 or less.

(f) If estimated search or review fees exceed $50, we will contact you. If you have specified a different limit that you are willing to spend, we will contact you only if we estimate the fees will exceed that amount.

(g) If you have failed to pay FOIA fees in the past, we will require you to pay your past-due bill before we begin processing your request. If we estimate that your fees may be greater than $250, we may require payment or a deposit before we begin processing your request.

(h) If we determine that you (acting either alone or with others) are breaking down a single request into a series of requests in order to avoid or reduce fees, we may aggregate all these requests in calculating the fees.

§ 1250.56 Fee schedule for NARA operational records.

In responding to FOIA requests for operational records, NARA will charge the following fees, where applicable, unless we have given you a reduction or waiver of fees under § 1250.60.

(a) *Search fees*—(1) *Manual searching of records.* When the search is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is $16 per hour (or fraction thereof). When the request is more complicated and must be done by a professional employee of NARA, the rate is $33 per hour (or fraction thereof)

(2) *Computer searching.* This is the actual cost to NARA of operating the computer and the salary of the operator. When the search is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is $16 per hour (or fraction thereof). When the request is more complicated and must be done by a professional employee of NARA, the rate is $33 per hour (or fraction thereof).

(b) *Review fees.* (1) Review fees are charged for time spent examining all documents that are responsive to a request to determine if any are exempt from release and to determine if NARA will release exempted records.

(2) The review fee is $33 per hour (or fraction thereof).

(3) NARA will not charge review fees for time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Reproduction fees*—(1) *Self-service photocopying.* At NARA facilities with self-service photocopiers, you may make reproductions of released paper documents for 15 cents per page.

(2) *Photocopying standard size pages.* This charge is 20 cents per page when NARA produces the photocopies.

(3) *Reproductions of electronic records.* The direct costs to NARA for staff time for programming, computer

operations, and printouts or electromagnetic media to reproduce the requested information will be charged to requesters. When the work is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is $16 per hour (or fraction thereof). When the request is more complicated and must be done by a professional employee of NARA, the rate is $33 per hour (or fraction thereof).

(4) *Copying other media.* This is the direct cost to NARA of the reproduction. Specific charges will be provided upon request.

§ 1250.58 Does NARA ever waive FOIA fees for NARA operational records?

(a) NARA will waive or reduce your fees for NARA operational records only if your request meets both of the following criteria:

(1) The request is in the public interest (i.e., information likely to contribute significantly to public understanding of the operations and activities of the government); and

(2) The request is not primarily in your commercial interest.

(b) All requests for fee waivers or reductions must be made at the time of the initial FOIA request. All requests must include the grounds for requesting the reduction or elimination of fees.

§ 1250.60 How will NARA determine if I am eligible for a fee waiver for NARA operational records?

(a) If you request a fee waiver, NARA will consider the following in reviewing how your request meets the public interest criteria in § 1250.58(a)(1):

(1) How do the records pertain to the operations and activities of the Federal Government?

(2) Will release reveal any meaningful information about Federal Government activities that is not already publicly known?

(3) Will disclosure to you advance the understanding of the general public on the issue?

(4) Do you have expertise in or a thorough understanding of these records?

(5) Will you be able to disseminate this information to a broad spectrum of the public?

(6) Will disclosure lead to a significantly greater understanding of the Government by the public?

(b) After reviewing your request and determining that there is a substantial public interest in release, NARA will also review it to determine if it furthers your commercial interests. If it does, you are not eligible for a fee waiver.

Subpart D—Appeals

§ 1250.70 What are my appeal rights under FOIA?

You may appeal any of the following decisions:

(a) The refusal to release a record, either in whole or in part;

(b) The determination that a record does not exist or cannot be found;

(c) The determination that the record you sought was not subject to the FOIA;

(d) The denial of a request for expedited processing; or

(e) The denial of a fee waiver request.

§ 1250.72 How do I file an appeal?

(a) All appeals must be in writing and received by NARA within 35 calendar days of the date of NARA's denial letter. Mark both your letter and envelope with the words ''FOIA Appeal,'' and include a copy of your initial request and our denial.

(b) In your appeal, explain why we should release the records, grant your fee waiver request, or expedite the processing of your request. If we were not able to find the records you wanted, explain why you believe our search was inadequate. If we denied you access to records and told you that those records were not subject to FOIA, please explain why you believe the records are subject to FOIA.

§ 1250.74 Where do I send my appeal?

(a) If NARA's Inspector General denied your request, send your appeal to the Archivist of the United States, c/o FOIA Appeal Staff, Office of the General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740–6001.

(b) Send all other appeals to the Deputy Archivist of the United States, c/o FOIA Appeal Staff, Office of the General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740–6001.

(c) Denials under FOIA of access to national security information accessioned into the National Archives of the United States are made by designated officials of the originating or responsible agency or by NARA under a written delegation of authority. You must appeal determinations that records remain classified for reasons of national security to the agency with responsibility for protecting and declassifying that information. NARA will provide you with the necessary appeal information in those cases. You can find additional information on access to national security classified records at NARA in 36 CFR part 1254.

§ 1250.76 May I email my FOIA appeal?

Yes, you may submit a FOIA appeal via email to inquire@nara.gov. You must put the words ''FOIA Appeal'' in the subject line of your email message. The body of your message must contain the information in § 1250.72(b).

§ 1250.78 How does NARA handle appeals?

NARA will respond to your appeal within 20 working days after its receipt of the appeal by NARA. If we reverse or modify our initial decision, we will inform you in writing and reprocess your request. If we do not change our initial decision, our response to you will explain the reasons for our decision, any FOIA exemptions that apply, and your right to judicial review of our decision.

Subpart E—Special Situations

§ 1250.80 How does a submitter identify records containing confidential commercial information?

When a person submits records that contain confidential commercial information to NARA, that person may state in writing that all or part of the records are exempt from disclosure under exemption (b)(4) of the FOIA.

§ 1250.82 How will NARA handle a FOIA request for confidential commercial information?

If NARA receives a FOIA request for records containing confidential commercial information or for records that we believe may contain confidential commercial information and if the information is less than 10 years old, we will follow these procedures:

(a) If, after reviewing the records in response to a FOIA request, we believe that the records may be opened, we will make reasonable efforts to inform the submitter of this. When the request is for information from a single or small number of submitters, NARA will send a notice via registered mail to the submitter's last known address. Our notice to the submitter will include a copy of the FOIA request and will tell the submitter the time limits and procedures for objecting to the release of the requested material.

(b) The submitter will have 5 working days from the receipt of our notice to object to the release and to explain the basis for the objection. The NARA FOIA Officer may extend this period for an additional 5 working days.

(c) NARA will review and consider all objections to release that are received within the time limit. If we decide to release the records, we will inform the submitter in writing. This notice will include copies of the records as we

intend to release them and our reasons for deciding to release. We will also inform the submitter that we intend to release the records 10 working days after the date of the notice unless a U.S. District Court forbids disclosure.

(d) If the requester files a lawsuit under the FOIA for access to any withheld records, we will inform the submitter.

(e) We will notify the requester whenever we notify the submitter of the opportunity to object or to extend the time for objecting.

§ 1250.84 Service of subpoena or other legal demand for NARA operational records.

(a) A subpoena duces tecum or other legal demand for the production of NARA operational records must be addressed to the Office of the General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740–6001.

(b) The Archivist of the United States and the General Counsel are the only NARA employees authorized to accept, on behalf of NARA, service of a subpoena duces tecum or other legal demands for NARA operational records.

(c) Regulations concerning service of a subpoena duces tecum or other legal demand for archival records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at 36 CFR 1254.8.

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

2. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118; 5 U.S.C. 552; and EO 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§§ 1254.38 and 1254.39 [Removed]

3. Amend Subpart C to remove §§ 1254.38 and 1254.39.

4. Amend § 1254.44 by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 1254.44 Freedom of Information Act (FOIA) requests.

(a) *Requests for access to national security information under the Freedom of Information Act.* Requests for access to national security information under the FOIA are processed in accordance with the provisions of 36 CFR part 1250. Time limits for responses to FOIA requests for national security information are those provided in the FOIA, rather than the longer time limits provided for responses to mandatory review requests specified by Executive Order 12958, Classified National Security Information (3 CFR, 1995 Comp., p. 333).

* * * * *

(c) *Denials and appeals.* Denials under FOIA of access to national security information accessioned into the National Archives of the United States are made by designated officials of the originating or responsible agency or by NARA under a written delegation of authority. You must appeal determinations that records remain classified for reasons of national security to the agency with responsibility for protecting and declassifying that information. NARA will provide you with the necessary appeal information in those cases.

Dated: August 17, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–21420 Filed 8–22–00; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1803, MM Docket No. 00–140, RM–9916]

Digital Television Broadcast Service; Scottsbluff, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Duhamel Broadcasting Enterprises, licensee of station KDUH–TV, NTSC Channel 4, Scottsbluff, Nebraska, requesting the substitution of DTV Channel 7 for its assigned DTV Channel 20 at Scottsbluff. DTV Channel 7 can be allotted to Scottsbluff, Nebraska, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (42–10–21 N. and 103–13–57 W.). As requested, we propose to allot DTV Channel 7 to Scottsbluff with a power of 32.4 and a height above average terrain (HAAT) of 592 meters.

DATES: Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Lauren Lynch Flick, Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW, Suite 400, Washington, DC 20006 (Counsel for Duhamel Broadcasting Enterprises).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–140, adopted August 17, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–21406 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1798, MM Docket No. 00–319, RM–9915]

Digital Television Broadcast Service; Little Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Channel 42 of Little Rock, Inc., licensee

of station KYPX(TV), NTSC Channel 42, Little Rock, Arkansas, requests the substitution of DTV Channel 44 for its assigned DTV Channel 43. DTV Channel 44 can be allotted to Little Rock, Arkansas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (34–47–56 N. and 92–29–44 W). As requested, we propose to allot DTV Channel 44 to Little Rock with a power of 1000 and a height above average terrain (HAAT) of 334 meters.

DATES: Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Scott S. Patrick, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW, Suite 800, Washington, DC 20036–6802 (Counsel for Channel 42 of Little Rock, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–139, adopted August 17, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–21407 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1796, MM Docket No. 00–137, RM–9917]

Digital Television Broadcast Service; Reno, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sierra Broadcasting Company (''Sierra''), licensee of Station KRNV9TV), NTSC Channel 4, Reno, Nevada, requesting the substitution of DTV Channel 9 for DTV Channel 34. DTV Channel 9 can be allotted to Reno, Nevada, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (39–18–57 N. and 119–53–00 W.). As requested, we propose to allot DTV Channel 9 to Reno with a power of 16.8 and a height above average terrain (HAAT) of 856.5 meters.

DATES: Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Dominic Monahan, Luvaas, Cobb, Richards & Fraser, P.C., 777 High Street, Suite 300, Eugene, Oregon 97401 (Counsel for Sierra Broadcasting Company).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–137, adopted August 17, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–21408 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1795, MM Docket No. 00–136, RM–9898]

Digital Television Broadcast Service; Birmingham, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Alabama Educational Television Commission, licensee of noncommercial television station WBIQ-TV, NTSC Channel 10, Birmingham, Alabama, requesting the substitution of DTV Channel *5 for DTV Channel *53. DTV Channel *5 can be allotted to Birmingham, Alabama, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (33–29–19 N. and 86–47–58 W.). As requested, we propose to allot DTV Channel *5 to Birmingham with a power of 2.0 and a height above average terrain (HAAT) of 296 meters.

DATES: Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marvin J.

Diamond, F. William LeBeau, Hogan & Hartson L.L.P., 555 13th Street, NW, Washington, DC 20004–1160 (Counsel for Alabama Educational Television Commission).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–136, adopted August 17, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–21409 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1739; MM Docket No. 99–304; RM–9738]

Radio Broadcasting Services; Charlotte, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a proposal filed by Charlotte Radio Broadcasting Company requesting the allotment of Channel 227A at Charlotte, Texas, as the community's first local broadcast service. *See* 64 FR 57836, October 27, 1999. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted. Since there has been no interest expressed for the allotment of a channel at Charlotte, Texas, in response to the *Notice of Proposed Rule Making*, the *Report and Order* dismisses the proposal.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–304, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21403 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 65, No. 164

Wednesday, August 23, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Malaria Vaccine Development Program; Federal Advisory Committee; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the USAID Malaria Vaccine Development Program (MVDP) Federal Advisory Committee. The meeting will be held from 9 am to 5 pm on 12 September and from 9 am to 3 pm on 13 September, 2000.

The agenda will concentrate on the activities of the MVDP over the past six months and on future plans. Since proprietary information will be discussed throughout the meeting it will be closed to the public.

Those wishing to obtain additional information about the USAID MVDP should contact Carter Diggs, the designated Federal Officer for the USAID MVDP Federal Advisory Committee at the Office of Health and Nutrition, USAID/G/PHN/HN/EH, Room 3.07–013, 3rd floor, RRB, Washington, DC 20523–3700, telephone (202) 712–5728m Fax (202) 216–3702, cdiggs@usaid.gov.

Carter Diggs,

USAID Designated Federal Officer, Senior Technical Advisor, Malaria Vaccine Development Program.

[FR Doc. 00–21536 Filed 8–22–00; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory Committee on Voluntary Foreign Aid (ACVFA); Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: September 14, 2000 (9:00 a.m. to 5:00 p.m.).

Location: Washington Plaza Hotel, Federal Hall, 10 Thomas Circle, NW., Washington, DC 20005.

This meeting, entitled ''Combating the HIV/AIDS pandemic in sub-Saharan Africa'' will focus attention on the next steps to be taken by the U.S. government, private voluntary organizations (PVOs), non-governmental organizations (NGOs), and the private sector, following the recent International AIDS Conference in Durban, South Africa.

The meeting is free and open to the public. However, notification by September 12, 1200 through the Advisory Committee Headquarters is required. Persons wishing to attend the meeting must fax their name, organization and phone number to Lisa J. Harrison (703) 741–0567.

Dated: August 15, 2000.

Noreen O'Meara,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 00–21534 Filed 8–22–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

RIN 0560–AG27

Sugar Payment-In-Kind (PIK) Diversion Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of program implementation.

SUMMARY: This notice implements section 1009(e) of the Food Security Act of 1985 with respect to existing Commodity Credit Corporation (CCC) inventories of sugar. Based on the combination of market prices below forfeiture levels, forfeitures expected this year, a greater excess supply outlook for the next crop, CCC holding sugar inventory with no other specific disposal plan, and U.S. sugar producers' growing realization of the major market problems facing the sugar sector, CCC is implementing a Sugar Payment-In-Kind (PIK) Diversion Program to help reduce the amount of forfeitures otherwise expected, and eliminate CCC's sugar inventory, thereby also eliminating storage costs.

EFFECTIVE DATE: This notice becomes effective on August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel Colacicco, Group Leader, Dairy and Sweetener Analysis, Farm Service Agency, USDA, STOP 516, 1400 Independence Avenue, SW, Washington, DC 20250–0516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This program has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized in this notice.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this notice applies are: Commodity Loan and Loan Deficiency Payments—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this notice because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

The program set forth in this notice is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995

are not applicable to this notice because the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice and because this notice does not impose any unfunded mandates.

Small Business Regulatory Enforcement Act of 1996

Provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Act (SBREFA)) provide that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose. Upon such a finding, the statute provides the agency action does not have to meet the requirements of section 801 of SBREFA, which requires a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This notice is considered to involve an action which would be considered major for the purposes of SBREFA. However, because this notice involves a cost-savings measure which would be lost with the passage of time, delay would be contrary to the public interest. Hence, this notice is made effective immediately on August 18, 2000.

Authority for a Sugar PIK Diversion Program

Authority for CCC to conduct a Sugar PIK Diversion Program is based on section 1009(e) of the Food Security Act of 1985 (''1985 Act''), which provides that when a loan program is in effect, the Secretary may, at any time before harvest, accept bids from producers to convert planted acreage to diverted acreage in return for payment in kind from CCC surplus stocks of the commodity to which the acreage was planted, i.e., offer a paid land diversion program. Subsection (e) also states that no producer may receive over $20,000 worth of in-kind payments. Such action can be taken only if there has been: (1) Changes in domestic or world supply for demand conditions have occurred after the announcement of the loan program for the crop and (2) without further action, the Government and producers will be faced with a burdensome and costly surplus. Overall, the measures addressed in section 1009(e) and other subsections can be taken under the terms of the statute only if they would reduce direct and indirect costs to the Government without adversely affecting the income of participating small and medium-size producers.

Supply-Demand Situation

The 1999-crop stocks-to-use ratio is projected to reach 18.4 percent—up 2.4 percentage points from the 1998-crop level. Refined beet sugar prices (Midwest) are in the 19 to 20-cent-per-pound range—4 cents below forfeiture levels. For raw cane sugar, the September contract has recently been trading between 17 and 18 cents per pound. The 2000-crop production forecast is 8.973 million tons—slightly below the previous production record of 9.035 million tons that was set last year.

CCC Sugar Purchase and Inventory

In response to the current depressed domestic sugar market on May 11, 2000, it was announced that CCC would buy U.S. sugar to reduce the cost of expected loan forfeitures, support sugar growers, and boost market prices. The purchase authority is based on section 1009(c) of the 1985 Act. On May 26, 2000, CCC issued a purchase invitation to buy approximately 150,000 tons of sugar. On June 6, 2000, CCC announced that it had purchased 132,000 tons of refined sugar at an average price of 20.5 cents per pound. Beginning with September 2000, CCC will begin incurring storage charges of $0.10 per hundredweight per month on this purchased sugar, i.e., $264,000 per month. On August 1, 2000, 42,000 additional tons of refined beet sugar loan collateral were forfeited to CCC, with an associated storage cost of $84,000 per month.

Basis for Implementing a Sugar PIK Diversion Program

Based on the combination of: (1) Market prices well below forfeiture levels, (2) forfeitures expected this year, (3) a greater excess supply outlook for the next crop, and (4) CCC holding sugar inventory with no other specific disposal plan, CCC is implementing a Sugar PIK Diversion Program to reduce Government costs by helping to reduce the amount of forfeitures otherwise expected, and eliminate much of CCC's sugar inventory, thereby also eliminating Government storage costs.

Outline of How the Sugar PIK Diversion Program Will Work

Under the Sugar PIK Diversion Program, producers must agree not to harvest sugar beets for commercial use in return for sugar from CCC's existing inventory. Producers submit bids indicating the dollar value of CCC sugar that they are willing to accept to divert acres, in an amount specified by the producers, from production. The Program will be limited to sugar beet producers because of the marketing complexities that would arise with such a program for the cane sector.

Sugar beet producers wanting to participate will be required to provide data on (1) the number of acres that the producer will divert, (2) the dollar equivalent of the number of pounds of sugar wanted as payment, and (3) the producer's previous 3-year simple average per acre production of sugar, which will require data from the grower's beet processor. Some of this information will be used to determine the value to CCC of the diversion.

Selection of participants will be based on the objective of getting the most sugar production diverted in return for the least amount of CCC inventory. To do this, CCC will rank the bids and not accept any bids that, in effect, request more sugar in payment for diverting acreage than would be expected to be produced from the diverted acreage. To facilitate the effort to obtain attractive bids, a bid cap will be established, in advance, based upon the submitted data and the production expectations. The bid cap will equal the dollar value of refined beet sugar historically produced by that acreage. To assure that a real reduction is obtained, the sugar removed from production must be under contract to a processor. Returns under the program will likely have to be enough to allow the producer to obtain a contract waiver from the processor who could then take an assignment of the sugar to be obtained from CCC.

Impact on Production

As of August 1, 2000, CCC owns 174,000 tons of refined sugar in inventory (186,180 tons, raw value). This amount is equivalent to 3.94 percent of the 2000-crop refined beet sugar production forecast, 4.28 percent of the raw cane sugar production forecast, and 2.05 percent of the total sugar production forecast. Removing 186,180 tons, raw value, from next year's supply would have only a slight effect on the expected excess supply situation. The stocks-to-use ratio may still be around 18.6 percent—near the current 1999-crop level of 18.4 percent.

Using the 186,180 tons, raw value, as a basis for analysis, the actual impact of a Sugar PIK Diversion Program for this amount of CCC inventory may be slightly higher than this quantity. For example, using the 2000-crop national average yield forecast, 2.9 tons of refined sugar are produced from 1 acre of sugar beets. The beets on diverted acreage will simply be left unharvested, disked under, or, in any case, may not be harvested for commercial use. Thus, a participating producer will forgo all, or most, of the harvest costs on each of

these acres—around $100 per acre. Bidders will likely concentrate on these forgone harvest costs in determining their competitive bid strategy. Using the current 19-cent estimate of Midwest refined sugar prices as a proxy value of the sugar, the $100 per acre forgone harvest cost would be the equivalent of around 526 pounds of refined sugar. If producers would try to retain only half that amount in their bids in order to gain acceptance into the program, they would give up around 260 pounds worth of normal production per acre, i.e., the equivalent of reducing their per acre yield from 2.9 tons per acre to about 2.8 tons per acre. Thus, the 174,000 tons of CCC refined sugar inventory could result in the equivalent of a 180,215-ton decrease in refined beet sugar production (192,030 tons, raw value). This is equivalent to a 62,143-acre decrease in production—4 percent of 1999-crop sugar beet plantings.

Factory throughput will be affected. Also, diverting acres from production will result in forgone revenue that would have been generated from the production of such by-products as molasses and beet pulp.

Effect of $20,000 Payment Limit

Based on the 2000-crop national average yield forecast of 2.9 tons of refined beet sugar per acre and valuing CCC's sugar inventory at the current estimate of Midwest refined sugar prices of 19 cents per pound, an individual beet producer could receive up to 52.6 tons as a payment—the equivalent of only 18.1 acres of production because of the $20,000 payment limit. The 1999-crop average acreage per farm was 129 acres. At that rate, at least 3,308 beet producers would have to participate in the program in order to utilize CCC's current sugar inventory. The Farm Service Agency's (FSA) 1999 farm acreage report indicates that there were 12,474 sugar beet farms. Even after accounting for possible decreases in sugar beet farm numbers in the Oregon and Washington areas, at least 12,000 farms likely planted sugar beets this year. Based on the apparent sugar sector interest in a Sugar PIK Program, CCC's 174,000-ton refined sugar inventory should easily be utilized in a Sugar PIK Diversion Program.

Potential Cost Savings

CCC savings will result from the elimination of monthly storage payments and the potential for reduced 2000-crop forfeitures of loan collateral. On August 1, 2000, 42,000 tons of refined beet sugar loan collateral were forfeited to CCC. Adding this amount to the 132,000 tons purchased on June 6, 2000, CCC's total inventory now stands at 174,000 tons of refined sugar. Total 1999-crop forfeitures are expected to reach 500,000 to 550,000 tons, in addition to the 42,000 tons already forfeited.

From 300,000 to 400,000 tons of refined sugar are expected to be paid out to participants under the Sugar PIK Program. Assuming 350,000 tons of refined sugar are paid out under the Sugar PIK Program, this would be equivalent to 7.8 percent of the current 2000-crop refined beet sugar production forecast and a 120,437-acre decrease in production—7.7 percent of plantings. At least 6,654 producers would have to participate in the program to utilize this amount of refined sugar.

This will impact CCC's monthly storage outlays and expected forfeitures. Monthly storage savings will total $700,000, and CCC could potentially avoid around $160 million worth of 2000-crop forfeitures.

Program Design

Administration

This program will be administered by the Executive Vice President, CCC.

1. Bid Submission Procedures

(a) Producers wishing to participate in the program must submit a bid, on a form prescribed by CCC, to CCC for a contract with CCC that provides for the conversion of acreage planted to sugar beets, under contract for delivery to a processor, to diverted acreage that will not be harvested for sugar or used for any other commercial purposes in return for payments in sugar from CCC's inventory of refined sugar or raw cane sugar.

(b) The bid must provide information that CCC deems necessary for conducting the program, including but not limited to, the number of acres that the producer will divert; the producer's previous consecutive 3-year simple average sugar beet yield (years with no production will not be considered; for first time producers, however, the previous consecutive 3-year simple average sugar beet yield for all the producers who delivered to the applicable factory will be used), the previous 3-year simple average sugar content of the producer's beets (for first time producers, the previous 3-year simple average sugar content for all beets delivered to that factory will be used), the processor's previous 3-year simple average recovery rate (for processors that have not been fully operational during the last 3 years, the simple average for those years that they were fully operational), the value of CCC sugar to be received as payment, and other information CCC deems necessary for administering the program.

(c) The following acreage is ineligible for the Sugar PIK Program:

(1) Acreage not currently under contract for delivery of sugar beets to a sugar beet processor for the production of sugar,

(2) Acreage on which a crop insurance indemnity or replant payment was received for the 2000-crop year or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the 2000-crop year,

(3) Acreage which is not harvestable, or

(4) Acreage devoted to roads or other non-producing areas.

(d) The diverted acres cannot be grazed, until after the sugar beets are destroyed by disking, plowing, or other means of mechanical destruction. In addition, the sugar beets on the diverted acres may not be used for any commercial purpose.

(e) If the total number of acres a producer bids is:

(1) Less than or equal to 15 acres, then the acreage bid must consist of one of the following:

(i) One area of contiguous land,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance;

(2) More than 15 acres, then the acreage bid must consist of one of the following:

(i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15 contiguous acres to complete the balance,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

2. Bid Selection Procedures

(a) CCC will rank the bids on the basis of the bid amount as a percentage of the bid cap, as determined by CCC. Those bids with the lowest of such percentages are expected to be selected first. In the case of identical bids, selection may be based on random selection or pro rata shares, as CCC deems appropriate.

(b) CCC will reject bids for which the bid amount exceeds the bid cap.

3. In-Kind Payments

(a) CCC will, through such methods as CCC deems appropriate, make payments in the form of refined sugar or raw cane sugar held in CCC inventory.

(b) To the maximum extent practicable, CCC will use its inventory in making an in-kind payment in the follow priority:

(1) CCC-owned refined sugar held in storage by the processor with whom the producer has a 2000-crop sugar contract which is stored in a region used by CCC in administering the CCC sugar loan program (region) in which the producer and processor are located;

(2) CCC-owned refined sugar held in storage by the processor with whom the producer has a 2000-crop contract which is stored in a region in which the producer is not located;

(3) CCC-owned refined sugar held in storage by any other processor which is in the same region as the producer;

(4) CCC-owned refined sugar held in storage by any other processor which is not in the same region as the producer; and

(5) CCC-owned raw cane sugar held in storage anywhere in the United States.

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw or refined). CCC will value its inventory by using the values set forth in the following tables. Accordingly, the quantity of sugar to be paid by CCC as an in-kind payment to a producer will be determined by dividing: (1) The total of the bid amount submitted by the producer and accepted by CCC, by (2) the value of CCC's inventory at the storage location where title will transfer from CCC to the producer, or the producer's assignee.

VALUATION OF REFINED SUGAR BY REGION

Region CCC		Inventory value ($/hundredweight)
Region 1	[MI IN OH KY TN WV]	$19.99
Region 2	[IA IL MN SD WI Eastern ½ ND]	19.00
Region 3	[AR CO KS MO NE UT Southeast ¼ WY]	19.67
Region 4	[NM OK TX LA MS]	19.90
Region 5	[MT Western ½ ND Northwest ¼ WY]	18.53
Region 6/7	[ID OR WA]	18.42
Region 8	[AK AZ CA HI NV AL & All Eastern Locations*]	20.07

*Eastern locations include: AL DE FL GA MD NJ NY SC NC PA VA & New England.

VALUATION OF RAW CANE SUGAR BY REGION

Region	CCC Inventory value* ($/hundredweight)
Florida	$15.57
Hawaii	14.27
Louisiana	15.91
Texas	16.25
Puerto Rico	17.00

*96 pol, adjusted by #14 contract.

(d) Producers may assign their in-kind payments to the processor with whom the producer has a 2000-crop sugar contract.

4. Payment Limitation

(a) The value of in-kind payments shall be limited to $20,000 per year per producer. For these purposes, a ''producer'' shall be determined by using the definition of a ''person'' set forth in 7 CFR part 1400.

(b) This payment limitation is separate and distinct from all other CCC program payment limitations.

5. Current Limit to the 2000 Crop

(a) Unless CCC announces otherwise, this Sugar PIK Program is limited to the 2000 crop.

(b) If the program is expanded to other crop years, participation will, unless CCC determined otherwise, be limited to those producers who have not increased their contract acreage from the previous crop year, or, more generally, have not increased their sugar beet plantings from the previous crop year.

6. Miscellaneous Provisions

(a) The contract shall provide for the payment of liquidated damages in the event that a producer fails to comply with the obligations specified in the CCC acreage diversion contract.

(b) In those instances in which, prior to the issuance of this notice, a producer has signed a power of attorney on an approved FSA–211 for a person or entity indicating that such power shall extend to all programs listed on the form, without limitation, such power will be considered to extend to this program unless by September 6, 2000 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

(c) CCC will transfer title of the sugar to the producer, or the producer's assignee, no earlier than October 1, 2000, and no later than December 31, 2000, as determined by CCC, by notifying the producer or assignee that the sugar is available to them. CCC will stop storage payments on this sugar on the date of transfer.

(d) The following provisions of Chapter 7 of the Code of Federal Regulations concerning general program administration will be applied in the administration of the Sugar PIK Program:

(1) Part 707—Payments due persons who have died, disappeared, or have been declared incompetent.

(2) Part 718—Provisions applicable to multiple programs.

(3) Part 780—Appeal regulations.

(4) Part 1403—Debt settlement policies and procedures.

Signed in Washington, D.C., on August 18, 2000.

Parks Shackelford,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–21490 Filed 8–18–00; 3:05 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–037N]

Codex Alimentarius Commission: Meeting of the Codex Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture and the Food and Drug Administration's (FDA) Center for Food Safety and Applied Nutrition (CFSAN) are sponsoring a public meeting on Thursday, September 7, 2000, to provide information and receive public comments on agenda items that will be discussed at the First Session of the Codex ad hoc Intergovernmental Task Force on Fruit and Vegetable Juices, which will be held in Brasilia, Brazil, on September 18–22, 2000. The Under Secretary and CFSAN

recognize the importance of providing interested parties with information about the Intergovernmental Task Force on Fruit and Vegetable Juices of the Codex Alimentarius Commission and to address items on the Agenda for the First Session of the Task Force.

DATES: The public meeting is scheduled for Thursday, September 7, 2000, from 1 pm to 4 pm.

ADDRESSES: The public meeting will be held in Room 1409 of the FDA Building, 200 ''C'' Street, SW., Washington, DC. 20204. To receive copies of the documents referenced in the notice contact the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo /economic/esn/codex/ccfvj01/fj00 _01e.htm* Submit one original and two copies of written comments to the FSIS Docket Room (address above) Docket #00–037N and the document number. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW, Washington, DC 20250, Telephone (202) 205–7760, FAX (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex ad hoc Intergovernmental Codex Task Force on Fruit and Vegetable Juices was established by the Twenty-third Session of the Codex Alimentarius Commission to revise and consolidate the existing Codex Standards and guidelines for fruit and vegetable juices and related products; and revise and up-date the methods of analysis and sampling for these products. The ad hoc Task Force is chaired by Brazil.

Issues To Be Discussed At The Public Meeting

Provisional agenda items to be discussed during the public meeting:

Consideration of Proposed Draft Codex Standards at Step 4:

(a) Proposed Draft Codex General Standard for Fruit Juices and Nectars;

(b) Proposed Draft Revised Codex Standard for Vegetable Juices; and

(c) Proposed Draft Codex Guidelines for the Labelling of Mixed Fruit Juices and Nectars.

The agenda items will be described and discussed at the public meeting and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to activities of the First ad hoc Task Force for Fruit and Vegetable Juices.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC.

Patrick J. Clerkin,

Associate U.S. Manager for Codex.

[FR Doc. 00–21510 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Record of Decision for Oil and Gas Leasing on Lands Administered by the Targhee National Forest; Bonneville, Butte, Clark, Fremont, Jefferson, Lemhi, Madison and Teton Counties, Idaho; Lincoln and Teton Counties, Wyoming

AGENCY: USDA, Forest Service is the lead agency USDI, Bureau of Land Management is a cooperating agency.

ACTION: Notice that a Decision has been made.

SUMMARY: This notice announces the decision made by the Forest Supervisor for Oil and Gas Leasing on the Targhee National Forest; and that the Bureau of Land Management has been a cooperating agency in the preparation of the EIS and will adopt the document for its leasing decisions. The notice of availability of the final environmental impact statement was published in the **Federal Register** on May 26, 2000 (Vol. 65, No. 103, pages 34174 and 34175).

DATES: The decision is appealable pursuant to 36 CFR 215 for 45 days from the date the legal notice appeared in the Idaho Falls Post Register. The legal notice appeared on August 15, 2000 and the appeal period will end on September 29, 2000.

ADDRESSES: The responsible official is Jerry B. Reese, Forest Supervisor, Caribou-Targhee National Forest, P.O. Box 208, 420 North Bridge Street, St. Anthony, ID 83445.

FOR FURTHER INFORMATION CONTACT: John Pruess, Caribou-Targhee National Forest, P.O. Box 208, 420 North Bridge Street, St. Anthony, ID 83445, telephone number (208) 624–3151.

Dated: August 16, 2000.

Jerry B. Reese,

Forest Supervisor, Caribou-Targhee National Forest.

Decision To Adopt the Targhee National Forest Oil and Gas Leasing Analysis Environmental Impact Statement

By the Bureau of Land Management, a Cooperating Agency; Bonneville, Butte, Clark, Fremont, Lemhi, Madison, and Teton Counties, Idaho; Lincoln and Teton Counties, Wyoming.

The Wyoming and Idaho Bureau of Land Management (BLM) hereby adopt the Targhee

National Forest Oil & Gas Leasing Analysis Environmental Impact Statement (EIS) pursuant to the provisions of 40 CFR 1506.3(c). BLM was identified as a Cooperating Agency in the Draft EIS (DEIS), the Final EIS (FEIS), and all **Federal Register** notices concerning the EIS. The EIS sufficiently addresses all concerns to allow the BLM to issue oil and gas leases in the Targhee National Forest in compliance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations, subject to further site-specific environmental analysis for specific drilling or development proposals.

The BLM developed the Oil and Gas Potential Report and the oil and gas reasonably foreseeable development (RFD) scenario for the National Forest prior to preparation of the EIS. The BLM has been involved in the identification of issues, the scoping and public involvement process, and has reviewed and provided comments on the Draft EIS. The BLM was also involved in the analysis of the comments on the Draft EIS. The EIS will not be recirculated because the BLM participated in its development, analysis, public involvement, and distribution.

The BLM finds, after independent review of the DEIS and the FEIS, that its comments and concerns have been satisfied. Further, BLM finds that the Forest Service Record of Decision adequately describes the rationale for selecting the preferred alternative. Finally, BLM finds that the EIS provides an adequate oil and gas RFD scenario and that the EIS meets the BLM Supplemental Program Guidance requirements for oil and gas leasing.

Prior to the BLM deciding whether or not to offer specific lands in the Targhee National Forest for oil and gas leasing, the Forest Service will help finalize the delineation of nominated lease parcels and insure that the appropriate stipulations are provided. Leases will not be issued without the concurrence of the Forest Service.

July 14, 2000.

Al Pierson,
BLM State Director, Wyoming.

Martha G. Hahn,
BLM State Director, Idaho.

Record of Decision

Targhee National Forest Oil and Gas Leasing Final Environmental Impact Statement; USDA Forest Service, Intermountain Region Targhee National Forest Bonneville, Butte, Clark, Fremont, Lemhi, Madison and Teton Counties, Idaho Lincoln and Teton Counties, Wyoming; Cooperating Agency: U.S. Department of Interior Bureau of Land Management

I. Introduction

This Record of Decision documents my decision as Responsible Official on the leasing of National Forest System lands for exploration, development, and production of oil and gas on the Targhee National Forest. These decisions include the determination of which lands will be made administratively available for leasing and which specific lands the Bureau of Land Management (BLM) will be authorized to lease (FEIS, 1–1). These decisions also amend the Land and Resource Management Plan for the Targhee National Forest.

These decisions are based on the Targhee National Forest Oil and Gas Leasing Environmental Impact Statement (EIS) and public comment, as well as other information available to us. The EIS was prepared in compliance with the National Environmental Policy Act of 1969 (NEPA) in order to implement authorities extended to the Forest Service by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FEIS, 1–3). All lands with federal mineral ownership within the study area (see Figure 1–1) were considered for leasing.

Department of Agriculture regulations at 36 CFR 228 Subpart E, implement Forest Service authorities granted under the Reform Act. These regulations require the Forest Service to make two leasing decisions. First, the Forest Service must decide which lands are administratively available for leasing (36 CFR 228.102(d)). Second, it must decide which specific lands the BLM will be authorized to offer for leasing (36 CFR 228.102(e)). As part of these decisions, the Forest Service must determine the conditions of surface occupancy or constraints, and ensure that appropriate stipulations are properly included as stipulations to the resulting leases. The lease stipulations are designed to protect forest resources and are based on the analysis documented in the EIS and the Revised Forest Plan for the Targhee National Forest.

The Secretary of Interior was granted the authority through the Mineral Leasing Act of 1920 as amended, to issue oil and gas leases for all federally owned minerals. The Secretary of Interior was also granted authority to set the terms under which oil and gas may be leased and the administrative requirements governing issued leases. The authority was extended to the BLM. The BLM is responsible for the sale and subsequent issuance of federal oil and gas leases (43 CFR Part 3100 through 3140).

The BLM and the Forest Service are required to coordinate oil and gas leasing decisions on National Forest System lands (43 CFR Part 3101.7). National Forest System lands reserved from the public domain or otherwise acquired cannot be leased over the objection of the Forest Service (see 43 CFR Part and 43 CFR Part 3101.7–2(b)). Where the Forest Service's consent to lease specific lands has been conditioned upon inclusion of stipulations into the lease, the authorized BLM officer is to incorporate these stipulations into any lease that may be issued on those lands (43 CFR Part 3101.7–2(a)). Once the Forest Service has authorized leasing of specific lands, final decisions regarding issuance or non-issuance of a lease for those lands reside with the BLM (43 CFR Part 3101.7–2).

Issuance of a Federal lease is the first stage in the administrative process of granting rights and approvals to explore for, develop, and produce oil and gas that may be present in the lease lands. There will be subsequent, more site specific, environmental analysis and approvals required at the exploratory drilling and field development stages. Sufficient authority has been retained at the leasing stage thru existing laws, regulations, standard lease terms and lease stipulations to avoid making irreversible, irretrievable commitments of resources that would result in unacceptable environmental impact. Additional requirements may be imposed at the time surface use and drilling plans are approved.

II. Decisions

The Forest Service and the BLM, federal agencies that have separate responsibilities for lands within the Targhee National Forest, have the following decisions to make:

1. The Forest Supervisor of the Targhee National Forest will decide which lands with federal mineral ownership are administratively available for oil and gas leasing and under what conditions.

2. The Forest Supervisor will decide what specific National Forest System lands the BLM will be authorized to offer for lease, subject to the Forest Service ensuring that correct stipulations will be attached to leases issued by the BLM.

3. The Forest Supervisor will need to make a decision to amend the Targhee Forest Plan to incorporate the leasing decisions being made here.

4. Subsequently, the BLM will decide whether or not to offer for lease the specific lands authorized by the Forest Service.

A. Availability Decision—36 CFR 228.102(d)

Based on the information analyzed and disclosed in the FEIS, the array of alternatives adequately address existing laws, regulations, Forest Plan direction, and responds to the public comments. Of these alternatives, I have selected Alternative 3 of the Final EIS (the preferred alternative) for the availability decision for specific lands (FEIS, 2–15).

This decision only applies to federal minerals and recognizes that the Forest Service has no authority with respect to the leasing of private or state minerals.

Specified lands with federal mineral ownership are available for leasing with lease stipulations applied to each specific resource area (see map attached to this decision). These stipulations and their rationale are described in detail in the table included as part of this decision.

APPROXIMATE ACRES AUTHORIZED FOR LEASING

Type of restriction	Acres
No Surface Occupancy	306,173
Special Stipulations (Controlled Surface Use and/or Timing Stipulations)	87,001
Standard Lease Terms	0
Total Acres Authorized For Leasing	393,174

The application of a No Surface Occupancy stipulation is intended to apply to well sites and production facilities such as tank batteries and compressor stations. Forest Plan standards and guidelines will be used to determine the acceptability and govern the design and placement of any proposed roads

or other linear facilities (pipelines, power lines, etc.) that typically extend beyond the lease boundaries. This allows for consistent standards to be applied, whether on lease or off lease. This is not to imply that roads or pipelines would be allowed in all places; they would not be allowed through the Research Natural Areas (RNAs), for example, since that would be inconsistent with the purposes for which RNAs are designated. They would also not be allowed in areas where the likely result would be unacceptable degradation of water quality, fisheries habitat, etc. Forest Plan direction provides standards and guidelines related to road design and construction (Revised Forest Plan pgs. 111–7, 18, 19, 21, 23, 89, 93, 94, 100, 102, 110, 111, 115, 118, 124, 133 and 149). If a proposed road cannot meet those criteria it will not be approved unless the Forest Plan is amended, and this would require further environmental analysis.

Oil and gas leasing exploration and development are legitimate, permissible, and viable uses of National Forest System lands that have been not been set aside by Congress for specific uses (e.g., designated wilderness). This is evidenced by several laws affecting the management of National Forest System lands, including the Organic Administration Act of 1897, Mineral Leasing Act of 1920, Mineral Leasing Act for Acquired Lands of 1947, the Mining and Mineral Policy Act of 1970, the National Forest Management Act of 1976, and the Energy Security Act of 1980 (FEIS, Appendix E).

Based on the analysis documented in the EIS, I conclude that specific National Forest System lands within the analysis area can be made available for leasing, with appropriate stipulations, while continuing to sustain the land's productivity and its capability to support long term ecosystem health and biodiversity goals (FEIS, 2–6, 2–15 thru 19, Ch. 4).

TARGHEE NATIONAL FOREST OIL AND GAS LEASING STIPULATIONS

Resource	Stipulation	Objective	Rationale
Wildlife Seasonal Habitats. Elk/Deer Winter Range→. Elk Summer Range→. Elk Summer Concentration→. Elk Calving Area→ ..... Moose Winter Range→	Timing Limitation. (TL)	To preclude the commencement of surface disturbing activities within the seasonal habitats—November 30 to April 1, April 1 to November 30, June 15 to August 15, May 15 to July 15, and November 15 to April 30, which could cause increased stress and/or displacement during the respective critical time periods.	Under Standard Lease Terms (SLT), activities can be delayed for up to 60 days to mitigate disturbance to wildlife seasonal habitats, but this would not provide needed mitigation in those areas that might overlap each other and require protection beyond 60 days. In this case a lease stipulation would be needed to preclude activities over an extended protection period. Also, by attaching a TL to the lease, the lessee is made aware of that requirement at the time the lease is acquired. The No Lease or No Surface Occupancy (NSO) stipulations are overly restrictive since operations conducted outside the no disturbance period would have a minimal effect on targeted wildlife.
Threatened, Endangered or Proposed Species (excluding grizzly bear, bald eagle and Ute ladies-tresses orchid).	Controlled Surface Use (CSU)—A survey would be required prior to surface disturbing activities to determine the possible presence of any T, E or P species and operations be designed and/or located so as not to adversely affect the viability of the species.	To ensure that proposed activities do not adversely affect viability of a T, E or P species.	Since the specific habitats of T, E of P species can change over time, a CSU stipulation will ensure that activities do not adversely affect the viability of these species should they be found during a survey at the time a well is proposed. The No Lease or NSO stipulation is overly restrictive since we are seeking to protect viability of a species, and not necessarily each individual animal or plant, which can often be avoided when locating facilities. Under SLTs, moving a facility 200 meters may not be sufficient to ensure a species viability.
Grizzly Bear Management Units (BMU's).	None—not available for leasing.	To preclude surface disturbing activities which would cause increased stress and/or displacement of animals.	The 1997 Revised Forest Plan management objective for these areas is to provide a predictable refuge in space and time and a secure habitat for grizzly bears. Oil and gas activities would not be compatible with this objective. A No Surface Occupancy stipulation would allow for directional drilling, but since adjoining lands are also unavailable for leasing, access to directional drill from nearby lands would not be possible.
Bald Eagle ..... Ute Ladies-tresses Orchid.	No Surface Occupancy within 1 mile of bald eagle nests. No Surface Occupancy.	To insure that proposed activities do not adversely affect the viability of the bald eagle or Ute ladies-tresses orchid.	The 1997 Revised Forest Plan emphasis is on minimizing human activities, avoiding and/or prohibiting road construction and ground disturbing activities in bald eagle and Ute ladies-tresses orchid habitats. CSU, TL stipulations, or leasing under standard lease terms would allow operations in the areas, which would have a negative impact on these species. The No Lease option is not appropriate since impacts can be mitigated under an NSO stipulation.

TARGHEE NATIONAL FOREST OIL AND GAS LEASING STIPULATIONS—Continued

Resource	Stipulation	Objective	Rationale
Sensitive Species	No Surface Occupancy.	To insure that proposed activities do not adversely affect the viability of sensitive animal and plant species and would not result in a downward trend toward listing.	The CSU, TL stipulations, or leasing under standard lease terms would allow operations, which have a negative impact on these species and might result in a downward trend toward listing.
Concentrated Development Areas—communication sites, administrative sites, active mines, mineral material sites, etc.	No Surface Occupancy.	To preclude surface occupancy and new surface disturbing activities within concentrated development areas.	Concentrated development allocates these specific lands for a specific use and a NSO stipulation is deemed necessary to protect the capital investment associated with these sites. A CSU, TL, or SLT stipulation would allow operations within these areas, which could negatively affect the capital investment. The No Lease option is not appropriate since impacts can be mitigated under an NSO stipulation.
Riparian Vegetation	Controlled Surface Use.	To require that activities be located and/or designed to avoid or minimize the potential for adverse effects to riparian areas.	Standard lease terms would not make the potential lessee aware of restrictions and possible increased operating costs. The No Lease option or No Surface Occupancy stipulation would preclude any activities and is deemed to be more restrictive than needed to ensure resource protection.
Non-Motorized Recreation.	None—Not Available for Leasing.	To protect the recreational values and natural setting within areas designated as semi-primitive non-motorized in the 1997 Revised Forest Plan.	The 1997 Revised Forest Plan management direction for the semi-primitive non-motorized areas is to close existing system or nonsystem roads and prohibit new road construction. Oil and gas activities would not be compatible with recreational values that are based on primitive settings.
Motorized Recreation ..	Controlled Surface Use.	To require that activities be located and/or designed to avoid or minimize the potential for adverse effects to recreational values and natural settings associated with this resource.	The 1997 Revised Forest Plan allows some motorized vehicle use because these areas are accessible by roads and trails. Generally, no new road construction is allowed. The No Lease option or No Surface Occupancy stipulation would preclude any activities and is deemed to be more restrictive than needed to ensure resource protection. Standard Lease Terms would not make the potential lessee aware of restrictions and possible increased operating costs.
Developed Recreation Sites.	No Surface Occupancy—one mile buffer around developed recreation sites (campgrounds).	To preclude surface occupancy and new surface disturbing activities within and near developed recreation sites.	Construction of a developed recreation site allocates those specific lands for a specific use and a NSO stipulation is deemed necessary to protect the capital investment made and the associated recreational values. A Controlled Surface Use, Timing Limitation stipulation or leasing under standard terms would allow operations within these areas which could affect the capital investment and/or recreational setting and therefore were not deemed appropriate. The No Lease option is not considered appropriate since impacts can be mitigated using a NSO stipulation.
Special-Use Permit Recreation Sites.	No Surface Occupancy.	To preclude surface occupancy and new surface disturbing activities within special-use permit sites such as ski resorts, summer homes, and organization camps.	Construction of resorts, summer homes, organization camps, etc., allocates these specific lands for a specific use and a NSO stipulation is deemed necessary to protect the capital investment made and the associated recreational values. A Controlled Surface Use, Timing Limitation Stipulation or leasing under standard terms would allow operations within these areas which could affect the capital investment and/or recreational setting and therefore were not deemed appropriate. The No Lease option is not considered appropriate since impacts can be mitigated using a NSO stipulation.

TARGHEE NATIONAL FOREST OIL AND GAS LEASING STIPULATIONS—Continued

Resource	Stipulation	Objective	Rationale
Roadless Area	No Surface Occupancy.	To preclude surface occupancy and surface disturbing activities that would alter the primitive setting.	Oil and gas activities would not be compatible with recreation values based on primitive settings. The primitive setting would be negatively impacted by application of less restrictive stipulations such as CSU and TL and standard lease terms.
Special Management Areas.	None—Not available for leasing.	To preclude surface occupancy and surface disturbing activities that would negatively impact areas of unique cultural, botanical, or zoological resource values.	Oil and gas activities would not be compatible with unique cultural, botanical, or zoological resource values. A No Surface Occupancy stipulation would allow for directional drilling, but since a large share of adjoining lands are unavailable for leasing, access to directional drill would be limited.
Unstable Soils	No Surface Occupancy.	To preclude surface disturbing activities on areas that have a high erosion/stability hazard and would be difficult to reclaim.	Surface disturbance within these areas would cause accelerated erosion or increased instability and would be difficult to reclaim, therefore, an NSO stipulation is necessary. Operations within these areas could occur under either a CSU or TL stipulation, or under SLTs but erosion and the stability of the area would be negatively affected. The No Lease option is not appropriate since impacts can be mitigated using an NSO stipulation.
Slopes > 40%	No Surface Occupancy.	To preclude construction of well sites and related facilities on slopes over 40%, which would involve relatively large cut and fill slopes and would be difficult to rehabilitate.	Soil disturbance of an area required for a well paid on steep slopes would be difficult to reclaim and could result in unacceptable soil loss through erosion and potentially increase the sediment load in the streams. Operations within these areas could occur under either a CSU or TL stipulation or under SLTs but the stability of the area would be negatively affected. The No Lease option is not appropriate since impacts can be mitigated using an NSO stipulation.
Wild, Scenic and Recreational Rivers.	None—Not available for leasing the banks of eligible wild, scenic and recreational rivers for ¼ mile from normal high water marks.	To preclude operations that would negatively impact resource values associated with wild, scenic and recreational rivers.	Roads, wellsites and other facilities and activities associated with oil and gas operations would alter the resource values associated with wild, scenic and recreational river corridors. A No Surface Occupancy stipulation would allow for directional drilling, but since most of the adjoining lands have a NSO stipulation, access to directional drill from near by lands would be limited.
Retention and Partial Retention Visual Quality Objective (VQO).	Controlled Surface Use-Proposed activities would be required to be located and/or designed to meet the visual quality objective within one year of commencing operations.	To ensure that the visual quality of the area is maintained.	Application of the CSU stipulation identifies the standard that the operator must meet and provides the opportunity to still conduct activities as long as that standard is met. The No Lease option or an NSO stipulation is overly restrictive in that the VQO can often be met using vegetative or topographic screening and similar methods to mitigate the visual impacts. Under SLTs, some impacts could be mitigated but operations could not be denied if the VQO could not be met.

B. Leasing Decision for Specific Lands

I have selected Alternative 3 of the Final EIS for the leasing decision for specific lands and authorize the BLM to offer the specific lands for lease subject to the Forest Service ensuring that correct stipulations will be attached to leases issued by the BLM (FEIS, 1–8).

With this decision, a variety of stipulations will be applied to most of the specific resource areas to protect surface resources, or to retain sufficient authority to ensure that potential impacts can be mitigated when surface disturbing activities are proposed (FEIS, 2–6, 2–15 thru 2–19).

Rationale

Forest Service regulations at 36 CFR 228.102(e) state that the BLM shall be authorized to offer specific lands for lease subject to:

1. Verifying that oil and gas leasing of the specific lands has been adequately addressed in a NEPA document, and is consistent with the forest land and resource management plans.

I have reviewed the EIS and believe that it is sufficiently site specific in its analysis to address the consequences of future leasing actions. Although the location of future ground disturbances associated with oil and gas exploration and development activities is

unknown at this time, the reasonably foreseeable development scenario provides a sound basis for estimating environmental consequences (FEIS, 1–5, Appendix A). The lease terms and stipulations to be used when leases are issued have been specified and the effectiveness of these stipulations is well known on the types of lands described in the Affected Environmental (Chapter 3) of the FEIS. This is based, to a large degree, on experience gained through past exploration activities on and adjacent to the national forest (FEIS, Appendix A, p. 6). As part of the leasing decision for specific lands, sufficient authority has been retained by virtue of existing law, regulations, standard lease terms, and special stipulations to avoid or otherwise mitigate impacts. Also, additional NEPA analysis will be conducted at the time a specific project is proposed and mitigation measures specific to that proposal will be identified in accordance with 36 CFR 228.107 and 228.108 (FEIS, 1–8, Appendix B).

A significant number of comments received in response to the DEIS focused on the compatibility of potential oil and gas activities with other resource values and uses and their related land allocation decisions made in the 1997 Revised Forest Plan (FEIS, 2–1 thru 2–4, Ch. 6). One of the key considerations that has been taken into account in making this decision is the land allocations of the Revised Forest Plan, which was approved following substantial public involvement in 1997.

In consideration of these points, I am confident that the analysis documented in the FEIS provides sufficient basis for evaluating alternatives and making a reasoned decision.

2. Ensuring that conditions of surface occupancy identified during the NEPA analysis are properly included as stipulations in resulting leases.

Again, this decision is subject to the Forest Service ensuring that correct stipulations are attached to leases issued by the BLM. As this decision is implemented, the Forest Service will take administrative action to parcel the land and attach the appropriate lease stipulations, as identified in the FEIS and this Record of Decision, for forwarding to the BLM. The interagency agreement between the Forest Service and the BLM dated 1991 states that, ''Prior to finalizing a sale notice that includes NFS lands, BLM will forward the notice to the FS to ensure that correct stipulations are being used.''

3. Determining that operations and development could be allowed somewhere on each proposed lease, except where stipulations will prohibit surface occupancy.

The areas where exploration and development may be allowed are delineated on the attached map (FEIS, Figure 2–3). The map also shows where surface occupancy is prohibited by lease stipulation. This map will be used when tracts are parceled and configured to allow operations and development somewhere on each proposed lease, or to identify it as a lease where stipulations prohibit all surface occupancy.

The No Lease portion of the forest along the Wyoming border in the east and along the Montana border in the north and westward to the western end of the forest is classified as having a no or low potential for the occurrence of oil and gas (FEIS, Appendix A, Oil and Gas Potential Report). The no lease determination for this area was based on these classifications and threatened and endangered wildlife concerns such as the protection of grizzly bear habitat.

The only portions of the forest having a moderate or high potential for the occurrence of oil and gas are in the south—north and west of Palisades Reservoir. However, most of the high potential area is unavailable for leasing due to proposed wilderness and wilderness study area land allocations decisions in the Revised Forest Plan. This leaves portions of the moderate potential area of the forest available for oil and gas operations. However, a substantial portion of this area has a No Surface Occupancy stipulation applied to it, because of designated roadless areas and steep and unstable slopes (FEIS, 2–15 thru 19).

C. Decision To Amend Forest Plan

It is my decision to amend the 1997 Revised Forest Plan for the Targhee National Forest with the decisions made above. The decisions made here comply fully with the goals, Management Area direction, and the forest-wide standards and guidelines in the Revised Forest Plan. The analysis of this amendment is documented in the EIS. I conclude that this is a nonsignificant amendment to the forest plan.

III. Public Involvement

Scoping is the process used to identify issues related to a proposed action and the scope of issues to be addressed during the NEPA analysis (FEIS, 2–1 thru 2–4). The Forest Service initiated scoping in April 1993 with the preparation of a scoping document. This formal scoping document was prepared to inform interested agencies, organizations, businesses, and individuals of the Forest Service and BLM's intent to conduct an environmental analysis of oil and gas leasing on portions of the Targhee National Forest. The document solicited comments from readers to assist the Forest Service and the BLM in identifying specific interests and concerns that should be addressed in the analysis.

The formal scoping process began May 21, 1993 with the publishing in the Federal Register of a Notice of Intent to prepare the EIS. A public notice was also published in the following five newspapers serving the area in and around the Forest: the Rexburg Standard-Journal, Teton Valley News, Jefferson County Star, Post Register (Idaho Falls), and Jackson Hole News. Next, copies of the scoping document were sent to almost 2,100 agencies, organizations, businesses, and individuals. In addition, two public meetings were held to discuss the proposal. Attendees were given the opportunity to ask questions and submit oral and written questions. These two meetings were held in Driggs, Idaho on June 16, 1993, and in Idaho Falls, Idaho on June 17, 1993 (FEIS, 6–3, 4).

The Forest Service reviewed and analyzed the 94 comments received during the scoping process. The comments received helped the interdisciplinary team identify the issues that needed to be addressed in the analysis. Issues revolved around the effects of oil and gas leasing and subsequent activities on wildlife, recreation, air and water resources, visuals, soils, transportation, threatened, endangered, and sensitive plant and animal species, vegetation, inventoried roadless areas, fisheries, and wetland and riparian areas. Also at issue was the effect of restrictive stipulations and mitigation measures on oil and gas exploration and development (FEIS, 2–1 thru 2–4).

The Draft EIS for this proposal was released for public review in September 1996. Copies of the Draft EIS were sent to all interested parties identified during the scoping process as well as appropriate local, state, and federal agencies.

The comment period on the Draft EIS ran from September 21, 1996 through December 4, 1996. Over 400 responses were received. All comments were reviewed and considered and are available for public review at the Forest Supervisor's Office, Targhee National Forest. The Forest Service reviewed and considered these, along with the comments received at public meetings. Changes in the FEIS were based upon the comments and on further analysis by the Forest Service (FEIS, 6–7 thru 6–23). No decisions were based upon the quantity of comments received on a particular issue.

The FEIS was published and released to the public on May 10, 2000 for a 30 day review period. This review period was to allow final comments for consideration in the Record of Decision. Seventeen letters were received. Five letters supported oil and gas leasing on the Targhee National Forest; two in support of Alternative 3 (the preferred alternative), one in support of Alternative 2, and the remaining not specifying which leasing alternative was preferred. Twelve letters either opposed oil and gas leasing or preferred the no leasing alternative. Most stated that the preferred alternative (Alternative 3) was a significant improvement over the preferred alternative in the Draft EIS. Several expressed concern about the length of time since the DEIS had been released, but expressed support for the changes made to develop the preferred alternative in the FEIS. A few expressed concern about the potential changes in the No Surface Occupancy stipulation after the leases were issued, but supported the idea that No Surface Occupancy is the appropriate stipulation, if leasing is allowed. In general, the comments did not express major concern with the selection of Alternative 3.

IV. Alternatives Considered

The alternatives considered in this analysis include:

Alternative 1: No Leasing
Alternative 2: 1997 Revised Forest Plan
Alternative 3: Revised Forest Plan Modification No. 1–Preferred
Alternative 4: Revised Forest Plan Modification No. 2
Alternative 5: Standard Lease Terms

Alternatives

The development of alternatives was designed to formulate a range of reasonable alternatives that addressed the issues identified during the scoping and public

involvement process and to ensure that the viable lease options were considered for each specific resource area. Based on the analysis contained in the FEIS, these alternatives could be implemented in whole or used in part to modify another alternative with respect to one or more of the specific resources or resource areas in making the decision (FEIS, 2–5 thru 2–7).

Alternative 1: No Leasing

This is the ''No Action'' alternative required by the Council of Environmental Quality regulations implementing the National Environmental Policy Act (NEPA). Under this alternative the Federal minerals within the analysis area would not be made available for oil and gas leasing by either the Forest Service or BLM. Since all Federal minerals would not be available for leasing, there would be no site-specific decision to be made (FEIS, 2–7,8).

Alternative 2: 1997 Revised Forest Plan

process, is that all areas with no or a low potential for deposits of oil or natural gas would not be available for leasing. Under this alternative, 22 percent of the Forest would be available for leasing with protective lease stipulations (FEIS, 2–15 thru 2–19).

Alternative 4. Revised Forest Plan Modification No. 2

This alternative was designed to be less restrictive than the preceding action alternatives and to be responsive to Issue 12, which reflects comments related to the need for oil and gas development while providing a degree of protection of other resource values. Under this alternative, more of the Forest (49 percent) would be available for leasing with less restrictive stipulations (FEIS, 2–19 thru 2–22).

Alternative 5: Standard Lease Terms

This alternative defines one end (opposite of Alternative 1) of the possible range of alternatives. Under this alternative 49 percent of the Forest would be available for leasing with standard lease terms (no special stipulations) (FEIS, 2–23). Mitigation of impacts on other resources would be based on existing laws such as the Endangered Species Act, the Archaeological Resource Protection Act, the Clean Water Act, and the Clean Air Act. For resources that are not protected by law, mitigation would be based on the Standard lease Terms and 43 CFR 3101.1–2, that provides clarification of reasonable mitigation as used in Section 6 of the Standard Lease Terms (delaying activities for up to 60 days or moving a well location up to 200 meters or 656 feet).

V. Environmentally Preferred Alternative

Although Alternative 1 would have the least effect on the biological and physical environment, I am identifying the selected Alternative 3 as environmentally preferable based on the following interpretation of the law and agency policy (FEIS, 2–15 thru 2–19).

Regulations implementing the National Environmental Policy Act (NEPA) require agencies to specify the alternative or alternatives which were considered to be environmentally preferable as an alternative that best meets the goals of section 101 of NEPA. Ordinarily this is the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. In some cases there may be more than one environmentally preferable alternative (FSH 1909.15–05).

Section 101 of NEPA declares national environmental policy, calling on federal, state and local governments and the public to create and maintain conditions under which humans and nature can exist in productive harmony. This broad policy is further defined in six goals:

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage and maintain wherever possible an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

Section 101 does not call for the exclusion of Americans from use of their natural resources, but does demand that such uses avoid degradation of the environment. Alternative 3 best meets the goals of Section 101 of NEPA. By this standard, the selected Alternative 3 is the environmentally preferable alternative for the Targhee's Oil and Gas Leasing FEIS.

VI. Findings Required by Other Laws

The proposed action (Alternative 3) must comply with several laws, regulations and policies. Some of these are discussed in the following section.

National Environmental Policy Act (NEPA)—The Forest Service followed the direction for preparing an environmental analysis and document according to NEPA. My decision is based on the analysis contained in the Targhee National Forest's Oil and Gas Leasing FEIS.

Endangered Species Act (ESA)—ESA provides for conservation of endangered, threatened and proposed species of fish, wildlife and plants. A Biological Assessment (BA) of effects was prepared, which concluded that the proposed action was not likely to adversely affect any listed or proposed species. The U.S. Fish and Wildlife Service (Service) concurs with this determination (FEIS, Appendix G). The Service concurs that the proposed action may affect, but is not likely to adversely affect the federally listed grizzly bear, bald eagle, and Ute ladies'-tresses. The Service also concurs that the proposed action is not likely to jeopardize the continued existence of the proposed mountain plover and lynx, nor the experimental non-essential populations of the gray wolf and whooping crane.

Fish and Wildlife Conservation Act (FWCA—This Act encourages federal agencies to conserve and promote non-game fish and wildlife species and their habitats. It also requires consultation with U.S. Fish and Wildlife Service and appropriate state agencies when undertaking projects which could affect water resources. The Oil and Gas Leasing Analysis is in compliance with the Act because of the conclusions presented in Chapter IV, wildlife, fisheries, and threatened, endangered, and sensitive sections of the FEIS.

National Forest Land Management Plan—The Revised Forest Plan has been reviewed and a determination made that this decision is consistent with the Revised Forest Plan. The actions in this project comply fully with the goals, the Management Area Direction, and the Forest-wide standards and guidelines in the Revised Land and Resource Management Plan for the Targhee National Forest.

Other Legislation—The Forest Service has complied (or is complying) with other applicable legislation including, but not limited to, the Clean Water Act, Clean Air Act, and the Historic Preservation Act. These are described in Appendix E of the FEIS.

VII. Implementation

The decisions identified in this Record of Decision shall be implemented in the following manner:

1. In accordance with 36 CFR 228.102(d), the Forest Service shall promptly notify the BLM of this decision and identify lands which are administratively available for leasing (FEIS, 1–1).

2. In accordance with 36 CFR 228.102(e), available unleased lands the Forest Service has authorized the BLM to offer for lease will be submitted to the BLM as soon as the Forest Service takes administrative action to parcel the lands and attach the appropriate stipulations as identified in this decision (FEIS, Figure 2–3, 2–15 thru 2–19). These actions are administrative functions implementing this Record of Decision and are not subject to appeal.

3. The BLM will then prepare a listing of the parcels to be offered for lease in the next available lease sale. The Forest Service will have an opportunity to review that list for proper stipulations prior to the official 45 day posting of that list in accordance with the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

4. If the lands in a parcel do not receive a bid when offered competitively at the lease sale, they will be available for noncompetitive offers for a period of two years (FEIS, Appendix B–1 thru B–2).

5. Following lease issuance, a lessee/operator may submit an Application for Permit to Drill (APD) that includes a Surface Use Plan of Operations (SUPO). Except where stipulations prohibit all surface use, operations and development may be allowed on the leased lands. Such activity is subject to the lessee/operator obtaining an approved SUPO from the Forest Service in accordance with 36 CFR Subpart E, 228.106 and 228.107. No decisions related to SUPO approval are being made in this Record of Decision, and an environmental analysis, tiered to this EIS

will be conducted when a drilling proposal is submitted (FEIS, Appendix B–8 thru B–9).

It is my intent that if, at the time a drilling proposal is submitted, the environmental analysis concludes that cumulative effects associated with the proposal and other resource activities in the area will exceed state standards or forest plan standards, off-site mitigation may be required or the proposal denied until the standards can be met. In other words, any subsequent operation would be required to comply with existing laws, regulations and state standards (36 CFR 228.107–108).

VIII. Appeal Opportunities

This decision is subject to appeal pursuant to 36 CFR 215.7. A written Notice of Appeal must be postmarked within 45 days of the date legal of this decision is published in the Post Register (Idaho Falls). The Notice of Appeal should be sent to USDA Forest Service, Intermountain Region, ATTN: Appeals Deciding Officer, 342 25th Street, Ogden, Utah 84401. Appeals must meet the content requirements of 36 CFR 215.14.

If no appeal is received, implementation of this decision may occur on, but not before, five business days from the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 days following the date of appeal disposition.

Copies of this Record of Decision, EIS, and the file of public comments are available for review at the following office: Forest Supervisor's Office, Targhee National Forest, 420 N. Bridge Street, St. Anthony, ID 83445.

For further information on this decision, please contact John Pruess at (208) 624–3151.

Dated: July 14, 2000.

Jerry B. Reese,

Forest Supervisor, Targhee National Forest.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights 326–W, Whitten Bulding, 1400 Independence Avenue, SW, Washington, D.C. 20250–9410 or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.

[FR Doc. 00–21451 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: This is a correction to the June 12, 2000 **Federal Register** Notice that announced the intent of the National Agricultural Statistics Service to extend and revise a currently approved information collection, the Agricultural Surveys Program. We are republishing the description of the information collection with corrected text.

DATES: Comments on this notice must be received by September 22, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117, South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION: On June 12, 2000, we published a **Federal Register** Notice that announced the intent of the National Agricultural Statistics Service to extend and revise a currently approved information collection, the Agricultural Surveys Program. There was an error in the fourth paragraph of the Abstract. Text has been changed from ''addition of questions regarding damage to crops by wildlife'' to ''addition of questions regarding losses of cattle caused by wildlife'' and ''identify and monitor crop losses caused by wildlife'' to ''identify and monitor cattle losses caused by wildlife.'' The comment period will be extended to 30 days from the date of this notice.

Title: Agricultural Surveys Program.

OMB Control Number: 0535–0213.

Expiration Date of Approval: November 30, 2000.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The National Agricultural Statistics Service is responsible for collecting and issuing state and national estimates of crop and livestock production, grain stocks, farm numbers, land values, on-farm pesticide usage, and pest crop management practices. The Agricultural Surveys Program contains a series of surveys that obtains basic agricultural data from farmers and ranchers throughout the Nation for preparing agricultural estimates and forecasts of crop acreage, yield, and production; stocks of grains and soybeans; hog and pig numbers; sheep inventory and lamb crop; cattle inventory; and cattle on feed. Grazing fees, land values, pesticide usage, and pest management practices data are also collected.

Uses of the statistical information are extensive and varied. Producers, farm organizations, agribusinesses, state and national farm policy makers, and government agencies are important users of these statistics. Agricultural statistics are used to plan and administer other related Federal and state programs in such areas as consumer protection, conservation, foreign trade, education, and recreation.

One important modification to the program is the addition of a Monthly Hog Survey. NASS was directed to publish on a monthly basis the Hogs and Pigs Inventory Report with the passage by Congress and signature of the President of H.R. 1906, the FY 2000 Department of Agriculture budget. The Monthly Hog Survey will supplement the Hog Survey Program currently conducted as part of the Quarterly Agricultural Surveys. The monthly surveys will use a shorter version of the quarterly questionnaire and will be conducted eight times a year, during the months between the quarterly surveys. The sampling frame for the monthly program will be hog owners who reported breeding females on the December Quarterly Hog Survey.

A second revision to the program is the addition of questions regarding losses of cattle caused by wildlife, methods being used to reduce these losses, and the cost of preventative measures. These additional questions will be asked only in January 2001. Aggregated totals will be provided to the USDA's Animal and Plant Health Inspection Service action agency, Wildlife Services, to help identify and monitor cattle losses caused by wildlife.

The third revision is the discontinuance of the Fall Area Survey. A reduced sample of the 1999 Fall Area Surveys respondents will be selected for an Integrated Pest Management Survey (IPM). This survey will be conducted only in January 2001 to collect information on IPM practices formerly collected as part of the Fall Area Survey. This is the fourth year of the USDA plan to measure the general adoption of IPM practices for the Nation's agricultural production.

The Agricultural Surveys Program has approval from OMB for a 3-year period.

NASS intends to request that the program be approved for another 3 years.

These data are collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 547,000.

Estimated Total Annual Burden on Respondents: 139,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162, South Building, Washington, D.C. 20250–2000. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, D.C., August 10, 2000.

Rich Allen,

Associate Administrator.

[FR Doc. 00–21511 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Indian Creek Project Area, Pennsylvania

AGENCY: USDA—Natural Resources Conservation Service.

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 on Environmental Quality Guidelines (40 CFR, part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR, part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Indian Creek Project Area, Fayette and Westmoreland Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Oertly, State Conservationist, USDA, Natural Resources Conservation Service, One Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110–2993, telephone (717) 237–2200; fax (717) 237–2238.

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, Janet L. Oertly, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for water quality improvement. The planned works of improvement involve ten treatment sites that are the source of ground and surface water pollution. Treatment of these sites will involve the installation of waterways, diversions, and passive treatment systems.

The ''Notice of a Finding of No Significant Impact'' (FONSI) has been forwarded to the Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment and basic data may be reviewed by contacting Janet L. Oertly.

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance Program 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 T. Mitchell,

Acting State Conservationist.

[FR Doc. 00–21427 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South Dakota; Field Office Technical Guide, Changes

AGENCY: USDA, Natural Resources Conservation Service.

ACTION: Notice of Availability of proposed changes to conservation practice standards in Section IV of the Field Office Technical Guide (FOTG) of NRCS in South Dakota for review and comment.

SUMMARY: It is the intention of NRCS in South Dakota to issue revised conservation practice standards in Section IV of the FOTG for the following practices: Fish Pond Management (399), Fish Stream Improvement (395), Recreation Area Improvement (562), and Hedgerow Planting (422).

DATES: Comments on this notice must be received on or before September 22, 2000.

ADDRESSES: All comments concerning the proposed conservation practice standards changes should be addressed to: Dean Fisher, State Conservationist, NRCS, 200 Fourth Street SW, Huron, South Dakota 57350. Copies of these standards will be made available upon written request.

Dated: August 4, 2000.

Sandra Byrd-Hughes,

Deputy State Conservationist, Natural Resources Conservation Service, Huron, South Dakota 57350.

[FR Doc. 00–21452 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South Dakota; Field Office Technical Guide, Change

AGENCY: USDA, Natural Resources Conservation Service.

ACTION: Notice of availability of proposed changes to conservation practice standards in Section IV of the Field Office Technical Guide (FOTG) of

NRCS in South Dakota for review and comment.

SUMMARY: It is the intention of NRCS in South Dakota to issue revised conservation practice standards in Section IV of the FOTG for the following practices: Conservation Crop Rotation (328); Residue Management, No Till/ Strip Till (329A); Residue Management, Mulch Till (329B); and Residue Management, Ridge Till (329C).

DATES: Comments on this notice must be received on or before September 22, 2000.

ADDRESSES: All comments concerning the proposed conservation practice standards changes should be addressed to: Dean Fisher, State Conservationist, NRCS, 200 Fourth Street SW, Huron, South Dakota 57350. Copies of these standards will be made available upon written request.

Dated: August 7, 2000.

Sandra Byrd-Hughes,

Deputy State Conservationist, Natural Resources Conservation Service, Huron, South Dakota 57350.

[FR Doc. 00–21453 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 51–2000]

Foreign-Trade Zone 125—South Bend, IN; Application for Subzone Status; Audiovox Specialized Applications, LLC Plant (Motor Vehicle Audio/Video Products), Elkhart, Indiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Joseph County Airport Authority, grantee of FTZ 125, requesting special-purpose subzone status for the motor vehicle audio/video products manufacturing plant of Audiovox Specialized Applications, LLC (ASA) (a subsidiary of Audiovox Corporation), located in Elkhart, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 14, 2000.

The ASA plant (8 acres/130,000 sq. ft.) is located at 23319 Cooper Drive, Elkhart (Elkhart County) Indiana, about 15 miles east of South Bend, Indiana. The facility (225 employees) is used to produce and distribute foreign-made motor vehicle audio and audio-visual products, including am-fm radio/ cassette players, am-fm radio/compact disc players, compact disc players, speakers, video observation systems, TV/VCR/DVD entertainment systems; and, flip down and integrated small video screens for export and the domestic market. The finished products are used in automotive, heavy duty/ construction equipment, and marine product applications (some of ASA's products may also be for consumer use). The production process involves design, assembly, testing, and warehousing. Components purchased from abroad (ranging between 60 to 95% of overall material value) used in manufacturing include: flexible wire, integrated circuits, printed circuit boards, transistors, fuses/holders, CRT sockets, tuners, DC power cords, cables, roller guides, roof pods/speaker enclosures, mounting brackets, bushings, gaskets/ seals, AC adaptors, remote controls, mesh grilles, headphone/jacks/covers, plates, fasteners, speakers, antennas and leads, housings, AM–FM radio/ cassettes, radios, video cassette players, compact disk players, color televisions (5, 9, 13 inch), microwave ovens, alarms, liquid crystal display modules, flexible monitors and 12″ flat panel TV screens, cabinets, door locks, knobs, cam and reel gears, and idler plates (duty rate range: free-4.9%). Additional foreign-sourced finished products to be distributed domestically include: Color televisions, video cameras, public address systems, marine radios, microphones, rechargeable flashlights, installation kits, headphones, and 12 volt car vacuum cleaners (duty rate range: free-12.5%).

FTZ procedures would exempt ASA from Customs duty payments on the foreign components used in export production. On its domestic sales, the company would be able to choose the duty rates that apply to finished motor vehicle audio and audio-visual products (duty free-4.4%) for the foreign inputs noted above. On ASA's automotive original equipment sales, the motor vehicle duty rate (2.5%) may be applied to the finished automotive audio/video products that are shipped in-bond to U.S. motor vehicle assembly plants with subzone status. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 23, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 6, 2000).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations.

Office of the Port director, U.S. Customs Service-Chicago, 610 Canal Street, Chicago, IL 60607

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230–0002

Dated: August 14, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–21560 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Dockets 49–2000 and 50–2000]

Foreign-Trade Zone 61—San Juan, Puerto Rico, Expansion of Facilities and Manufacturing Authority—Subzone 61D, 61E, Merck, Sharp & Dohme Quimica Plants (Pharmaceuticals); Arecibo and Barceloneta, Puerto Rico

Applications have been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Exports Development Corporation (PREDC) (formerly known as the Commercial and Farm Development Corporation of Puerto Rico), grantee of FTZ 61, requesting on behalf of Merck, Sharp & Dohme Quimica de Puerto Rico, Inc. (MSD), to add capacity and to expand the scope of manufacturing authority under zone procedures within Subzone 61D and 61E, at the MSD plants in Arecibo and Barceloneta, Puerto Rico. The applications were formally filed on August 10, 2000.

Subzone 61D was approved by the Board in 1995 at a single site (1 bldg./ 150,000 sq. ft. on 18.45 acres) located at Km. 60, Road PR–2, in the municipality of Arecibo, Puerto Rico, with authority granted for the manufacture of finished pharmaceuticals (Board Order 741, 60 FR 27272, 5/23/95). MSD is now proposing to expand acreage, add 2 buildings and expand the existing building. The proposed subzone would then include 3 bldgs. consisting of

286,000 sq. ft. (a 90% increase) on 38.18 acres.

Subzone 61E was approved by the Board in 1995 at a single site (76 bldgs./440,616 sq. ft. on 221 acres) located at Road PR–2, Km. 57, in the municipality of Barceloneta, Puerto Rico, with authority granted for the manufacture of pharmaceutical bulk chemicals and intermediates used in Merck's human and animal health products and finished animal health and agricultural chemical products for its AgVet (agricultural/veterinary) Division (Board Order 742, 60 FR 27272, 5/23/95). MSD is now proposing to add 16 buildings and expand existing buildings. The proposed subzone would then include 92 bldgs. consisting of 504,756 sq. ft. (a 15% increase) on 221 acres.

The applications also request to expand the scope of authority for manufacturing activity conducted under FTZ procedures at Subzone 61D and Subzone 61E to include additional general categories of inputs that have recently been approved by the Board for other pharmaceutical plants. They include chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances.

FTZ procedures would exempt MSD from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to elect the duty rates that applies to finished products (primarily duty-free for finished pharmaceuticals and up to 14.6% for intermediates) for the foreign materials noted above (duty rates ranging from duty-free to 14.5%). The application indicates that the expanded use of FTZ procedures will help improve MSD's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 23, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 6, 2000).

Copies of the applications will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 14, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–21559 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors from the People's Republic of China: Notice of Extension of Time Limits for the Preliminary and Final Results of the Fourth New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 29, 2000, the two respondents in this proceeding agreed to waive the time limits in order that the Department of Commerce may conduct the fourth new shipper review concurrent with the third annual administrative review of the antidumping duty order on brake rotors from the People's Republic of China. Therefore, in accordance with 19 CFR 351.214(j)(3) and 351.213(h)(1), we intend to issue the preliminary results of the fourth new shipper review not later than 245 days after the last day of the anniversary month of the order and the final results 120 days after the date on which notice of the preliminary results are published in the **Federal Register**.

EFFECTIVE DATE: August 23, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brian Ledgerwood, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1766 or (202) 482–3836, respectively.

Applicable Statute and Regulations

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 of Commerce (''the Department'') regulations are to 19 CFR part 351 (April 2000).

SUPPLEMENTARY INFORMATION: On June 2, 2000, in accordance with 19 CFR 351.214(d) and 351.213(b), the Department initiated the fourth new shipper review and third administrative review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC''), respectively. (*See* 65 FR 35322 and 65 FR 35320, respectively.) On June 29, 2000, Hongfa Machinery (Dalian) Co., Ltd. (''Hongfa'') and Luoyang Haoxiang Brake Disc Factory (''Luoyang'') agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct the fourth new shipper review concurrent with the third annual administrative review of this order for the period April 1, 1999 through March 31, 2000. Because the date which is 245 days after the last day of the anniversary month falls on a weekend, we intend to issue the preliminary results, in accordance with 19 CFR 351.214(j)(3) and 351.213(h)(1), on the following business day, January 2, 2001. We also intend to publish the final results 120 days after the date on which notice of the preliminary results is published in the **Federal Register**.

This notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: August 16, 2000.

Richard Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 00–21558 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081700B]

Endangered Species; Permits

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

ACTION: Issuance of permits (1239); and modifications to existing permits (1245).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has issued permit 1239 to Dr. Boyd Kynard, of U.S. Geological Survey (USGS); NMFS has issued modification #1 to permit 1245 to Mr. J. David Whitaker, of South Carolina Department of Natural Resources (SC–DNR).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00 p.m. eastern standard time on September 22, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 1239 and 1245, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910 (301–713–1401).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD, (301–713–1401 x148).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Endangered Green turtle (*Chelonia mydas*), Endangered Hawksbill turtle (*Eretmochelys imbricata*), Endangered Kemp's ridley turtle (*Lepidochelys kempii*), Endangered Leatherback turtle (*Dermochelys coriacea*), Threatened Loggerhead turtle (*Caretta caretta*).

Endangered Shortnose sturgeon (*Acipenser brevirostrum*).

Permits and Modifications Issued

Modification #1 to Permit 1245

Notice was published on July 12, 2000 (65 FR 42992) that Mr. J. David Whitaker, of South Carolina Department of Natural Resources applied for a modification to permit 1245. Modification #1 increases the authorized take of loggerhead turtles from 200 to 250 animals annually, green turtles from 1 to ten annually, Kemp's ridley turtles from 23 to 50 annually and adds the take of five hawksbill turtles annually. The applicant possesses a three year permit to establish a scientifically-valid indices of abundance for the northern sub-population of the threatened loggerhead turtle and the endangered Kemp's ridley, green and leatherback sea turtles which occur in the Atlantic Ocean off the southeastern United States. This study is intended to capture juveniles and adults, thereby providing a more comprehensive assessment of total population abundance and an assessment of the health of individual animals. Modification #1 to Permit 1245 was issued on August 11, 2000, authorizing take of listed species. Permit 1245 expires October 31, 2002.

Permit #1239

Notice was published on 03/02/2000 (65 FR 11288) that Dr. Boyd Kynard, of U.S. Geological Survey applied for a scientific research permit (1239). The proposed research continues over 20 years of research on life history of shortnose sturgeon in the Connecticut river, will collect new information on spawning, migration, habitat and fish passage of the species. The applicant has requested a 5-year permit to lethally take up to 200 spawned eggs, embryos and larvae annually; capture, PIT tag and release up to 350 juvenile and adult sturgeon annually; and authorization to lethally take up to 1000 pre-spawned eggs; radio tag and release 3 pre-spawned females and 7 pre-spawned males for 3 years of the permit. Permit 1239 was issued on August 17, 2000, authorizing take of listed species. Permit 1239 expires June 30, 2005.

Dated: August 17, 2000.

Chris Mobley,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–21543 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

August 17, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, carryforward, special carryforward, swing, special swing and the 5% adjustment for 100% cotton apparel items of handloomed fabric.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70220, published on December 16, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 24, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	19,268,753 square meters.
219	80,578,347 square meters.
313	47,058,736 square meters.
315	17,376,373 square meters.
317	47,849,395 square meters.
326	11,008,721 square meters.
334/634	163,456 dozen.
335/635	657,672 dozen.
336/636	1,187,021 dozen.
338/339	4,733,150 dozen.
340/640	2,580,065 dozen.
341	5,086,251 dozen of which not more than 3,140,840 dozen shall be in Category 341–Y [2].
342/642	1,603,733 dozen.
345	232,344 dozen.
347/348	881,042 dozen.
351/651	368,945 dozen.
369–S [3]	875,426 kilograms.
641	1,670,026 dozen.
647/648	829,068 dozen.
Group II	
200, 201, 220–227, 237, 239pt. [4], 300, 301, 331–333, 350, 352, 359pt. [5], 360–362, 600–604, 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [6], 666, 669pt. [7], 670, 831, 833–838, 840–858 and 859pt. [8], as a group.	142,271,990 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[7] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–21529 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Korea

August 17, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryforward, special shift and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68334, published on December 7, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 24, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Group I	
200–223, 224–V [2], 224–O [3], 225, 226, 227, 300–326, 360–363, 369pt. [4], 400–414, 464, 469pt. [5], 600–629, 666, 669–P [6], 669pt. [7], and 670–O [8], as a group.	420,497,662 square meters equivalent.
Sublevels within Group I	
200	564,469 kilograms.
201	2,554,267 kilograms.
611	4,496,500 square meters.
619/620	106,050,011 square meters.
624	9,671,586 square meters.
625/626/627/628/629	18,671,176 square meters.
Group II	
237, 239pt. [9], 331–348, 350–352, 359–H [10], 359pt. [11], 431, 433–438, 440–448, 459–W [12], 459pt. [13], 631, 633–652, 659–H [14], 659–S [15] and 659pt. [16], as a group.	586,414,227 square meters equivalent.
Sublevels within Group II	
338/339	1,323,137 dozen.
347/348	494,688 dozen.
638/639	5,243,341 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905, (Category 369–L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[6] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[7] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[11] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[12] Category 459–W: only HTS number 6505.90.4090.

[13] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[14] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[15] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[16] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–21530 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

August 17, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryforward and the recredting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68336, published on December 7, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 28, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
336/636	410,394 dozen.
338/339	2,239,029 dozen.
340	342,228 dozen.
342/642	782,620 dozen.
347/348/847	1,067,684 dozen.
638/639	2,503,080 dozen.
647/648	1,374,949 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–21531 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Headquarters Air Force Reserve Officer Training Corps announces the proposed renewal of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 21, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collections should be sent to HQ AFROTC/RRU, 551 East Maxwell Boulevard, Maxwell AFB, AL 36112–6106. Comments can also be submitted via e-mail to kyle.monson@maxwell.af.mil.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed collection or to obtain a copy of the proposal and associated collection instruments, please write to the above addresses or call (334) 953–2829.

Title, Associated Form, and OMB Number: Air Force ROTC Scholarship Nomination, OMB Number 0701–0103.

Needs and Uses: The information collection requirement is used by the Air Force to identify the best-qualified applicants for the scholarship, providing for a ''whole person'' evaluation.

Affected Public: College students who apply for an Air Force ROTC scholarship.

Annual Burden Hours: 250.

Number of Respondents: 500.

Responses Per Respondent: 1.

Average Burden Per Response: 30 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are college students who apply for an Air Force ROTC college scholarship. This form collects identification and academic performance data, academic aptitude scores, and the Professor of Aerospace Studies (PAS) evaluation of the applicant's performance and potential. This application will require approximately 30 minutes to complete. Submitted data will be evaluated by Air Force ROTC In-College Scholarship selection boards to determine eligibility and to select individuals for the award of a college scholarship involving the expenditure of federal funds.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–21532 Filed 8–22–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Headquarters Air Force Reserve Officer Training Corps announces the proposed renewal of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 21, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collections should be sent to HQ AFROTC/RRU, 551 East Maxwell Boulevard, Maxwell AFB, AL 36112–6106. Comments can also be submitted via e-mail to kyle.monson@maxwell.af.mil.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed collection or to obtain a copy of the proposal and associated collection instruments, please write to the above addresses or call (334) 953–2829.

Title, Associated Form, and OMB Number: Air Force ROTC College Scholarship Application, OMB Number 0701–0101.

Needs and Uses: The information collection requirement is used by the Air Force to identify the best-qualified applicants for the scholarship, providing for a ''whole person'' evaluation.

Affected Public: High school seniors and recent graduates who apply for an Air Force ROTC scholarship.

Annual Burden Hours: 4,000.

Number of Respondents: 8,000.

Responses Per Respondent: 1.

Average Burden Per Response: 30 Minutes.

Frequency: Annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents will be high school seniors and recent graduates who apply for an Air Force ROTC college scholarship. A twelve-page scannable application will be provided to applicants by Air Force recruiting personnel or can be mailed directly to the applicant. This application will require approximately 30 minutes to complete. Respondents will have the option of completing the application on the Air Force ROTC internet homepage instead of returning the hardcopy survey form. Submitted data will be evaluated by Air Force ROTC College Scholarship Program selection boards to determine eligibility and to select individuals for the award of a college scholarship.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–21533 Filed 8–22–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Arkansas River Navigation Study, Arkansas and Oklahoma

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, DoD, Little Rock District will prepare an Environmental Impact Statement (EIS) for the Arkansas River Navigation Study.

The purpose of the EIS will be to present alternatives and assess the impacts associated with the Arkansas River Navigation Study. Under direction of the U.S. Congress, the U.S. Army Corps of Engineers (USACE) is conducting a study of the Arkansas River Basin in Arkansas and Oklahoma. The study purpose is to develop and evaluate alternatives for implementing solutions to problems resulting from sustained high flows on the McClellan-Kerr Arkansas River Navigation System (MKARNS). These high flows have resulted in decreased navigation traffic, flooding, losses to recreation use, and other adverse conditions. Proposed improvements resulting from the study could impact (positively or negatively) agriculture, hydropower, recreation, flood control, and fish and wildlife along the MKARNS.

The EIS will evaluate potential impacts (positive and negative) to the natural, physical, and human environment as a result of implementing any of the proposed project alternatives. Proposed alternatives are currently being developed and include structural and non-structural measures for reducing sustained high flows on the MKARNS.

Elements of the structural alternatives identified to date include:

1. Removal of channel restrictions,

2. Construction of high flow relief structures (*e.g.* spillways) along the MKARNS for navigation flow management,

3. Construction of additional levees along the MKARNS for navigation flow management,

4. In-stream modification/alteration of existing navigation structures,

5. Restoration/enhancement of aquatic and riparian habitats along the MKARNS.

Elements of the non-structural alternatives identified to date include:

1. Operational changes to MKARNS reservoirs resulting in changes in the flow regime within the Arkansas River,

2. Adjustments/increases in flowage easements.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the proposed action should be addressed to: Mr. Jim Ellis, Environmental Team Leader, Planning Branch, P.O. Box 867, Little Rock, Arkansas 72203–0867, Telephone 501–324–5033, e-mail: *James.D.Ellis@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. MKARNS

The McClellan-Kerr Arkansas River Navigation System consists of a series of 18 locks and dams (17 existing and 1 currently under construction) and provides navigation from the Mississippi River to the Port of Catoosa near Tulsa, Oklahoma. River flow in the Arkansas River is modified primarily by 11 reservoirs in Oklahoma. The reservoirs are: Keystone, Oologah, Pensacola, Hudson, Fort Gibson, Tenkiller Ferry, Eufaula, Kaw, Hulah, Copan, and Wister. These lakes provide flood control, water supply, hydropower, fish & wildlife, water quality, recreation, and other benefits.

2. Study History

The Arkansas River Navigation Study is being undertaken by USACE Little Rock and Tulsa Districts under the direction of the U.S. Congress. The study includes major hydraulics investigations, economics analyses, alternatives development and related analyses in addition to the EIS. Throughout May and June of 2000 the USACE conducted public information meetings at locations throughout Arkansas and Oklahoma to inform the public of the Arkansas River Navigation Study and solicit information regarding the study.

3. Comments/Scoping Meeting

Interested parties are requested to express their views concerning the proposed activity. The public is encouraged to provide written comments in addition to or in lieu of, oral comments at the scoping meeting. To be most helpful, scoping comments should clearly describe specific environmental topics or issues, which the commentator believes the document should address. Oral and written comments receive equal consideration.

Scoping meetings will be held with government agencies and with the public. Public Scoping Meetings will be held in the fall of 2000 in Pine Bluff Arkansas, Fort Smith Arkansas, and Tulsa Oklahoma. The location, time, and date will be published at least 14 days prior to each scoping meeting. Comments received as a result of this notice and the news releases will be used to assist the Districts in identifying potential impacts to the quality of the human or natural environment. Affected local, state, or Federal agencies, affected Indian Tribes, and other interested private organizations and parties may participate in the Scoping process by forwarding written comments to the above noted address. Interested parties may also request to be included on the mailing list for public distribution of meeting announcements and documents.

4. Alternatives/Issues

The EIS will evaluate the effects of structural and non-structural alternatives of the authorized project and other identified concerns. Specific project alternatives will incorporate the elements previously identified in this notice. Anticipated significant issues identified to date and to be addressed in the EIS include: (1) Impacts on navigation, (2) impacts on flood control, (3) impacts on hydropower, (4) impacts on recreation and recreation facilities, (5) impacts on river hydraulics, (6) impacts on fish and wildlife resources and habitats, and (7) other impacts identified by the Public, agencies or USACE studies.

5. Availability of the Draft EIS

The Draft Environmental Impact Statement is anticipated to be available for public review in the spring of 2002 subject to the receipt of federal funding.

6. Authority

The River and Harbor Act of 1946 authorized the development of the Arkansas River and its tributaries for the purposes of navigation, flood control, hydropower, water supply, recreation, and fish and wildlife. Public Law 91–649 stated that the project would be known as the McClellan-Kerr Arkansas River Navigation System. The Arkansas River Navigation Study began as a Fiscal Year (FY99) Congressional Add to investigate flooding problems along the Arkansas River in Crawford and Sebastian Counties in the vicinity of Fort Smith, Arkansas.

Thomas A. Holden, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 00–21447 Filed 8–22–00; 8:45 am]

BILLING CODE 3710–57–U

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Greers Ferry Lake Shoreline Management Plan, Arkansas

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The purpose of the Environmental Impact Statement (EIS) is to address alternatives and impacts pertaining to the Shoreline Management Plan (SMP) at Greers Ferry Lake, Heber Springs, Arkansas, as proposed under a review and update of the 1994 SMP. This review and update of the SMP is conducted in accordance with Title 36 CFR, 327.30.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the proposed action should be addressed to Ms. Tricia Anslow, Project Manager, Planning Branch, P.O. Box 867, Little Rock, Arkansas 72203–0867, telephone 501–324–5032, E-mail: *patricia.anslow@swl02.usace.army.mil* or Mr. Jim Ellis, Environmental Team Leader, Planning Branch, P.O. Box 867, Little Rock, Arkansas 72203–0867, telephone 501–324–5033, e-mail: *James.D.Ellis@swl02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: Greers Ferry Lake, has been operating under the current Shoreline Management Plan (SMP) since 1994. Shoreline Management Plans are reviewed periodically, but no less often than every five years, to determine need for updates, and ensure protection of a quality resource for the public, while balancing permitted private uses. The SMP is a comprehensive document addressing multiple reservoir activities and is developed in conjunction with the Operational Management Plan. Public meetings were conducted from January 1999–January 2000 to solicit comments about the current plan and review process. During this period, the public involvement was used to develop alternatives for the revision of the SMP. Due to the level of public interest it was concluded that the SMP warranted revision.

The Greers Ferry Lake draft SMP addresses the following changes: (1) permitting of additional boat docks, resulting in an expansion of the current shoreline development; (2) modification in the distance of current vegetation modification (mowing) permits from the current 50′ from a habitable structure, with the addition of minimum shoreline buffer; and; (3) implementation of wildlife enhancement permits, allowing limited modification of the shoreline. Elements that arise during the scoping meetings will also be addressed in the Environmental Impact Statement.

The Environmental Impact Statement will evaluate impacts due to revisions proposed in the draft SMP, as modified from the 1994 Shoreline Management Plan. Significant issues to be addressed in the EIS include: (1) Impacts on physical resources; (2) impacts on pollution and water quality; (3) impacts on cultural resources; (4) impacts on wetlands; (5) impacts on aquatic resources; (6) impacts on terrestrial resources; (7) impacts on threatened and endangered species; (8) impacts on recreation and facilities; (9) impacts on aesthetics; (10) socio-economic impacts; and (11) other impacts identified by the public, agencies, or Corps studies.

Scoping meetings for the project are planned to be conducted in the fall of 2000. News releases informing the public and local, state, and Federal agencies of the proposed action will be published in state and local newspapers. Comments received as a result of this notice and the news releases will be used to assist the Little Rock District in identifying potential impacts to the quality of the human or natural environment.

Affected local, state, or Federal agencies, affected Indian tribes, and other interested private organizations and parties may participate in the scoping process by forwarding written comments to the above noted address or attending scoping meetings.

The draft EIS (DEIS) is expected to be available for public review and comment by October 1, 2001 subject to receipt of Federal funding. Any comments and suggestions should be forwarded to the above noted address no later than September 1, 2001, to be considered in the DEIS.

Thomas A. Holden, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 00–21448 Filed 8–22–00; 8:45 am]

BILLING CODE 3710–57–U

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Quarterly Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming quarterly meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Thelma Leenhouts at (202) 219–2065 by no later than September 11. We will attempt to meet requests after this data, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: September 22, 2000.

TIME: 9 a.m. to (approximately) 3 p.m., open; 3 p.m. to 5 p.m., closed.

LOCATION: Room 100, 80 F St., NW., Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, D.C. 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma_Leenhouts@ed.gov, or nerppb@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Board will conduct outstanding business in open session and hear reports from the Assistant Secretary for OERI; on a proposed study by the National Academy of Sciences/National Research Council on the structure and content of the educational research agenda; and on a commissioned study on the Phase II standards designating promising and exemplary programs. The meeting will be closed to the public from approximately 3 p.m. to 5 p.m. under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemptions (2) and (6) of section 552b (c) of the title 5 U.S.C. The Board will discuss personnel issues at this time.

A final agenda will be available from the Board office on September 15, and will be posted on the Board's web sit, *http://www.ed.gov/offices/OERI/NERPPB/.* A summary of activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records are kept of all Board proceedings and are available for public

inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW., Washington, D.C. 20208–7564.

Dated: August 18, 2000.

Thelma Leenhouts,

Executive Officer.

[FR Doc. 00–21541 Filed 8–22–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program; Notice

AGENCY: Department of Education.

ACTION: Notice—Computer matching between the Department of Education and the Internal Revenue Service, Department of Treasury.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the computer matching program between the Department of Education (ED) (the recipient agency), and the Internal Revenue Service (IRS), Department of Treasury (the source agency).

Notice of the matching program was originally published in the **Federal Register** on April 12, 1974 (58 FR 31587); the program became effective January 14, 1998. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(o)(2)(D)). The one-year extension expired July 14, 2000. This document notifies the public of the approval of a new agreement between the Department of Treasury and Department of Education to continue the matching program. The Data Integrity Boards will continue the matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and OMB guidance on the computer matching provision of the Privacy Act, we provide the following information:

1. Name of Participating Agencies

The U.S. Department of Education (ED) and the Internal Revenue Service (IRS) of the U.S. Department of Treasury.

2. Purpose of the Match

This matching program, entitled Taxpayer Address Request (TAR), permits ED to have access to any taxpayer's mailing address who has defaulted on certain loans extended under the Higher Education Act for the purposes of locating the taxpayer to collect the loan. This agreement further provides for redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or State or nonprofit guarantee agency, also participating under the Higher Education Act, or any educational institution with which the Secretary of Education has an agreement under that Act.

3. Authority for Conducting the Matching Program

The information contained in the IRS data base is referred to as TAR, and is authorized under the Internal Revenue Code (IRC) sections 6103 (m)(4) and (m)(5), Pub. L. 99–603.

4. Categories of Records and Individuals Covered

The records to be used in the match and the roles of the matching participants are described as follows:

ED will provide the Social Security Number (SSN) and first four letters of the last name of each student who has defaulted under a loan program authorized under Title IV of the Higher Education Act of 1965. This information will be extracted from the Student Financial Assistance Collection System of records (18–11–07). The ED data will be matched against the IRS' system of records to collect most the recent address of each taxpayer who matches the SSN and first four letters of the last provided by ED.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, unless OMB disapproves the Matching Program within the 40-day review period. If OMB takes no action within 40 days, this Matching Program becomes effective after both the 40-day OMB period and the 30-day period have passed. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

The person to contact if there are any questions or inquiries is: Cynthia DB Mills, Management Analyst, Federal Family Student Loan Systems Division, Student Financial Assistance, Development Division, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 4613, ROB–3), Washington, DC 20202, Telephone: 202–708–9768. If you use a telecommunications device for the deaf (TTD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Dated: August 18, 2000.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 00–21477 Filed 8–22–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Sponsorship and Support for the 2001 American Solar Challenge

AGENCY: Golden Field Office, Department of Energy (DOE).

ACTION: Notice of sponsorship and support for the 2001 American Solar Challenge.

SUMMARY: The U.S. Department of Energy (DOE) is announcing its intention to sponsor the 2001 American Solar Challenge, a solar-powered car race across the United States. DOE will support the American Solar Challenge by providing funding to New Resources Group, the race organizer, to support the planning, management, and conduct of the race. DOE will also conduct public

outreach and community relations before and during the race. Parties interested in co-sponsoring or supporting the American Solar Challenge should contact Dan Eberle, organizer, at Formula Sun, P.O. Box 30, Freeman, MO 64746, 1–800–840–5511 or deberle@formulasun.org.

DATES: The American Solar Challenge will be held July 15, 2001 through July 25, 2001.

FOR FURTHER INFORMATION CONTACT: Ruth E. Adams, Contracting Officer, at 303–275–4722, e-mail ruth_adams@nrel.gov.

ADDRESSES: Copies of this Announcement, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html. Details on the American Solar Challenge can be obtained at http:/www.formulasun.org/ascindex.html.

SUPPLEMENTARY INFORMATION: Under this Announcement, DOE is announcing its intention to sponsor the 2001 American Solar Challenge (ASC). The ASC is a biennial, competition to design, build and race solar-powered cars. The ten-day, cross-country event will be held from July 15, 2001 through July 25, 2001 and follow the historic Route 66, beginning in Chicago, Illinois and ending near Los Angeles, CA. Historically, solar car racing in the U.S. has featured exclusively North American post secondary (college and university) teams. However, the ASC has opened entry to schools, companies, universities, clubs and individuals worldwide. The American Solar Challenge will pit cars powered only by the sun's energy against each other in a competition that only the brightest, most creative and best organized team can be expected to win. At almost 2300 miles, it will be the longest solar car race in the world. Since it follows the old Route 66 and coincides with the 75th anniversary of that famous road, it will be a highly visible event and provide a dramatic, high technology, futuristic contrast to the nostalgic events surrounding the anniversary. In the past, sponsors of solar car races, both domestic and international, have received significant amounts of very positive publicity that has enhanced the sponsors' public image. This race has the potential to be the most visible solar car race ever. The mission of the American Solar Challenge is to promote and celebrate educational excellence and engineering creativity and champion the creative integration of technical and scientific expertise across a range of exciting disciplines. The mission includes the promotion of: (1) Renewable energies, specifically photovoltaics; (2) educational and engineering excellence; (3) environmental consciousness; and (4) public education and awareness of the potential of emerging technologies.

Through sponsorship, DOE intends to support and encourage bright minds to succeed in the fields of engineering, sciences, mathematics, and multi-disciplined learning and to support public awareness and enthusiasm, both for educational excellence and for the technologies that emerge. DOE's funding support is expected to be $400,000 for the planning, management, and conduct of the race. DOE will also conduct public outreach and community relations before and during the race. In addition to DOE's support, New Resources Group is seeking co-sponsorship and support for the solar-powered car race. Parties interested in co-sponsoring or supporting the American Solar Challenge, either financially or through donations, should contact Dan Eberle, President of New Resources Group and race organizer, at Formula Sun, P.O. Box 30, Freeman, MO 64746, 1–800–840–5511 or deberle@formulasun.org. Parties interested in providing support to participating teams should contact the teams directly. A list of participating teams can be obtained from www.formulasun.org or contacting Dan Eberle at deberle@formulasun.org or by calling 1–877–840–5511 or 1–800–606–8881. Race regulations and route information for the American Solar Challenge can be obtained through http:/www.formulasun.org/ascindex.html. For information on previous solar car races, access http:/www.sunrayce.com/sunrayce/.

Issued in Golden, Colorado, on August 16, 2000.

Jerry L. Zimmer,

Procurement Director, in care of Golden Field Office.

[FR Doc. 00–21504 Filed 8–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Medicine Education Award Program

AGENCY: Department of Energy.

ACTION: Notice of Program Interest.

SUMMARY: The U.S. Department of Energy (DOE) announces a university grant program providing support for the development of graduate and postgraduate academic curricula in nuclear medicine studies and applications including nuclear pharmacy. The support includes individual grants up to $120,000 a year for up to three years to support faculty, academic staff, and laboratory equipment and instrumentation. The total funding for this award program is $500,000 per year for three years. The specific goal of these grants is to increase the number of graduate students enrolled in these programs.

DATES: Opening date: September 5, 2000, and closing date: October 23, 2000.

ADDRESSES: Complete details, instructions on how to apply, opening and closing dates and the forms may be obtained from the DOE NE home page on the Internet at: http://www.ne.doe.gov. The formal solicitation document will be disseminated electronically as solicitation number DE–PS01–00NE22918 through the Department's Industry Interactive Procurement System (IIPS) home page located at https://doe-iips.pr.doe.gov.

FOR FURTHER INFORMATION CONTACT: John Pantaleo, Program Manager, at 301–903–2525 and Phyllis Morgan, Contract Specialist at 202–426–0064.

SUPPLEMENTARY INFORMATION: This effort is part of the DOE Advanced Nuclear Medicine Initiative (ANMI) that was inaugurated Fiscal Year 2000. The purpose of the ANMI is to support broad-based research on new uses of isotopes including alpha emitters for the diagnosis and therapy of life threatening diseases or other innovative medical applications, and to support nuclear medicine educational programs.

Effective October 1, 1999, the IIPS system became the primary way for the Office of Headquarters Procurement Services to conduct competitive acquisitions and financial assistance transactions. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and proposals, evaluating, and awarding various instruments in a paperless environment. All documents included in your applications should be submitted in the Microsoft Word format. To get more information about IIPS and to register your organization, go to https://doe-iips.pr.doe.gov. Follow the link on the IIPS home page to the Secure Services Page. Registration is a prerequisite to the submission of an application, and applicants are encouraged to register as soon as possible. When registering, all applicants should use the same North American Industry Classifications System number: 325412. A help document, which describes how IIPS

works, can be found at the bottom of the Secure Services Page.

Issued in Washington, DC on August 17, 2000.

Carol Rueter,

Director, Program Services Division, Office of Headquarters Procurement Services.

[FR Doc. 00–21506 Filed 8–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Certification of the Radiological Condition of the Kimble Property in Hamilton, Ohio

AGENCY: Department of Energy.

ACTION: Notice of Certification.

SUMMARY: The Department of Energy (DOE) has completed remedial actions to decontaminate a property in Hamilton, Ohio. Formerly, the property was found to contain quantities of residual radioactive material resulting from materials received from the Department of Energy Fernald Area Office operations. Radiological surveys show that the property now meets applicable requirements for radiologically unrestricted use.

ADDRESSES: The certification docket is available at the following locations:

Public Reading Room, Room 1E–190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Public Environmental Information Center, U.S. Department of Energy, 10995 Hamilton-Cleves Highway, Harrison, OH 45030.

FOR FURTHER INFORMATION CONTACT: Jack R. Craig, Director, Fernald Area Office, U.S. Department of Energy, Cincinnati, OH 45253, (513) 648–3101 Fax: (513) 648–3071.

SUPPLEMENTARY INFORMATION: The Department of Energy, Ohio Field Office, has conducted remedial action at the Kimble Property in Hamilton, Ohio. The remedial action, commenced in 1994, was conducted pursuant to standards established in DOE Order 5400.5 for the purpose of protecting the health and safety of the public against radiation in conducting the Department's programs.

In 1973, DOE-Fernald declared various materials from the Fernald Plant to be surplus and subject to public sale. Mr. Kimble, a plant employee at that time, purchased a plant maintenance bus, redwood from a plant cooling tower, and items of construction hardware. These materials were released to Mr. Kimble for unrestricted use according to then-applicable standards (0.3 rad/hr) and were transported to the Kimble property.

In 1994, at the request of the property owner, DOE-Fernald performed a radiological survey of the Kimble property and identified contamination in excess of the current DOE surface contamination guidelines for beta-gamma emitters. The survey revealed that the radiactive contamination was primarily associated with the redwood and, to a lesser extent, with soil, pipes, and assorted hardware. In addition to investigating radioactive contamination, DOE-Fernald noted the need to investigate the potential migration from ash or weathered redwood of arsenic and chromium contaminants originating from preservatives used to treat the redwood. Remediation activities were initiated in August, 1995 and were concluded in June, 1996.

Post-remedial action surveys have demonstrated and DOE has certified that the subject property is in compliance with the Department's radiological decontamination criteria and standards. The standards are established to protect members of the general public and occupants of the properties and to ensure that future use of the properties will result in no radiological exposure above applicable health-based guidelines.

The certification docket will be available for review between 9:00 a. m. and 4:00 p.m., Monday through Friday (except federal holidays) in the Department's Public Reading Room, located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the certification docket will also be available in the DOE Public Environmental Information Center, U.S. Department of Energy, 10995 Hamilton-Cleves Highway, Harrison, Ohio 45030.

DOE, through the Ohio Field Office, has issued the following statement:

Statement of Certification: Kimble Property, Hamiltion, Ohio DOE, Ohio Field Office, has reviewed and analyzed the radiological data obtained following remedial action at the Kimble Property (4090 Stillwell Road, Hamilton, Ohio; Parcel Numbers 25, 26, and 46 filed in Plat Book Hanover, Page 18 in the records of Butler County, Ohio). Based on analysis of all data collected, including post-remedial action surveys, DOE certifies that any residual contamination which remains onsite falls within current guidelines for use without radiological restrictions. This certification of compliance provides assurance that reasonably foreseeable future use of the property will result in no radiological exposure above current guidelines established to protect members of the general public as well as occupants of the site.

Property owned by Daniel and Maxine Kimble: 4090 Stillwell Road, Hamilton, Ohio 45013.

Issued in Dayton, OH on August 9, 2000.

Susan Brechbill,

Manager, Ohio Field Office.

[FR Doc. 00–21505 Filed 8–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Sources Sought for Superconductivity Program for Electric Power Systems

AGENCY: Golden Field Office; Office of Energy Efficiency and Renewable Energy; Department of Energy (DOE).

ACTION: Notice of Financial Assistance Solicitation—DOE Superconductivity Partnership Initiative (SPI) Program.

SUMMARY: The DOE Office of Power Technologies intends to issue a solicitation for proposals under which several competitive financial assistance awards will be made in support of the DOE SPI Program in Fiscal Year 2001. Expression of interest in this solicitation is requested at this time. In addition, it is requested that interested parties comment regarding the approach to be followed in the anticipated solicitation as described below.

DATES: DOE is requesting expressions of interest and comments in responding to the contemplated solicitation by August 31, 2000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401. The Project Engineer is Russell Eaton, at (303) 275–4740 or e-mail at russell__eaton@nrel.gov. The Contract Specialist is James McDermott, at FAX: (303) 275–4788 or e-mail at jim__mcdermott@nrel.gov.

SUPPLEMENTARY INFORMATION: The office of Power Technologies of the DOE Office of Energy Efficiency and Renewable Energy (EERE) intends to issue a solicitation in early Fiscal Year 2001 for SPI. DOE, as part of its Superconductivity Program for Electric Power Systems, is currently pursuing the development of electric power equipment incorporating High Temperature Superconductors (HTS) through its SPI. The purpose of the SPI is to accelerate the time for the initial commercialization of energy-saving HTS electric power equipment. DOE intends to share the costs of the projects to be

awarded under this new solicitation with industry partners' contributions being at least half of a project's costs (statutory requirement). DOE intends that its industry partners will be vertically integrated teams composed of equipment manufacturers, HTS wire and coil suppliers, component suppliers, and end users (primarily utilities). Each partnership may, at its option, utilize via a Cooperative Research and Development Agreement (CRADA) with any of the DOE's national laboratories. The laboratory could contribute specialized capabilities, facilities, or equipment to the project that would complement the partnership's needs. These teams carry out the multi-year technology developmental efforts, consisting of design, construction, installation and testing phases. The DOE currently has seven SPI projects for the following equipment: flywheel energy storage system, magnetic separator unit, motors, transformers, and underground AC cables. DOE is eager to increase the diversity of its portfolio of HTS power system applications.

DOE is contemplating issuing a solicitation early in FY2001 in response to the continuing interest in the SPI by its industrial stakeholders and due to the impressive technical progress by the participating industry teams involved in current SPI activities with DOE. DOE anticipates that awards will be made to teams for projects ranging in size from hundreds of thousands of dollars to several million dollars per year and for project periods of up to four years. Subject to the availability of funds, it is anticipated that the DOE funding for the contemplated solicitation will be no more than $7 million in the first year, and no more than $9 million for each of the following 3 years. The SPI awards will be cost-shared cooperative agreements between DOE and the prime of the industry-led team. The anticipated solicitation intends to combine the requirement of earlier SPI solicitations for the development of full-scale, pre-commercial power applications, utilizing essentially available HTS conductors, e.g., BSCCO multi-filamentary tapes and forms. The solicitation also intends to assess the potential impacts of replacing available HTS conductors with promising coated HTS conductors, currently under development, into the proposed power application. DOE also expects the solicitation will require that the application include an energy and economic benefits analysis, technical performance expectations, product or system design studies, and a business plan for product introduction.

Respondents to this notice should notify DOE of their interest in submitting a proposal to the anticipated solicitation. In addition, information or comments to assist in drafting the solicitation will be appreciated.

Issued in Golden, Colorado, on August 15, 2000.

Matthew A. Barron,

Contracting Officer, Golden Field Office.

[FR Doc. 00–21503 Filed 8–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG00–6–003]

Dominion Resources, Inc. and Consolidated Natural Gas Company; Notice of Filing

August 17, 2000.

Take notice that on August 1, 2000, Dominion Resources, Inc. and Consolidated Natural Gas Company (CNG) submitted a compliance filing as required by the May 17, 2000 Order on Compliance Filing, 91 FERC 61,140 (2000), and the May 17, 2000 Standards of Conduct Order, 91 FERC ¶ 61,141 (2000).

CNG states that it has served copies of this filing to all parties on the service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 1, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing may be viewed on the web at *http://www.ferc.fed.ud/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21443 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–435–000]

Natural Gas Pipeline Company of America; Notice of Application

August 17, 2000.

Take notice that on August 10, 2000, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois, 60148, filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations to abandon interests in offshore lateral, tap and meter facilities and requests a determination that following abandonment, that the facilities will be non-jurisdictional gathering facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http:www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance.).

Any questions regarding this application should be directed to James J. McElligott, Senior Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148 (630) 691–3525.

Specifically Natural requests:

(1) Permission and approval to abandon, by sale to Green Canyon Pipe Line Company, L.P., successor to Green Canyon Pipe Line Company, L.L.C. (Green Canyon), a nonjurisdictional gathering company, Natural's 10.60610% interest in 16.82 miles of 24-inch diameter offshore lateral originating in Mustang Island (MUI) Block 758A, offshore, Texas and terminating in Matagorda Island (MI) Block 686, offshore, Texas including related tap facilities and appurtenances (MUI 758A Lateral);

(2) Permission and approval to abandon, by sale to Green Canyon, Natural's 35.00% interest in the MUI 758A Receiving Station consisting of a dual 6-inch meter and liquids extraction and dehydration equipment and appurtenances (MUI 758A Receiving Station) located on the MUI 758 platform authorized in Docket Nos. CP81–215–000 and 001; and

(3) A determination in the Commission's order that following abandonment, and upon transfer to Green Canyon, the relevant interests in the MUI 758A Lateral and MUI 758A Receiving Station will become part of Green Canyon's gathering system and will be nonjurisdictional and not subject to NGA regulation by the Commission,

pursuant to section 1(b) of the Natural Gas Act.

Natural states that its interests in the MUI 758A Lateral and the MUI 758A Receiving Station were originally constructed as a means of receiving gas purchased from Chevron U.S.A. Inc. for Natural's system supply to support Natural's merchant function. It is stated that Natural's merchant function terminated effective December 1, 1993. Consequently, Natural states that it no longer has a need for the facilities interests to be abandoned in the present application.

Natural states that it proposes to abandon and transfer these facilities interests to Green Canyon for $0 as these facilities have already been fully depreciated.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 7, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–21442 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–371–001]

Northern Border Pipeline Company; Notice of Compliance Filing

August 17, 2000.

Take notice that on August 14, 2000, Northern Border Pipline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 2000:

Substitute First Revised Sheet Number 120
Substitute Second Revised Sheet Number 121
Substitute Second Revised Sheet Number 275

The purpose of this filing is to comply with the Commission's letter order issued July 28, 2000 in Docket No. RP00–371–000. The Commission's July 28, 2000 letter order required Northern Border to revise language on three of the proposed tariff sheets. In this filing, Northern Border is proposing tariff language in accordance with the Commission's July 28, 2000 letter order. In subsection 5.12 of First Revised Sheet Number 120, Northern Border has revised the first sentence to reference the five year matching limitation. In subsection 5.13 of Sheet Number 120 and subsection 5.22 on Substitute Second Revised Sheet Number 121, no changes are now being proposed to the currently effective tariff language, ''fully allocated cost''. On Substitute Second Revised Sheet Number 275, subsection 27.21 (a) and (b), the words ''an effective'' was deleted and replaced with the word ''a''.

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 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. 00–21444 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065]

El Dorado Irrigation District, Notice of Scoping Meetings, Site Visit, and Intent to Prepare an Environmental Impact Statement

August 17, 2000.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), which was filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador counties, California. The project occupies lands administered by the El Dorado National Forest.

The Commission intends to prepare an Environmental Impact Statement (EIS) for the El Dorado Project, which will be used by the Commission to determine whether, and under what conditions, to issue a new license for the project. To support and assist our environmental review, we are beginning the public scoping process to ensure that all pertinent issues are identified and analyzed, and that the environmental document is thorough and balanced.

We invite the participation of government agencies, non-governmental organizations, and the general public in the scoping process, and have prepared Scoping Document 1 (SD1) to provide information on the proposed project and to solicit written and verbal comments and suggestions on our preliminary list of issues and alternatives to be addressed in the EIS. The SD1 has been distributed to parties on the Service List for this proceeding, as well as other individuals and organizations that we have identified as having previously expressed an interest in this project. The SD1 is available from our Public Reference Room at (202) 208–1371. It can also be accessed online at http://rimsweb1.ferc.fed.us/rims/.

We all hold two scoping meetings to receive input on the appropriate scope of the environmental analysis. A public meeting will be held on September 20, 2000, from 7:00 to 9:00 p.m., at the County Board of Supervisors Chambers, Building A, 330 Fair Lane, Placerville, CA. The second meeting will be held on September 21, 2000, from 9:00 a.m. until noon, at the Hyatt Regency Hotel, 1209 L Street, Sacramento, CA. The public and agencies may attend either or both meetings.

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staffs preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record for this Commission proceeding.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EIS.

The applicant and Commission staff will conduct a project site visit beginning on Tuesday, September 19 and continuing on Wednesday, September 20, 2000. We will meet at the El Dorado Project forebay recreational area in Pollock Pines on September Tuesday at 9:00 a.m. on September 19, 2000 and at the Caples Lake Resort on Highway 88 at 9:00 a.m. on September 20, 2000. More information on the meetings and site visit is provided in the SD1.

Please review the SD1 and, if you wish to provide oral or written input, follow the instructions in section 3.0. Please note that scoping comments must be received by the close of business on October 23, 2000. All correspondence should clearly show at the top of the first page ''El Dorado Project, FERC No. 184–065.'' Address all communications to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, DC 20426.

Please direct any questions about the scoping process to John M. Mudre at (202) 219–1208.

David P. Boergers,

Secretary.

[FR Doc. 00–21446 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to Surrender Exemption

August 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No.:* P–6630–004.

c. *Date Filed:* July 17, 2000.

d. *Applicant:* Y–8 Hydro Partnership.

e. *Name of Project:* Y–8 Hydroelectric Project.

f. *Location:* The Y–8 Hydroelectric Project is located on Y Canal in Gooding County near Bliss, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(c)–825(r).

h. *Applicant Contact:* Blaine A. Graff, Y–8 Hydro, P.O. Box 7867, Boise, ID 83707, (208) 395–8930.

i. *FERC Contact:* Stefanie Damiani at *stefanie. damiani@ferc.fed.us*, or telephone (202) 219–2684.

j. *Deadline for filing comments, motions, or protests:* September 18, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–6630–004) on any comments or motions filed.

k. *Description of Project:* The project consists of: (1) a reinforced concrete diversion/intake structure at the Y–8 Canal headworks; (2) a 130-foot-long, 36-inch-diameter buried steel pipe; (3) a powerhouse containing 1 turbine connected to 2 generators with a combined capacity of 75 kW; and (4) appurtenant facilities. The project has experienced periodic maintenance and operating problems and has not operated since August 1997, therefore the exemptee requests surrender of the exemption.

l. *Locations of the application:* A copy of the notices and letters are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208-2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene–Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–21440 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Surrender Exemption

August 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No.:* P–3615–002.

c. *Date Filed:* June 30, 2000.

d. *Applicant:* Drew River Mill, Inc.

e. *Name of Project:* Branch River Mill Project.

f. *Location:* The Branch River Mill Project is located on the Branch River in Carroll County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Klein, C/O John E. Bowker, P.E., 102 Old Governor's Road, Brookfield, NH 03872, (603) 522–3704.

i. *FERC Contact:* Stefanie Damiani at *stefanie.damiani@ferc.fed.us,* or telephone (202) 219–2684.

j. *Deadline for filing comments, motions, or protests:* September 18, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Please include the project number (P–3615–002) on any comments or motions filed.

k. *Description of Project:* The project consists of: (1) A 10-foot-high, 50-foot-long, concrete cap dam; (2) a reservoir with a surface area of 3 acres; (3) a powerhouse containing a single generating unit with a net rating of 30 kW; and (4) appurtenant facilities. The exemptee requesters surrender of the exemption, stating that the Branch River Mill Dam stopped supplying electric power to the Public Service of New Hampshire as of October 20, 1999.

l. *Locations of the application:* A copy of the notices and letters are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–21441 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

August 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11854–000.

c. *Date filed:* August 7, 2000.

d. *Applicant:* Ketchikan Public Utilities.

e. *Name of Project:* Connell Lake Project.

f. *Location:* On Connell Lake and Ward Creek, in Ketchikan Gateway Borough, Alaska. The project would utilize federal lands within Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Karl R. Amylon, General Manager, Ketchikan Public Utilities, 2930 Tongass Avenue, Ketchikan AK 99901.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) a 600-foot-long, 70-foot-high concrete gravity dam; (2) having an impoundment with a surface area of 400 acres and storage capacity of 8,370 acre-feet, with normal water surface elevation of 254 feet msl; (3) an intake structure; (4) a 2.4-mile-long, 60-inch wood stave pipe; (5) a 0.3-mile-long concrete lined tunnel; (6) a 0.3-mile-long, 48-inch wood stave pipe; (7) a 0.1-mile-long, 48-inch-diameter steel pipe; (8) 1,800-foot-long, 48-inch-diameter steel penstock; (9) a powerhouse containing one generating unit with an installed capacity of 1.9 MW; (10) a tailrace; (11) a 1,400-foot-long, 34.5 kV transmission line; and (13) appurtenant facilities.

The project would have an annual generation of 11,640 MWh that would be sold to a local utility.

l. A copy of the application is available for inspection and

reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–21445 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Notice of Interim Approval

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: The Secretary of Department of Energy, confirmed and approved, on an interim basis, Rate Schedules JW–1–F and JW–2–C. The rates were approved on an interim basis through September 19, 2005, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rate on an interim basis is effective through September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, 2 South Public Square, Elberton, Georgia 30635–2496, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued November 17, 1995, in Docket No. EF95–3031–000, confirmed and approved Wholesale Power Rate Schedules JW–1–E and JW–2–B. Rate schedules JW–1–F and JW–2–C replace these schedules.

Dated: August 11, 2000.

T. J. Glauthier,

Deputy Secretary.

[Rate Order No. SEPA–39]

Southeastern Power Administration—Jim Woodruff Project Power Rates; Order Confirming and Approving Power Rates on an Interim Basis)

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On November 24,1999, the Secretary of Energy issued Delegation Order No. 0204–172, granting the Deputy Secretary authority to confirm, approve, and place into

effect Southeastern's rates on an interim basis. This rate order is issued by the Deputy Secretary pursuant to said notice.

Background

Power from the Jim Woodruff Project is presently sold under Wholesale Power Rate Schedules JW–1—E and JW–2–B. These rate schedules were approved by the FERC on November 17, 1995, for a period ending September 19, 2000 (73 FERC 62116).

Public Notice and Comment

Southeastern prepared a Power Repayment Study, dated February of 2000, that showed that revenues at current rates were not adequate to meet repayment criteria. A revised study with a revenue increase of $237,000 produced rates that are adequate to meet repayment criteria. On March 17, 2000, by **Federal Register** Notice 65 F. R. 14557, Southeastern proposed a rate adjustment of about 4.3 percent to recover this revenue. The notice also announced a Public Information and Comment Forum to be held May 3, 2000, in Tallahassee, Florida, with a deadline for written comments of June 15, 2000. Southeastern received five comments from one party. The following is a summary of the comments:

Staff Evaluation of Public Comments

No comments were received at the Public Information and Comment Forum held in Tallahassee, Florida, on May 3, 2000. Written comments were received from one source by facsimile during the comment period, which are included as part of the Administrator's record of decision as an attachment to Exhibit A–5, filed with the FERC. These comments were received pursuant to **Federal Register** Notice 65 Fed. Reg. 14557 dated March 17, 2000.

The comments, received from Southeastern Federal Power Customers, Inc. (SeFPC or SFPC), are regarding the Department of Energy (DOE) policy to recover Civil Service Retirement System costs and health benefits costs (CSRS) that are unfunded by DOE (unfunded) and funded by the Office of Personnel Management (OPM). Congress has addressed the problem of shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from Treasury to the Retirement Fund administered by the OPM to finance such unfunded liabilities. It is DOE's position that the Power Marketing Administrations have sufficient statutory authority to include unfunded costs in their rates to offset such appropriations from the general fund of the Treasury made by Congress to the Retirement Fund administered by OPM from which post-retirement costs are paid retirees. See July 1, 1998 Memorandum, Department of Energy's General Counsel, Mary Anne Sullivan, ''PMA Authority To Collect In Rates, And Reimburse To Treasury, Government's Full Costs of Post-Retirement Benefits,'' at page 2. The Memorandum is cited hereafter as Memorandum Opinion. A copy of the Memorandum Opinion is included as part of the Administrator's record of decision as Exhibit A–5 filed with the FERC pursuant to 18 C.F.R. 300.10 *et seq.* in support of this rate action.

The preference customers have contended in two prior Southeastern rate filings that Southeastern does not have the legal authority to include such unfunded costs in their rates without specific Congressional authorization. They also contend these costs are beyond the boundaries of cost-based ratemaking authority established by the Flood Control Act of 1944; and that the term ''cost'' in the Flood Control Act should not be read to include such retirement and pension benefit costs.

The Georgia-Alabama-South Carolina Rates were filed with FERC on September 22, 1998, and approved by FERC on February 26, 1999. See Southeastern Power Administration, 86 FERC ¶ 61,195 (1999). The customers have requested a rehearing and the request is currently pending before FERC. Many of these issues were responded to in that prior rate filing.

The preference customers also objected to the inclusion of such unfunded costs in the Cumberland System of Projects rates that were filed with FERC on July 1, 1999, and approved by FERC on March 17, 2000. See Southeastern Power Administration, 90 FERC ¶ 61,266 (2000). The customers requested a rehearing, which was denied by FERC on June 15, 2000. See 91 FERC ¶ 61,272 (2000). Many of these issues were responded to in that rate filing.

In its March 17, 2000, decision regarding Southeastern's Cumberland System Rates, FERC concluded that such contentions were without merit. It noted that it had so ruled in its first such challenge to Southeastern's rates, *i.e.* Southeastern's Georgia-Alabama-South Carolina Rates (SEPA–37). See Southeastern Power Administration, 86 FERC ¶ 61,195, p. 61,681 (1999). In the case of the Georgia-Alabama-South Carolina Rates (SEPA–37), FERC had ruled that the Flood Control Act of 1944 ''. . . does not contain any language prohibiting the recovery of these costs''and that the costs are ''. . . reasonably incurred by Southeastern and recoverable from Southeastern's customers. . . . '' See 86 FERC ¶ 61,195, p. 61,681 (1999).

In its March 17, 2000, Cumberland decision, FERC ruled that ''. . . SFPC had failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful.'' See 90 FERC ¶ 61,266, p. 61,894 (2000).

On June 15, 2000, in its denial of a rehearing of its March 17, 2000, Cumberland Rate case, FERC noted that the preference customers had reiterated the recovery of such costs in Southeastern's rates was arbitrary and capricious. FERC rejected this, saying that in its March 17, 2000, Cumberland Order, it had already rejected the argument that such costs are arbitrary and capricious. Since the preference customers had ''. . . not proffered any new arguments that demonstrate that the inclusion of these costs (in Southeastern rates) is arbitrary and capricious . . .,'' it denied their requests for a rehearing. See 91 FERC ¶ 61,272 (2000). See also 90 FERC ¶ 61,266 (2000).

The most detailed consideration of inclusion in Southeastern's rates of unfunded costs was set forth in FERC's February 26, 1999, Georgia-Alabama-South Carolina Rate Order. See 86 FERC ¶ 61,195, p. 61,681 (1999). In concluding that Southeastern's annual costs of CSRS and post-retirement health benefits were within Southeastern's cost-based ratemaking authority, FERC relied heavily upon the July 1, 1998, Memorandum Opinion of the Department of Energy's General Counsel. FERC essentially agreed with the Memorandum Opinion. The General Counsel's Memorandum Opinion noted, and FERC agreed, that Section 5 of the Flood Control Act of 1944 ''. . . leaves considerable discretion to Southeastern's Administrator regarding what expenses may be considered costs recoverable under the Flood Control Act.'' See 86 FERC ¶ 61, 195, p. 61,681 (1999).

FERC agreed with the DOE General Counsel's legal analysis which concluded that there also would seem to be ''. . . little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems. . . .'' See 86 FERC ¶ 61,195, p. 61,681 (1999), citing the Memorandum Opinion at page 5, and ruled that CSRS costs and the costs of post retirement health benefits ''. . . are costs reasonably incurred by Southeastern and recoverable from Southeastern's customers. . . .'' See 86 FERC ¶ 61,195,

p. 61,681 (1999). FERC concluded that SFPC, ''. . . along with the other intervenors, have failed to demonstrate that the inclusion of these costs is arbitrary, capricious, or unlawful. Accordingly, we will deny the intervenors' request to eliminate these costs from Southeastern's rates.'' *Id.* p. 61,681.

FERC's approval of the Memorandum Opinion is not limited to Southeastern's rates. It has also been cited with approval in the case of Western Area Power Administration's (Western or WAPA) Pacific Northwest-Pacific Southwest Rates (Western's Rate No. 76). See 87 FERC ¶ 61,346 (1999). In that case, the certain Western's customers protested '' . . . the inclusion of the unfunded portion of the Civil Service Retirement Costs and Post-Retirement Health and Life Insurance Benefits (retirement benefits) in Rate Order WAPA–76.'' Western Area Power Administration (Pacific Northwest-Pacific Southwest Intertie Project), Docket No. EF99–5191–000, 87 FERC ¶ 61,346 (1999). Certain customers of Western argued that Western ''. . . does not have the legal authority to recover these costs without specific Congressional authorization. . . .'' See 87 FERC ¶ 61,346, p. 63,337 (1999).

In its approval of Western's Rate 76, FERC expressly followed its earlier Southeastern decision in the case of the Georgia-Alabama-South Carolina Rates, upholding the inclusion of such costs in Southeastern rates. See Southeastern Power Administration, citing 86 FERC ¶ 61,195 (1999). FERC stated that the same principle applied to Western's rates.

It stated, at 87 FERC ¶ 61,346, p. 62,338, ''FERC has previously held that the power marketing administrations (PMAs), such as WAPA, can include these costs in their rates.'' FERC placed heavy reliance upon the Memorandum Opinion, where the General Counsel stated that there would seem to be ''. . . little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems.'' See Memorandum Opinion, p. 5. FERC concluded that such unfunded costs ''. . . are reasonably incurred by WAPA and are recoverable from WAPA's customers. Because APA and Arizona TDU have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful, we will deny the intervenors' request to eliminate these costs from WAPA's rates.'' See 87 FERC ¶ 61,346, p. 62,338 (1999).

We will respond to each comment individually.

Comment 1: FERC must follow specific factors to ensure that the approved rate is ''the lowest possible rate to consumers consistent with sound business principles.''

Response 1: On July 1, 1998, DOE General Counsel Mary Anne Sullivan responded to the issue of Southeastern's discretion to collect the full CSRS costs in rates by a memorandum opinion of same date entitled, ''PMA Authority To Collect In Rates, and Reimburse To Treasury, Government's Full Costs of Post-Retirement Benefits''

(Memorandum Opinion). The Memorandum Opinion concludes at page 4:

> ''[T]hat it is reasonable to interpret the term ''cost'' in the organic statutes to include the total costs to the Government of post-retirement benefits for PMA-related employees.''

The Memorandum Opinion also concludes at page 7:

> DOE policy, FASB [Financial Accounting Standards Board] principles, and FERC ratemaking policy indicate the inclusion in rates applicable for a given period of all employer costs accruing in that period is a reasonable interpretation of the statutory obligation to recover costs.

In both the Georgia-Alabama-South Carolina and Cumberland Rate filings, FERC explained the Flood Control Act of 1944 does not (1) contain any language prohibiting the recovery of unfunded costs, that (2) these are costs reasonably incurred by Southeastern and recoverable from Southeastern's customers. It emphasized that those customers that had protested inclusion of unfunded CSRS costs in Southeastern's rates ''. . . have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful. . . .'' See United States Department of Energy-Southeastern Power Administration, 86 FERC ¶ 61,195, p. 61,681 (1999), and 90 FERC ¶ 61,266, p. 61,894 (2000).

Comment 2: SEPA's inclusion of CSRS costs contradicts Congressional directives that a portion of the costs should be recovered by appropriations.

Response 2: Southeastern rejects the premise of the Comment. Congress is well aware that appropriations to Southeastern to pay the Federal Government's share of civil service retirement benefits, even in combination with the matching employees' contributions, fails to recover their full cost. The Memorandum Opinion took this fully into account. It is stated at page 2:

> The Civil Service Retirement Act provides retirement and disability benefits for Federal employees. The employing agency deducts a percentage of an employee's basic pay, combines it with an equal amount contributed by the appropriate governmental agency, and deposits it in the Treasury to the credit of the Civil Service Retirement and Disability Fund (Retirement Fund). *Clark* v. *United States*, 691 F. 2d 837, 841 (7th Cir. 1982), *citing* 5 U.S.C. 8334. Prior to 1969, however, the Retirement Fund had an unfunded deficit created ''by the Government's failure to contribute sufficient funds, the gradual increase in liability caused by past increased retirement benefits, and salary increases.'' S. Rep. No. 339, 91st Cong. 1st Sess., reprinted in 1969 U.S. Code Cong. & Admin. News 1168, 1169.
>
> In 1969, Congress addressed the problem of potential shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury. *Clark* v. *United States,* 691 F. 2d at 841. The statute authorizes appropriations to the Retirement Fund to finance the unfunded liability created by new or liberalized benefits payable from the Fund, extension of the coverage of the Fund to new groups of employees, or increases in pay on which benefits are computed. 5 U.S.C. 8348(f). The cost of CSRS retirement benefits is approximately 25 percent of the annual salary, while the combined agency and employee contributions are only 14 percent.

The Memorandum Opinion addresses the question of the Congressional intent of full cost recovery at page 5:

> On a practical, common sense level, there seems little room to dispute that the full amount of the retirees' benefits is a ''cost'' of hiring the employee to operate and maintain the PMA power systems. Thus, recovering these costs in rates is entirely consistent with Congressional objectives that the PMA's operate on a fiscally self-supporting basis.

The Commission has also stated in the Georgia-Alabama-South Carolina rate case, 86 FERC ¶ 61,195, p. 61,681 (1999) (footnotes omitted), that:

> The Flood Control Act does not contain any language prohibiting the recovery of these costs. In fact, as the Department of Energy's General Counsel explained in a memorandum accompanying SEPA's filing, section 5 of the Flood Control Act leaves considerable discretion to SEPA's Administrator regarding what expenses may be considered costs recoverable under the Flood Control Act. There also would seem to be ''little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems.'' In sum, therefore, these are costs reasonably incurred by SEPA and recoverable from SEPA's customers, and SFPC, along with the other intervenors, have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful. Accordingly, we will deny the intevenors' request to eliminate these costs from SEPA's rates.

FERC noted that the SFPC had asserted, in the case of the Georgia-Alabama-South Carolina Rates, that

''. . . Southeastern does not have the legal authority to include such costs, without specific Congressional authorization. They argue that, under section 5 of the Flood Control Act of 1944, these costs are beyond the boundaries of cost-based ratemaking authority established for power marketing administrations and assert that the term 'cost' in the Flood Control Act should not be read to include such retirement and pension benefit costs.'' See 86 FERC ¶ 61,195, p. 61,681 (1999).

Comment 3: SEPA's CSRS policy is arbitrary and capricious and beyond the scope of its authority.

Response 3: The preference customers advanced precisely the same arguments before FERC as part of FERC's review of the Georgia-Alabama-South Carolina Rates. [86 FERC ¶ 61,195, p. 61,681 (1999)] and Southeastern's Cumberland Rates [90 FERC ¶ 61,266, p. 61,894 (2000)]. FERC rejected their contentions.

In the case of the Georgia-Alabama-South Carolina Rates, FERC stated:

> SFPC, along with the other intervenors, raises a number of issues concerning the inclusion of CSRS and post-retirement health benefits costs in their proposed rates. Intervenors argue that SEPA does not have the legal authority to include such costs, without specific Congressional authorization. They argue that, under section 5 of the Flood Control Act of 1944, these costs are beyond the boundaries of cost-based ratemaking authority established for power marketing administrations and assert that the term ''cost'' in the Flood Control Act should not be read to include such retirement and pension benefit costs. See 86 FERC ¶ 61,195, p. 61,681 (1999) (footnotes omitted).

In its February 26, 1999, Georgia-Alabama-South Carolina Rate decision, 86 FERC ¶ 61,195 (1999), FERC also rejected such assertion, stating that:

> The Flood Control Act does not contain any language prohibiting the recovery of these costs. In fact, as the Department of Energy's General Counsel explained in a memorandum accompanying SEPA's filing, section 5 of the Flood Control Act leaves considerable discretion to SEPA's Administrator regarding what expenses may be considered costs recoverable under the Flood Control Act. There also would seem to be ''little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems.'' In sum, therefore, these are costs reasonably incurred by SEPA and recoverable from SEPA's customers, and SFPC, along with the other intervenors, have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful. Accordingly, we will deny the intevenors' request to eliminate these costs from SEPA's rates. See 86 FERC ¶ 61,195, p. 61,681 (1999) (footnotes omitted).

In its March 17, 2000, Cumberland Rate decision, 90 FERC ¶ 61,266, p. 61,894 (2000), the customers's contentions that inclusion of these costs was arbitrary and capricious were again rejected. It also stated, in its February 29, 1999, decision respecting Southeastern's Georgia-Alabama-South Carolina Rates, [United States Department of Energy-Southeastern Power Administration, 86 FERC ¶ 61,195, p. 61,681 (1999), reh'g pending], that ''. . . the Flood Control Act does not contain any language prohibiting the recovery of these costs.''

Also, in its June 15, 2000, denial of a rehearing of its March 17, 2000, Cumberland Rate Order, FERC, for the fourth time, rejected the contention that the inclusion of unfunded CSRS costs in Power Marketing Administration Rates was arbitrary and capricious. FERC, in denying rehearing, noted that it had already addressed these arguments in its March 17, 2000, Order. Denial of rehearing was appropriate because SeFPC ha(d) not proffered any new arguments that demonstrate that the inclusion of these costs is arbitrary and capricious. See 91 FERC ¶ 61,272 (2000). FERC, in its review of said Southeastern rates, as well as in its review of Western's Pacific Northwest-Pacific Southwest Intertie Project Rates (WAPA–76), [(87 FERC ¶ 61,346 (1999)], again made it abundantly clear that it agreed with the Memorandum Opinion (cited in our responses to Comments 2, 3, 4, and 5).

Accordingly, we reject the assertion that inclusion of such unfunded CSRS costs in rates is arbitrary and capricious beyond the scope of Southeastern's authority.

Comment 4: The DOE directives must be read *in pari materia* with OPM's statutory mandate to fund employee benefits.

Response 4: SeFPC's argument is that Southeastern should not rely entirely on the Flood Control Act of 1944 to determine which costs should be included in rates. Instead Southeastern should also rely on the OPM's statutory authority which provides for the funding of a portion of the costs through OPM's appropriation. The OPM's statutory authority is concerning how the CSRS costs will be funded. The statutory authority does not deal with whether the costs should or should not be recovered in rates. The comments by SeFPC on page 4 quote the OPM law, 5 U.S.C.A. 8334(a)(1) (1999) (footnote omitted):

> ''[T]he employing agency shall deduct and withhold 7 percent of the basic pay of an employee . . . . [A]n equal amount shall be contributed from the Appropriation or fund used to pay the employee . . .''

SeFPC on page 6 states that, ''SeFPC does not take issue with Southeastern over the recovery of these amounts.''

These costs are funded through Southeastern and the Corps of Engineers appropriations, and the DOE has determined that they are a legitimate cost of a PMA. Similarly, the OPM costs that are funded by OPM appropriations have been determined by DOE and FERC, in its review of the Georgia-Alabama-South Carolina and Cumberland Rates, to be legitimate costs and therefore should be recovered in the rate.

The customers protesting the rate appear to argue that two statutes must be read *in pari materia*. These are 5 U.S.C.A. 8334 and 5 U.S.C.A. 8348(f). The first one, 5 U.S.C.A. 8334, requires the employing agency to deduct a percentage of an employee's basic pay and to combine it with the specified amount contributed by the appropriate government agency. Such combined payment is paid to the OPM retirement fund. The second statute, 5 U.S.C.A. 8348(f), is the 1969 Act of Congress authorizing a permanent appropriation from the General Treasury to OPM to meet shortfalls in the sufficiency of funding for retiree benefits.

This argument that these two statutes be read *in pari materia* has some logic. Under the doctrine, statutes are to be read together ''. . . when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object.'' See 2B Sutherland Statutory Const § 51.03 (5th Ed. 1992)(footnotes omitted). See also In the Matter of Robison, 665 F. 2d 166, 171 (7th Cir. 1981). Under the *in pari materia* canon of statutory interpretation, statutes which pertain to the same thing are to be ''harmonized.'' 2B Sutherland, *supra*, § 51.05. It is clear that the permanent appropriation statute to OPM to meet the costs of unfunded liabilities, 5 U.S.C.A. 8348(f), and the statute, 5 U.S.C.A. 8334, requiring employer and employee to make payments to the retirement fund, have a common purpose.

Also, the doctrine of *in pari materia* requires consideration of all relevant statutes and regulations. See *Chemical Bank New York Trust Co.* v. *U.S.*, 249 F. Supp. 450, 459 (S.D.N.Y. 1966), *Bzozowski* v. *Pennsylvania-Reading Seashore Lines*, 259 A. 2d 231, 233 (Superior Court of N.J. 1969). The other relevant statute which Southeastern believes must also be read *in pari materia* with 5 U.S.C.A. 8348(f) and 5 U.S.C.A. 8334 is section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) requiring Southeastern to return its costs to the Treasury. The proper

application of the doctrine of *in pari materia,* in Southeastern's opinion, requires that these statutes be read in light of DOE Order RA 6120.2 and the applicable Standards of the FASB.

DOE Order RA 6120.2 guides Southeastern in the establishment of its rates and is one of the criteria FERC uses in confirming these rates. See Southeastern Power Administration, 91 FERC ¶ 61,272 (2000). Also, DOE Order RA 6120.2 requires the PMAs to use accounting practices consistent with the principles by the FASB. As the result of new accounting rules issued by the FASB, ''{a} post-retirement benefit is part of the compensation paid to an employee for services rendered.'' Under such rules, unfunded pensions promised to current and retired employees are actual liabilities of Southeastern under the Flood Control Act of 1944, as construed by both DOE and FERC.

Under all relevant statutes and regulations, the inclusion in Southeastern rates for a given period of all employer costs, including the unfunded component accruing in the period is, in both the view of DOE and FERC, a reasonable interpretation of Southeastern's statutory obligation to recover costs.

Accordingly, Southeastern must reject the *in pari materia* argument advanced by the customers as too restrictive an interpretation of the statutes that have to be harmonized.

Comment 5: SEPA has deviated from past practice without sufficient justification.

Response 5: The Memorandum Opinion addressed this argument and stated:

> Given the PMAs' previous practice of not securing recovery in rates of the unfunded portion of employee retirement benefits, it may be argued that the PMAs' inclusions of such costs now would represent a change in agency interpretation. We do not understand this practice, however, to have been premised on an articulated legal judgment that it would be legally impermissible. See Memorandum Opinion, p. 4.
>
> Even if it had been, an agency ''is not locked into the first interpretation it espouses. *Sacred Heart Medical Center* v. *Sullivan,* 958 F. 2d. 537, 544 (3d Cir. 1992). ''[A]n Agency's reinterpretation of statutory language is . . . entitled to deference, so long as the agency acknowledges and explains the departure from its prior views.'' *Mobil Oil Corp.* v. *E.P.A.,* 871 F. 2d 149, 152 (D.C. Cir. 1989).'' See Memorandum Opinion, p. 4, f.n. 4.

There is no merit to the assertion that Southeastern has deviated from past practice without sufficient justification.

In the case of the Jim Woodruff rates, Southeastern is adhering to four FERC decisions, upholding the DOE General Counsel's Memorandum Opinion. As indicated above, the thrust of the Memorandum Opinion was the simple fact that the cost of CSRS retirement benefits is approximately 25 percent of the annual salary, while the combined agency and employee contributions are only 14 percent. See Memorandum Opinion, p. 2. The Memorandum Opinion took cognizance that in 1969, Congress addressed the problem of potential shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury ''to the'' Retirement Fund to finance the unfunded liability. See Memorandum Opinion, p. 2, citing 5 U.S.C.A, 8348(f).

The General Counsel indicated that as the result of new accounting rules issued by the FASB, ''[a] post-retirement benefit is part of the compensation paid to an employee for services rendered.'' See Memorandum Opinion, p. 5, f.n. 5. Under such rules, unfunded pensions promised to current and retired employees are actual liabilities. *Id.* The General Counsel also recognized that DOE Order No. RA 6120.2, ¶ 12 (September 20, 1979), requires the PMAs to use accounting practices consistent with the principles prescribed by the FASB. See Memorandum Opinion, p. 5. Thus, as a function of meeting the operating expenses of the PMAs, it was within the discretion of the PMA Administrators to include in rates the allocated undercollections for post-retirement benefits.

This result follows, in the Opinion of the General Counsel, because DOE policy, FASB principles, and FERC ratemaking policy indicate the inclusion in rates applicable for a given period of all employer costs accruing in the period is a reasonable interpretation of the statutory obligation to recover costs. See Memorandum Opinion, p. 7.

FERC, as indicated above in our response to the customers' objections, agrees with the General Counsel's July 1, 1998, Memorandum Opinion and Southeastern is applying both DOE's and FERC's well articulated principles to the Jim Woodruff rates. In no way are the Jim Woodruff rates an unexplained departure from past practice.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in May 2000, for the Jim Woodruff Project, shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning September 20, 2000, and ending no later than September 19, 2005.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective September 20, 1995, attached Wholesale Power Rate Schedules JW–1–F and JW–2–C. The rate schedules shall remain in effect on an interim basis through September 19, 2005, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: August 11, 2000.

T. J. Glauthier

Deputy Secretary.

Wholesale Power Rate Schedule JW–1–F

Availability: This rate schedule shall be available to public bodies and cooperatives served by the Florida Power Corporation and having points of

delivery within 150 miles of the Jim Woodruff Project (hereinafter called the Project).

Applicability: This rate schedule shall be applicable to firm power and accompanying energy made available by the Government from the Project and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the customer.

Monthly Rate: The monthly rate for capacity and energy made available or delivered under this rate schedule shall be:

Demand Charge: $5.51 per kilowatt of monthly billing demand

Energy Charge: 15.46 mills per kilowatt hour

Billing Demand: The monthly billing demand for any billing month shall be the lower of (a) the Customer's contract demand or (b) the sum of the maximum 30-minute integrated demands for the month at each of the Customer's points of delivery, provided, that, if an allocation of contract demand to delivery points has become effective, the 30-minute maximum integrated demand for any point of delivery shall not be considered to be greater than the portion of the Customer's contract demand allocated to that point of delivery.

Capacity Made Available: The capacity which the Government will supply to meet the demand of the Customer in any billing month will be the maximum amount of capacity required for that purpose up to the contract demand. Such maximum amount of capacity required will be determined by adding the maximum 30-minute integrated measured demands at all points of delivery of the Customer located within 150 miles of the Project power station. At such time as the demand of the Customer approximates the contract demand, the Government will allocate the contract demand among the Customer's then existing delivery points on the basis of the demands recorded as of that time at each such point of delivery adjusted to round each point's allocation to the nearest 10 kilowatts. The allocation of contract demand to delivery points shall become effective the billing month that the Customer's total demand at said delivery points exceeds its contract demand.

Energy Made Available: During any billing month in which the Government supplies all the Customer's capacity requirements, the Government will make available such when both the Government and the Florida Power Corporation are supplying capacity to a delivery point, each kilowatt of capacity supplied to such point during such month will be considered to be accompanied by an equal quantity of energy.

Billing Month: The billing month for power sold under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

Conditions of Service: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Florida Power Corporation on its side of the delivery point.

Service Interruption: When energy delivered to the Customer's system for the account of the Government is reduced or interrupted for 1 hour or longer, and such reduction or interruption is not due to conditions on the Customer's system or has not been planned and agreed to in advance, the demand charge for the month shall be appropriately reduced.

Wholesale Power Rate Schedule JW–2–C

Availability: This rate schedule shall be available to the Florida Power Corporation (hereinafter called the Company).

Applicability: This rate schedule shall be applicable to electric energy generated at the Jim Woodruff Project (hereinafter called the Project) and sold to the Company in wholesale quantities.

Points of Delivery: Power sold to the Company by the Government will be delivered at the connection of the Company's transmission system with the Project bus.

Character of Service: Electric power delivered to the Company will be three-phase alternating current at a nominal frequency of 60 cycles per second.

Monthly Rate: The monthly rate for energy sold under this schedule shall be equal to 60 percent of the calculated saving in the cost of fuel per KWH to the Company determined as follows:

Energy Rate = 63% x [Computed to the nearest $0.00001 (1/100mill) per KWH]

Where:

Fm = Company fuel cost in the current period as defined in Federal Power Commission Order 517 issued November 13, 1974, Docket No. R–479.

Sm = Company sales in the current period reflecting only losses associated with wholesale sales for resale. Sale shall be equated to the sum of (a) generation, (b) purchases, (c) interchange-in, less (d) inter-system sales, less estimated wholesale losses (based on average transmission loss percentage for preceding calendar year).

Method of Application: The energy rate applied during the current billing month will be based on costs and equated sales for the second month preceding the billing month.

Determination of Energy Sold: Energy will be furnished by the Company to supply any excess of Project use over Project generation. Energy so supplied by the Company will be deducted from the actual deliveries to the Company's system to determine the net deliveries for energy accounting and billing purposes. Energy for Project use shall consist of energy used for station service, lock operation, Project yard, village lighting, and similar uses.

The on-peak hours shall be the hours between 7:00 a.m. and 11:00 p.m., Monday through Sunday, inclusive. Off-peak hours shall be all other hours.

All energy made available to the Company, exclusive of transfers to the Georgia Power Company for the account of the Government, shall to the extent required be classified as energy transmitted to the Government's preference customers served from the Company's system. All energy made available to the Company from the Project shall be separated on the basis of the metered deliveries to it at the Project during on-peak and off-peak hours, respectively. Such on-peak energy as is made available to the Company at the points of interconnection with Georgia Power Company shall be determined from schedules of deliveries. Deliveries to preference customers of the Government shall be divided on the basis (with allowance for losses) of 77 percent being considered as on-peak energy and 23 percent being off-peak energy. Such percentages may by mutual consent be changed from time to time as further studies show to be appropriate. Deliveries made to the Georgia Power Company shall be on the basis (with allowances for losses) of schedules of deliveries. In the event that in classifying energy there is more than enough on-peak energy available to supply on-peak requirements of the Government's preference customers but less than enough off-peak energy available to supply such customers off-peak requirements, such excess on-peak

energy may be applied to the extent necessary to meet off-peak requirements of such customers in lieu of purchasing deficiency energy to meet such off-peak requirements.

Any on-peak and off-peak Project energy made available in any billing month over and above that required for transfers to the Georgia Power Company for the account of the Government and to meet the above requirements of preference customers shall be classified as energy sold under this rate schedule.

The energy requirements of the Government's preference customers shall be the total energy requirements of such customers so long as the Government is supplying the total capacity required. In any month when both the Government and the Company are supplying capacity to a preference customer, each kilowatt of capacity shall be considered to be accompanied by an equal quantity of energy. The energy supplied by the Government shall come from its own resources or from purchases from the Company and shall be accounted for as transmitted for the account of the Government. Energy delivered to preference customers by the Company shall be increased by 7 percent to provide for losses in transmission.

Billing Month: The billing month under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

Power Factor: The purchaser and seller under this rate schedule agree that they will both so operate their respective systems that neither party will impose an undue reactive burden on the other.

[FR Doc. 00–21507 Filed 8–22–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6856–6]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee will meet on September 7—8, 2000, in Alexandria, VA. The Committee will hear presentations on EPA's Unfunded Mandates Reform Act internal implementation guidance, the National Aeronautics and Space Administration's remote-sensing database (a possible tool for local planners), the Agency's Gap analysis (water infrastructure funding gap), and the land use State Implementation Plan (SIP) guidance. The full Committee will also vote on adoption of two sets of recommendations: (1) ''Building the Network'' recommendations developed by the former Outreach Subcommittee; and (2) recommendations concerning the Agency's arsenic regulation developed by the Small Community Advisory Subcommittee. The Issues and Process Subcommittees will meet on the afternoon of September 7 and the morning of September 8 to refine and complete their strategic plans and develop or complete recommendations.

The Committee will hear comments from the public between 11:30 a.m. and 11:45 a.m. on September 7. Each individual or organizations wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first served basis.

DATES: The meeting will begin at 9:00 a.m. on Thursday, September 8 and conclude at 4:00 p.m. on the 9th.

ADDRESSES: The meetings will be held in Alexandria, Virginia at the Radisson Hotel located at 901 North Fairfax Street in the Washington Room.

Requests for Minutes and other information can be obtained by writing the DFO at 1200 Pennsylvania Avenue, NW (1306A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 564–3684 or by email at ney.denise@epa.gov.

Dated: August 7, 2000.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 00–21525 Filed 8–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–963; FRL–6738–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–963, must be received on or before September 22, 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.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–963 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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 the table could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. 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,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–963. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–963 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, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–963. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

PP 0E6085

EPA has received a pesticide petition (PP 0E6085) from the Interregional Research Project Number 4, 681 US Highway 1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of halosulfuron-methyl in or on the raw agricultural commodity (RAC) cucumber/squash subgroup at 0.5 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by Monsanto Company, St. Louis, MO 63167.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of halosulfuron-methyl as well as the nature of the residues in plants is adequately understood for purposes of this tolerance.

2. *Analytical method.* A practical analytical method, gas chromatography with a nitrogen specific detector which detects and measures residues of halosulfuron-methyl is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. This enforcement method has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual (PAM II).

3. *Magnitude of residues.* In cucumber and squash residue studies, there were no quantifiable residues found in the raw agricultural commodities using an analytical method with limit of quantitation (LOQ) of 0.1 ppm and 0.5 ppm, respectively.

B. Toxicological Profile

1. *Acute toxicity.* Acute toxicological studies placed the technical-grade halosulfuron-methyl in Toxicity Category III. A 90-day feeding study in rats resulted in a lowest observed adverse effect level (LOAEL) of 497 milligrams/kilograms/day (mg/kg/day) in males and 640 mg/kg/day in females, and a no observed adverse effect level (NOAEL) of 116 mg/kg/day in males and 147 mg/kg/day in females.

2. *Genotoxicity.* Bacterial/mammalian microsomal mutagenicity assays were performed and found not to be mutagenic. Two mutagenicity studies were performed to test gene mutation and found to produce no chromosomal aberrations or gene mutations in cultured Chinese hamster ovary cells. An *in vivo* mouse micronucleus assay did not cause a significant increase in the frequency of micronucleated polychromatic erythrocytes in bone marrow cells. A mutagenicity study was performed on rats and found not to induce unscheduled DNA synthesis in primary rat hepatocytes.

3. *Reproductive and developmental toxicity.* A developmental toxicity study in rats resulted in a developmental LOAEL of 750 mg/kg/day, based on decreases in mean litter size and fetal body weight, and increases in resorptions, resorptions/dam, post-implantation loss and in fetal and litter incidences of soft tissue and skeletal variations, and a developmental NOAEL of 250 mg/kg/day. Maternal LOAEL was 750 mg/kg/day based on increased incidence of clinical observations, reduced body weight gains, and reduced food consumption and food efficiency. The maternal NOAEL was 250 mg/kg/day.

A developmental toxicity study in rabbits resulted in a developmental LOAEL of 150 mg/kg/day, based on decreased mean litter size and increases in resorptions, resorptions/dam and post-implantation loss, and a developmental NOAEL of 50 mg/kg/day. The maternal LOAEL was 150 mg/kg/day based on reduced body weight gain and reduced food consumption and food efficiency. The maternal NOAEL was 50 mg/kg/day.

A dietary 2-generation reproduction study in rats resulted in parental toxicity at 223.2 mg/kg/day in males and 261.4 mg/kg/day in females in the form of decreased body weights, decreased body weight gains, and reduced food consumption during the premating period. Very slight effects were noted in body weight of the offspring at this dose. This effect was considered to be developmental toxicity (developmental delay) rather than a reproductive effect. No effects were noted on reproductive or other developmental toxicity parameters. The systemic/developmental toxicity LOAEL was 223.2 mg/kg/day in males and 261.4 mg/kg/day in females; the systemic/developmental toxicity NOAEL was 50.4 mg/kg/day in males and 58.7 mg/kg/day in females. The reproductive LOAEL was greater than 223.2 mg/kg/day in males and 261.4 mg/kg/day in females; the reproductive NOAEL was equal to or greater than 223.2 mg/kg/day in males and 261.4 mg/kg/day in females.

4. *Subchronic toxicity.* A 21-day dermal toxicity study in rats resulted in a NOAEL of 100 mg/kg/day in males and greater than 1,000 mg/kg/day in females. The only treatment-related effect was a decrease in body weight gain of the 1,000 mg/kg/day group in males.

5. *Chronic toxicity.* A 1-year chronic oral study in dogs resulted in a LOAEL of 40 mg/kg/day based on decreased weight gain and a NOAEL of 10 mg/kg/day for systemic toxicity. A 78-week carcinogenicity study was performed on mice. Males in the 971.6 mg/kg/day group had decreased body weight gains and an increased incidence of microconcretion/mineralization in the testis and epididymis. No treatment-related effects were noted in females. Based on these results, a LOAEL of 971.9 mg/kg/day was established in males and NOAELs of 410 mg/kg/day in males and 1,214.6 mg/kg/day in females were established. The study showed no evidence of carcinogenicity. A combined chronic toxicity/carcinogenicity study in rats resulted in a LOAEL of 225.2 mg/kg/day in males and 138.6 mg/kg/day in females based on decreased body weight gains, and a NOAEL of 108.3 mg/kg/day in males and 56.3 mg/kg/day in females. The study showed no evidence of carcinogenicity.

6. *Animal metabolism.* EPA stated that the nature of the residue in ruminants was determined to be adequately understood. In the tissues and milk of goats, the major extractable residue was the unmetabolized parent compound. Based on the low residues of the parent compound in corn grain and the low transfer of residues in the metabolism study, tolerances on poultry products were not required. In the rat metabolism study, parent compound was absorbed rapidly but incompletely. Excretion was relatively rapid at all doses tested with majority of radioactivity eliminated in the urine and feces by 72 hours. Fecal elimination of parent was apparently the result of unabsorbed parent.

7. *Metabolite toxicology.* The toxicology studies listed below were conducted with the 3-CSA metabolite. Based on the toxicological data of the 3-CSA metabolite, EPA concluded that it has lower toxicity compared to the parent compound and that it should not be included in the tolerance expression. The residue of concern is the parent compound only.

i. A 90-day rat feeding study resulted in a LOAEL in males of >20,000 ppm

and a NOAEL of 20,000 ppm (1,400 mg/kg/day). In females, the LOAEL is 10,000 ppm (772.8 mg/kg/day) based on decreased body weight gains and a NOAEL of 1,000 ppm (75.8 mg/kg/day).

ii. A developmental toxicity resulted in a LOAEL for maternal toxicity of >1,000 mg/kg/day based on the absence of systemic toxicity, a NOAEL of 1,000 mg/kg/day. The developmental LOAEL is >1,000 mg/kg/day and the NOAEL is 1,000 mg/kg/day.

iii. The microbial reverse gene mutation did not produce any mutagenic effect while the mammalian cell gene mutation/Chinese hamster ovary cells did not show a clear evidence of mutagenic effect in the Chinese hamster ovary cells.

iv. The mouse micronucleus assay did not show any clastogenic or aneugenic effect.

8. *Endocrine disruption*. No specific tests have been conducted with halosulfuron-methyl to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there were no significant findings in other relevant toxicity tests, i.e., teratology and multi-generation reproduction studies, which would suggest that halosulfuron-methyl produces effects characteristic of the disruption of the estrogenic hormone.

C. Aggregate Exposure

1. *Dietary exposure*. Tolerances have been established (40 CFR 180.479) for residues of halosulfuron-methyl in or on a variety of plant and animal RACs including field corn at 0.05 ppm, grain sorghum (milo) at 0.05 ppm, sweet corn (kernel + cobs with husks removed) at 0.05 ppm, pop corn grain at 0.05 ppm, sugarcane cane at 0.05 ppm, tree nuts nutmeat at 0.05 ppm, pistachio nuts nutmeat at 0.05 ppm, cotton undelinted seed at 0.05 ppm, and rice grain at 0.05 ppm; and secondary tolerances in meat and meat byproducts at 0.1 ppm (cattle, goats, hogs, horses, and sheep). Tolerances for the fruiting vegetable crop group 8 have been proposed by Gowan Company at 0.05 ppm. An additional tolerance is herein being requested for the crop group 9B, squash/cucumber subgroup of the cucurbit vegetable group, at 0.5 ppm.

i. *Food*—a. *Acute exposure*. For purposes of assessing the potential dietary exposure from food under existing and proposed tolerances, aggregate exposure is based on the Theoretical Maximum Residue Contribution (TMRC) which is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The calculated TMRC value using 95th percentile consumption data was 0.0036 mg/kg body weight/day or 0.72% acute reference dose (RfD) for the general US population; 0.0081 mg/kg/day or 1.61% acute RfD for non-nursing infants less than 1 year old; and 0.0022 mg/kg/day or 0.45% acute RfD for females 13+ years not pregnant or nursing. TMRC is obtained by multiplying the tolerance levels for each commodity by the daily consumption of the food forms of that commodity eaten by the U.S. population and various population subgroups. In conducting this exposure assessment, conservative assumptions were made, e.g., 100% of all commodities will contain halosulfuron-methyl residues and those residues would be at the level of their respective tolerances. This results in a large overestimate of human exposure. Given the conservative approach, dietary exposures to halosulfuron-methyl are less 2% acute RfD for all sub-populations. Food consumption data from DEEM software (Novigen Sciences, Inc., version 6.73) were used in the calculation. Corn and sorghum forage and fodder are fed to animals; thus, exposure of humans to residues from these commodities might result if such residues are transferred to meat, milk, poultry or eggs. However, based on the results of animal metabolism and feeding studies and the amount of halosulfuron-methyl expected in animal feeds, it can be concluded that there is no reasonable expectation that residues of halosulfuron-methyl will exceed existing tolerances in meat.

b. *Chronic exposure*. The chronic RfD is 0.1 mg/kg/day. The calculated TMRC value for the U.S. population is 0.0011 mg/kg/day or 1.1% RfD; 0.0017 mg/kg/day or 1.7% cRfD for infants less than 1-year old; 0.0035 mg/kg/day or 3.5% cRfD for children 1-6 years old; and 0.0009 mg/kg/day for 0.9% cRfD for females 13+ years not pregnant or nursing.

c. *Short- and intermediate-term exposure*. The short-term NOAEL for females 13+ years and infants and children is 50 mg/kg/day. Comparing the NOAEL with the chronic food exposure from DEEM analysis of 0.0009 mg/kg/day for females 13+ and 0.0035 mg/kg/day for children 1-6 years old results in food MOEs of 55,560 and 14,280, respectively. The intermediate-term NOAEL is 10 mg/kg/day, comparing the NOAEL with the chronic food exposure from DEEM analysis of 0.0035 mg/kg/day for children (1-6 years old) results in a food MOE of 2,860.

d. *Chronic risk-carcinogenic*. Halosulfuron-methyl has been classified as a Group E chemical based upon the lack of evidence of carcinogenicity in mice and rats, and has been classified as a not likely human carcinogen.

ii. *Drinking water*. There is no Maximum Contaminant Level (MCL) established for residues of halosulfuron-methyl. It is not listed for MCL development or drinking water monitoring under the Safe Drinking Water Act nor is it a target of EPA's National Survey of Wells for Pesticides. Monsanto is not aware of any halosulfuron-methyl detections in any wells, ponds, or lakes resulting from its use in the United States. The drinking water estimated environmental concentrations (EECs) in ground water (acute and chronic) is 0.008 mg/L. The EECs (acute and chronic) for surface water are 4.3 mg/L and 1.1 mg/L, respectively. These estimates are based on a maximum application rate of 0.063 lbs. active ingredient per acre which may be applied twice per season.

a. *Acute exposure and risk*. Acute drinking water levels of concern (DWLOCs) have been calculated for exposure to halosulfuron-methyl in drinking water for the relevant population subgroups of females 13+ years and infants and children. The acute DWLOC is 15,000 mg/L for females 13+ years and 5,000 mg/L for infants and children. The calculated DWLOCs are significantly higher than the drinking water EECs for ground water (0.008 mg/L) and surface water (4.3 mg/L).

b. *Chronic exposure and risk*. Chronic DWLOCs have been calculated for exposure to halosulfuron-methyl in drinking water for the U.S. population (48 contiguous states) and the relevant subgroups of females 13+ years and infants and children. The chronic DWLOC is 3,500 mg/L for the U.S. population, 3,000 mg/L for females 13+ years, and 1,000 mg/L for infants and children. The calculated DWLOCs are significantly higher than the drinking water EECs for ground water (0.008 mg/L) and surface water (1.1 mg/L).

c. *Short- and intermediate-term exposure and risk*. Short-term and intermediate-term DWLOCs have been calculated for exposure to halosulfuron-methyl in drinking water for the relevant population subgroups. The short-term DWLOC is 10,000 mg/L for females 13+ years and 3,700 mg/L for infants and children. The intermediate-term DWLOC is 590 mg/L for adult males, 57 mg/L for females 13+ years, and 160 mg/L for infants and children. The calculated intermediate-term DWLOCs are significantly higher than

the chronic drinking water EECs for surface water (1.1 mg/L). The calculated short-term DWLOCs are significantly higher than the acute drinking water EECs for ground water (0.008 mg/L) and surface water (4.3 mg/L).

d. *Conclusion*. Monsanto has concluded that potential levels of halosulfuron-methyl in soil and water do not appear to have significant toxicological effects on humans or animals and presents a negligible risk. Based on the very low level of mammalian toxicity, lack of other toxicological concerns and low use rates, there is reasonable certainty that no harm will result from exposure to halosulfuron-methyl via drinking water sources.

2. *Non-dietary exposure*. Halosulfuron-methyl is labeled for use on commercial and residential turf and other non-crop sites. For residential applicators, short- and intermediate-term exposure may occur. Chronic exposure (>6 months of continuous exposure) are not expected.

i. *Acute exposure and risk*. There is potential for exposure to halosulfuron-methyl by homeowner. However, since endpoints for acute dermal or inhalation were not identified, the use of halosulfuron-methyl on residential non-food sites is not expected to pose an unacceptable acute risk.

ii. *Chronic exposure and risk*. Chronic exposures for residential use of halosulfuron-methyl are not expected and a chronic non-dietary endpoint was not identified, therefore the use on residential non-food sites is not expected to pose an unacceptable chronic risk.

iii. *Short- and intermediate-term exposure and risk*. There is potential for short- or intermediate-term dermal exposure to residential handlers; therefore, residential exposure assessments were conducted to assess the following post-application exposure scenarios: Dermal exposure to residues on turf; children's incidental non-dietary ingestion of residues on residential lawn from hand-to-mouth transfer; and children's ingestion of pesticide-treated turfgrass.

The short-term dermal MOE for residential handlers is 4,200 which is significantly greater than the minimum acceptable MOE of 100.

The short-term dermal MOE for exposure from treated lawns for adult males, adult females, and children are 390, 330, and 420, respectively, which are significantly greater than the minimum acceptable MOE of 100. The intermediate-term dermal MOE for exposure from treated lawns for adult males, adult females, and children are 120, 100, and 130, respectively, which are equal to or greater than the minimum acceptable MOE of 100. Therefore the use of halosulfuron-methyl on residential non-food sites is not expected to pose an unacceptable short- or intermediate-term risk.

The short- and intermediate-term oral MOE for hand-to-mouth transfer for children are 4,900 and 1,500, respectively, which are significantly greater than the minimum acceptable MOE of 100. Therefore the use of halosulfuron-methyl on residential non-food sites is not expected to pose an unacceptable short- or intermediate-term risk.

The short- and intermediate-term oral MOE for incidental ingestion by children are 210,000 and 66,000, respectively, which are significantly greater than the minimum acceptable MOE of 100. Therefore the use on residential non-food sites is not expected to pose an unacceptable short- or intermediate-term risk.

D. Cumulative Effects

Halosulfuron-methyl belongs to the sulfonyl urea class of chemistry. The mode of action of halosulfuron-methyl is the inhibition of the plant enzyme aceto lactase synthetase (ALS), which is essential for the production of required amino acid in plants. Although other registered sulfonyl ureas may have similar herbicidal mode of action, there is no information available to suggest that these compounds exhibit a similar toxicity profile in the mammalian system that would be cumulative with halosulfuron-methyl. Thus, consideration of a common mechanism of toxicity is not appropriate at this time. Monsanto is considering only the potential risks of halosulfuron-methyl in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*—i. *Acute risk*. Aggregate exposure risk includes exposure from food and water. The risk from acute ''food only'' exposure is less than 2% of the RfD for all population groups which is less than the EPA's level of concern. The lowest DWLOC calculated was 5,000 mg/L for infants and children. The calculated DWLOC for females (13+ years) was 15,000 mg/L. For both subgroups, the DWLOC is significantly higher than the drinking water EECs for acute ground water (0.008 mg/L) and surface water (4.3 mg/L). Therefore, the risk from aggregate exposure to halosulfuron-methyl residues from all anticipated dietary exposure routes does not pose appreciable risks to human health.

ii. *Chronic risk*. Aggregate chronic exposure to halosulfuron-methyl from ''food only'' exposure utilizes 3.5% of the RfD for the most sensitive subgroup, children (1-6 years). The lowest DWLOC calculated was 1,000 mg/L for infants and children which is significantly higher than the drinking water EECs for chronic ground water (0.008 mg/L) and surface water (1.1 mg/L). Therefore, the aggregate risk from chronic exposure to halosulfuron-methyl residues from all anticipated dietary exposures does not pose appreciable risks to human health.

iii. *Short- and intermediate-term risk*—a. Short-term aggregate exposure takes into account chronic dietary food and water plus short-term residential exposure. For halosulfuron-methyl, EPA has determined that it is appropriate to aggregate exposure via oral exposure route (food and water) with those via oral and dermal exposure routes from residential uses. The MOEs for ''food only'' and residential exposure routes are 22,400 and 330 for females 13+ years. Short-term DWLOC for females 13+ is 10,000 mg/L which is substantially higher than the drinking water EECs for acute surface water (4.3 mg/L). The food only and residential (oral and dermal) MOEs are well above the acceptable short-term aggregate MOE of 100. Therefore, exposure to halosulfuron-methyl residues resulting from current and proposed uses does not pose a short-term aggregate risk.

b. Intermediate-term aggregate exposure takes into account chronic dietary food and water plus intermediate-term residential exposure. The MOEs for ''food only'' and residential exposure routes are 13,700 and 120 for adult males, and 11,500 and 100 for females 13+ years. The intermediate-term DWLOCs are 590 mg/L and 57 mg/L, respectively, for adult males and females 13+. Intermediate-term DWLOCs are substantially higher than the drinking water EECs for chronic surface water (1.1 mg/L). The food only and residential (dermal) MOEs are above the acceptable short-term aggregate MOE of 100. Therefore, exposure to halosulfuron-methyl residues resulting from current and proposed uses does not pose a intermediate-term aggregate risk.

iv. *Aggregate cancer risk*. Halosulfuron-methyl has been classified as a Group E chemical based upon the lack of evidence of carcinogenicity in mice and rats, and has been classified as a not likely human carcinogen.

v. *Conclusion*. Based upon these risk assessments, Monsanto concluded that there is a reasonable certainty that no harm will result from aggregate exposure to halosulfuron-methyl

residues resulting from current and proposed uses.

2. *Infants and children*—i. *Safety factor*. FFDCA section 408 provides that EPA may apply an additional safety factor (up to 10) in the case of threshold effects for infants and children to account for prenatal and postnatal toxicity and the completeness of the data base. Except for the pending request for a developmental neurotoxicity study, the toxicity data base is complete for halosulfuron-methyl. Based upon reliable toxicity data, the use of an additional 10x safety factor is not warranted. Dietary assessments do not indicate a level of concern for potential risks to infants and children based upon the low use rates of halosulfuron-methyl and that the results of field and animal RAC studies conclude that detectable residues are not expected in human foods.

ii. *Acute risk*. The acute RfD was determined to be 0.5 mg/kg/day based upon the developmental rabbit study. The percent of the acute RfD occupied is 0.72% for the U.S. population, 0.45% for females 13+ years not pregnant or nursing, and 1.61% for non-nursing infants (<1 year old). The subgroup with the highest exposure were non-nursing infants and children. The DWLOC for acute exposure for infants and children is 5,000 mg/L and is significantly less than the maximum concentration of halosulfuron-methyl in drinking water (0.008 mg/L in ground water and 4.3 mg/L in surface water).

iii. *Chronic risk*. The cRfD was determined to be 0.1 mg/kg/day based upon the chronic dog study. The percent of RfD occupied is 3.5% for the most sensitive subgroup, children (1-6 years old). The DWLOC for chronic exposure for infants and children is 1,000 mg/L and is significantly less than the maximum concentration of halosulfuron-methyl in drinking water (0.008 mg/L in ground water and 1.1 mg/L in surface water).

iv. *Short- and intermediate-term risk*. An aggregate exposure estimate and risk assessment was calculated for post-application exposure to halosulfuron-methyl from treated lawns. Short-term MOEs for food, residential oral, and residential dermal are 6,200, 4,900, and 420, respectively, for infants and children. Intermediate-term MOEs for food, residential oral, and residential dermal are 2,900, 1,500, and 130, respectively, for children and infants. The short- and intermediate-term DWLOCs for infants and children were 3,700 and 160 mg/L, respectively, which are substantially higher than the drinking water EECs for acute surface water (4.3 mg/L) and chronic surface water (1.1 mg/L).

v. *Conclusion*. Therefore, based on complete and reliable toxicity data and the conservative exposure assessment, Monsanto concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to halosulfuron-methyl residues with respect to the proposed new uses on squash/cucumber subgroup of the cucurbit vegetable group.

F. International Tolerances

Maximum residue levels have not been established for residues of halosulfuron-methyl on any food or feed crop by the Codex Alimentarius Commission.

[FR Doc. 00–20997 Filed 8–22–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6856–9]

Geiger (C&M Oil) Superfund Site, Rantowles, Charleston County, South Carolina; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Pursuant to 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), the U.S. Environmental Protection Agency (''EPA'') proposes to settle its claims for past response costs incurred at the Geiger (C&M Oil) Site (''Site'') located in Rantowles, Charleston County, South Carolina with the following settling parties: Pile Drivers, Inc., the Department of Navy, and The Department of Army. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or consideration which indicate that the settlement is inappropriate, improper, or inadequate. A copy of the proposed settlement may be obtained from Ms. Paula V. Batchelor, U.S. EPA Region 4, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887. Comments should reference the Geiger (C&M Oil) Site in Rantowles, Charleston County, South Carolina.

Dated: August 7, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–21527 Filed 8–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6857–1]

ILCO Superfund Site, Leeds, Jefferson County, Alabama; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with Lucent Technologies, Inc., for response costs pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9622(h)(1) concerning the ILCO Superfund Site located in Leeds, Jefferson County, Alabama. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: August 9, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–21526 Filed 8–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6856–8]

Notice of Proposed Settlement; Ware Shoals Dyeing and Printing Superfund Site; Ware Shoals, Greenwood County, South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into a ''prospective purchaser agreement'' (PPA) concerning property owned by the Ware Shoals Power and Water, Inc. (WSPW), in Greenwood County, South Carolina. EPA proposes to enter into the PPA with the Town of Ware Shoals. The PPA concerns the acquisition by the Town of Ware Shoals of certain real property presently owned by the WSPW in Ware Shoals, Greenwood County, South Carolina.

The real property in question consists of a 27 acre tract located at 12 Mill Street, East Main Street and Honea Path Street, Ware Shoals, Greenwood County, South Carolina. The Property is the subject of an Agreement to transfer the property from WSPW to the Town of Ware Shoals. Pursuant to the PPA, the Settling Respondent agrees to conduct further environmental assessment at the Site pursuant to a Voluntary Contract with the South Carolina Department of Health and Environmental Control. The PPA will also settle and resolve, subject to reservations and limitations contained in the PPA, the potential liability of the Settling Respondent for the Existing Contamination as defined in the PPA at the Property which may otherwise result from Settling Respondent becoming the owner of the property. The Town of Ware Shoals will be protected from CERCLA liability for past costs which may arise from their participation in the acquisition of the Property, as described above.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8909, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of publication.

Dated: August 3, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–21528 Filed 8–22–00; 8:45 am]

BILLING CODE 6560–50–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, N.W., 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.: 011626–005.

Title: The Alianca/Columbus/P&O Nedlloyd Agreement.

Parties: Alianca Navegacao e Logistica Ltda., Columbus Line, P&O Nedlloyd Limited, P&O Nedlloyd B.V.

Synopsis: The proposed amendment adds Crowley American Transport and Oceanica AGW Com. E Rep. Ltda. d/b/a ''Mercosul Line'' as members of the Agreement; suspends the East Coast United States/East Coast of South America portion of the Agreement; adds an additional vessel to the Agreement's Gulf ports service; reallocates space among the parties; and updates the Agreement's withdrawal provisions. The parties request expedited review.

Agreement No.: 011677–001.

Title: United States Australasia Agreement.

Parties: P&O Nedlloyd Limited, Contship Containerlines Limited, Wallenius Wilhelmsen Lines AS, Australia-New Zealand Direct Line, Columbus Line, CMA CGM S.A.

Synopsis: The proposed modification adds Article 17(K) that suspends overcarriage payments or undercarriage compensation during the initial pool period from November 1, 1999, through October 31, 2000. The modification also corrects the name and address of CMA CGM S.A.

Dated: August 18, 2000.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 00–21546 Filed 8–22–00; 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, D.C. 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Honda Express Co, Ltd., 7754–1, Koh-Cho, Suzuka-Shi, Mie Pref. 513–0836, Japan, Officer: Nobuyuki Shimura, President (Qualifying Individual)

Ronex Shipping and Forwarding B.V., Ridderhaven 17, Ridderkerk 2984 BT, Netherlands, Officer: Ronald J. Schols, President (Qualifying Individual)

Elemar International Forwarding, Inc., 3475 NW 114 Avenue, Miami, FL 33178, Officer: Victor Matos, President (Qualifying Individual)

SeaLines International, Inc., 316 Maid Street, East Rutherford, NJ 07073, Officers: Richard E. Burke, President (Qualifying Individual), Fred W. Morgenthaler, Vice President

Konoike Transport and Engineering (USA), Inc., 1420 Coil Avenue, Wilmington, CA 90744, Officers: Yutaka Urabe, C.F.O. (Qualifying Individual), Kozo Murasawa, C.E.O/ President

Sea-Logix, Inc., Metro Office Park, Compaq Bldg-400, San Juan, Puerto Rico 00936, Officers: Richard Rodriguez, Vice President (Qualifying Individual), John Keenan, Chairman/ Director

Wil Can (USA) Group Inc., 167–10 South Conduit Avenue, Suite 210, Jamaica, NY 11434, Officer: Shen Zhang, General Manager (Qualifying Individual)

P.K. Shipping, Inc. d/b/a Cargo Express, 5707 Calverton Street, Suite 2E, Baltimore, MD 21228, Officer: Joseph Pfender, Treasurer (Qualifying Individual)

Webtrans Logistics, Inc. d/b/a ANC International, 601 W. Carob Street, Compton, CA 90220, Officer: John Park, President (Qualifying Individual)

May Trading Inc. d/b/a Cargo Freight Transportation Co., 1300 E. Main Street, Room 109C, Alhambra, CA 91801, Officer: Eugene Y. Chiang, President (Qualifying Individual)

Atlantic Trade Shipping Company, LLC d/b/a Grimaldi Group USA, 1903 Monroe, Dearborn, MI 48124, Officer: Houssam Salloum, President

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

GKN Freight Services, Inc., 6400 Durham Road, Highway 501, Timberlake, NC 27583, Officers: P. Gerard Byrne, Exec. Vice President (Qualifying Individual), Dennis Morris, President

Worldwide Group, Inc. d/b/a World Trans Line, 14928 S. Figueroa Street, Gardena, CA 90248, Officer: Choong Ho Chun, President (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

A.G. International Freight Forwarding, Inc., 212 Livermore Avenue, Staten Island, NY 10314, Officers: Aldo Gallelli, Sr., President (Qualifying Individual), Aldo Gallelli, Jr., Vice President

Crossroads Inc., 9250 NW 25th Street, Miami, FL 33172, Officers: Peter R. Sengelmann, President (Qualifying Individual), Remberto Junquera, Vice President

Dated: August 18, 2000.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 00–21547 Filed 8–22–00; 8:45 am]

BILLING CODE 6730–01–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 September 15, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. BOU Bancorp, Inc., Ogden, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Utah, Ogden, Utah.

Board of Governors of the Federal Reserve System, August 17, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–21469 Filed 8–22–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

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 September 6, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Southern Michigan Bancorp, Inc.,* Coldwater, Michigan; to acquire a 24 percent interest in H.O.M.E. Limited Dividend Housing Association Limited Partnership through Sturgis Bank and Trust Company's, Sturgis, Michigan, wholly owned subsidiary, First Michiana Development Corporation, Holland, Michigan, and thereby engage in community development activities, pursuant to § 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, August 17, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–21470 Filed 8–22–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 992 3121]

FirstPlus Financial Group, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 18, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Haynes, FTC/S–4429, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–3107.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent

order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from FirstPlus Financial Group, Inc. (''FirstPlus'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Through direct mail, television, and online advertisement, FirstPlus has disseminated information promoting high loan-to-value (''HLTV'') loans, home equity loans, and other types of consumer credit transactions. The complaint alleges that many of these advertisements are deceptive and misleading, and violate various provisions of the .Federal Trade Commission Act (''FTC. Act''), the Truth in Lending Act (''TILA''), and Regulation Z. Specifically, the complaint alleges that FirstPlus: (1) Falsely represented in its advertising that consumers would save money when consolidating existing debts in a FirstPlus loan and that the examples shown in FirstPlus's advertising accurately illustrate potential monthly savings; (2) falsely represented that each consumer receiving a solicitation from the company would actually receive a loan; (3) misrepresented that consumers would receive loans for the full amount states in the company's advertisement; (4) failed to adequately disclose credit terms for its loan products; and (5) failed to disclose clearly and conspicuously key information about the terms of its credit offers as required by the TILA and Regulation Z.

The proposed consent order (1) prohibits FirstPlus from misrepresenting the comparative or absolute savings or benefits of consolidating debt, including misrepresenting the circumstances under which consumers can save money when consolidating, and misrepresenting the monthly savings consumers will realize over the extended life of the FirstPlus loan; (2) prohibits FirstPlus from misrepresenting an individual's eligibility to receive a loan; (3) prohibits FirstPlus from misrepresenting the amount of loan proceeds to be disbursed to consumers, or misrepresenting the amount of proceeds to be disbursed on consumers' behalf to third parties; (4) prohibits FirstPlus from stating the savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, without disclosing accurately, clearly, and conspicuously all material information needed by consumers to evaluate the comparison; (5) prohibits FirstPlus from using an example of the cost savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, without basing the example on reasonable assumptions regarding average annual percentage rates and repayment terms for comparable credit transactions; and (6) requires FirstPlus to comply with the disclosure requirements of the TILA and Regulation Z when stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioner Mozelle W. Thompson

This matter is the Commission's first action brought against a consumer finance company for misrepresenting the savings that consumers would gain by consolidating their debts into a high loan-to-value (HLTV) loan. Accordingly, this case sends an important law enforcement message to companies engaged in this multi-billion dollar financial market that the Commission will look closely at HLTV transactions and take appropriate action when consumers are victimized by those who omit or misrepresent material facts relating to such loans.

Because this principle is so important, we also note that this case does not necessarily establish the full scope of relief that the Commission may seek in future cases. While the Commission's order—by providing for strong injunctive relief—supplies the full dose of all relief feasible in light of this particular respondent's weak financial situation, we believe that the Commission may consider pursuing additional relief in future cases involving deceptive HLTV loan advertising. Specifically, we expect that the Commission, in appropriate circumstances, would seek consumer redress or other monetary relief.

[FR Doc. 00–21471 Filed 8–22–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 992 3274]

SmartScience Laboratories, Inc., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 15, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary,

Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janet Evans, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2125.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 16, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from SmartScience Laboratories, Inc. and its president, Gene Weitz, (together, ''SSL'') settling charges that they engaged in a large-scale deceptive advertising campaign for JointFlex, a skin cream.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations for JointFlex. Respondents sold this cream through advertisements in national newspapers and magazines (including USA Today, the Washington Post, and Newsweek), more than 200 other major and minor local newspapers, and two websites that are not currently operative. According to the FTC complaint, SSL advertisements represented that JointFlex eliminates significant pain due to disabling joint conditions, crushed vertebrae, arthritis, herniated disk, and other conditions; that JointFlex provides more pain relief than other over-the-counter pain creams; and that testimonials from consumers appearing in the advertisements for JointFlex represent the typical or ordinary experiences of members of the public who use the product. According to the complaint, SSL lacked a reasonable basis to substantiate these claims. The complaint also alleges that respondents ads represented that the glucosamine sulfate and chondroitin sulfate in JointFlex contribute to pain relief when applied topically, but that respondents do not possess competent and reliable evidence that the glucosamine sulfate and chondroitin sulfate in JointFlex, a topically applied cream, penetrates the skin sufficiently to induce a pharmacological effect.

The complaint further alleges that SSL made several false advertising claims. It alleges that the ads represented that a competent and reliable survey of JointFlex users shows that ninety-five percent experienced reduction or elimination of pain due to use of JointFlex. This claim is alleged to be false because the survey respondents relied on was not competent and reliable, because there is no assurance that any pain reduction the responding consumers reported was due to use of the product, and because the ninety-five percent figure reflects responses to the question, ''do you feel that the product helped your symptoms.'' not a question about pain relief, and the surveys also inquired into relief from stiffness, swelling, redness, and protuberances. The complaint alleges that SSL falsely characterized the results of certain testimonials, by overstating the nature of their injuries at the time they used the JointFlex product.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I of the order would require, with regard to JointFlex or any drug or supplement, competent and reliable scientific substantiation for future claims about the absolute or comparative efficacy of the product in reducing, relieving, or eliminating pain from any source; the health benefits, performance, safety or efficacy of any such product; or the ability of glucosamine sulfate, chrondroitin sulfate, or any other ingredient to relieve pain or provide any other health benefit when applied topically.

Part II prohibits respondents, in connection with any product, from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or research.

Part III provides that, in connection with any product, respondents shall not misrepresent the experience of any testimonialist or endorser. If further provides that respondents shall not represent that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless the typicality claim is substantiated by competent and reliable scientific evidence; or respondents disclose, clearly and conspicuously, and in close proximity to the endorsement or testimonial, either what the generally expected results would be for users of the product, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Part IV of the order is a safe harbor, providing that the order does not prohibit respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration. Part V is a safe harbor, providing that the order does not prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Parts VI–XI are standard record keeping, order distribution, reporting, compliance, and sunsetting provisions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–21472 Filed 8–22–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0914]

Agency Information Collection Activities; Announcement of OMB Approval; Electronic Importer's Entry Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Electronic Importer's Entry Notice'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 29, 2000 (65 FR 40100), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0046. The approval expires on August 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: August 17, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–21478 Filed 8–22–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1460]

Salmonella Enteritidis Research Public Meeting

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) in cooperation with the Food Safety and Inspection Service (FSIS) and the Agricultural Research Service of the United States Department of Agriculture is announcing a public meeting to assess the current status of scientific research required to make decisions about *Salmonella* Enteritidis (SE) in egg preventative controls, surveillance, and education based on the Egg Safety Action Plan (Objective 7). This public meeting will provide an opportunity to identify the existing primary research gaps and what mechanism should be used to address such research gaps (e.g., awarding of competitive research grants, targeted contracting of research).

DATES: The meeting will be held on Friday, September 8, 2000, from 8:30 a.m. to 5 p.m. Registration and written notices of participation will be accepted beginning August 23, 2000. Submit written comments no later than October 10, 2000.

ADDRESSES: The meeting will be held at the Holiday Inn Crowne Plaza, 1325 Virginia Ave., Atlanta, GA.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may also send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or on the FDA website at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Transcripts and summaries of the meeting will be available for examination at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *To register for the meeting:* Wendy S. Buckler, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–2923, FAX 202–205–4422 or e-mail: wendy.buckler@cfsan.fda.gov. When registering please provide name, title, firm name, address, telephone, and fax number. When registering, please indicate if you would like to make a presentation during the meeting. Time allotted for each presentation will be approximately 5 minutes for each participant, but will depend on the number of people participating.

There is no registration fee for this public meeting, but advance registration is suggested. Interested persons are encouraged to register early because space may be limited.

For general information regarding the meeting or the Egg Safety Action Plan: Robert E. Brackett, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4064, FAX 202–205–4422 or e-mail: robert.brackett@cfsan.fda.gov

SUPPLEMENTARY INFORMATION:

I. Background

The President's Council on Food Safety issued a directive entitled ''Egg Safety from Production to Consumption: An Action Plan to Eliminate Salmonella Enteritidis Illness Due to Eggs'' (Egg Safety Action Plan) to address this public health issue. A primary objective of the Egg Safety Action Plan is to promote research that will help eliminate SE illnesses associated with consumption of eggs by the year 2010. The purpose of this public meeting is to assess the current status of scientific research as specified in Objective 7 of the Egg Safety Action Plan. All discussion and presentations will focus on one or more of the items outlined in this objective. Objective 7 from the Egg Safety Action Plan states:

Objective 7:

Ensure adequate, current information is available to make decisions about SE preventive controls, surveillance, and education based on sound science.

7.1. Conduct research to develop and evaluate on-farm intervention strategies or technologies, including:

7.1.1. Forced molting and other stress factors

7.1.2. Vaccines and immunomodulators

7.1.3. Competitive exclusion

7.1.4. Ion air scrubbers in hatcheries

Timeline: By Fiscal Year (FY) 2005

7.2. Conduct research to provide additional information about commercial processing technologies and practices

7.2.1. In-shell pasteurization of eggs

7.2.2. Rapid cooling before and after processing

7.2.3. Continuous rewashing

7.2.4. Repackaging

7.2.5. Pasteurization of egg products with additives

Timeline: By FY 2003

7.3. Conduct research to improve testing methodologies for SE on the farm and in eggs, including the identification of virulence factors and development of rapid tests, screening tests, sampling protocols, and molecular for subtyping SE isolates.

Timeline: By FY 2005

7.4. Conduct research to understand the ecology and epidemiology of SE in the hen and farm environment, including:

7.4.1. Sources of SE in the environment

7.4.2. Mechanism of colonizing the layer house

7.4.3. Factors affecting infection of the hen and contamination of the egg

7.4.4. Characteristics of SE that promote infection in hens and humans

7.4.5. Biochemical characteristics of SE strains causing variations in virulence

7.4.6. Immunological and other factors in humans that affect infectivity

7.4.7. Risk factors associated with the on-farm presence of SE isolates

Timeline: By October 2008

II. Public Dockets and Submission

The agency has established public dockets to which comments may be submitted. All comments must include the docket number found in brackets in the heading of this document. Submit written comments in duplicate to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

III. Meeting Summary and Transcript

A summary of the public meeting may be requested in writing from the Dockets Management Branch (address above) approximately 30 business days after the meeting at a cost of 10 cents per page. The summary of the public meeting will be available for public examination at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

A transcript of the public meeting will be prepared. Copies of the transcript may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 18, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–21632 Filed 8–21–00; 12:48 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Notice of Intent To Prepare an Environmental Impact Statement and Hold an Informal Scoping Meeting on the Utah Lake Drainage Basin Water Delivery System of the Bonneville Unit, Central Utah Project

AGENCY: The Department of the Interior, Utah Reclamation Mitigation and Conservation Commission, and the Central Utah Water Conservancy District (District) are the joint lead agencies.

LOCATION: Wasatch Front Area, Utah (Salt Lake, Utah, and East Juab Counties).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and hold an informal scoping meeting on the Utah Lake Drainage Basin Water Delivery System (Utah Lake System) of the Bonneville Unit, Central Utah Project, for the purpose of assessing the needs for current and future water uses within the Wasatch Front Area.

SUMMARY: Pursuant to: Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended; Section 202 (a)(1) of Public Law 102–575, Central Utah Project Completion Act (CUPCA); and the October 14, 1998, **Federal Register** Notice (FR Doc. 98–27484), the joint lead agencies are initiating a planning and EIS process with public involvement on the Utah Lake System of the Bonneville Unit, Central Utah Project. The Utah Lake System will connect to the Diamond Fork System and could make water available to the Wasatch Front Area for irrigation, municipal and industrial, fish and wildlife, and other authorized uses. Water could be delivered directly to locations within the Utah Lake Drainage Basin by the Utah Lake System as well as by exchange from other facilities. As indicated in the 1999 Diamond Fork Final Supplement to the Final EIS, the project water supply will consist of a transbasin diversion of 101,900 acre-feet, the United States' acquisition of the District's water rights in Utah Lake, and the United States' acquisition of other water rights as authorized in CUPCA. The water supply will be comprised of several sources including Strawberry Reservoir, Utah Lake, Jordanelle Reservoir, and the Provo River. A portion of the transbasin diversion has been previously committed to instream flows and exchange to Jordanelle Reservoir to meet contracts with water users from North Utah, Wasatch, and Salt Lake Counties. Therefore, the project's Utah Lake System water supply could vary from 30,000 to 70,000 acre-feet, depending on the place of use, availability, type and location of water conservation measures implemented, and the use of project return flows. Any other additional uses of Bonneville Unit water within the Wasatch Front Area and all remaining environmental issues and commitments associated with the Bonneville Unit will be addressed during this planning and EIS process. The Utah Lake System is the final component of the Bonneville Unit, Central Utah Project.

Scoping Process: The joint lead agencies will conduct scoping on the Utah Lake System in two phases. The initial phase will be informal scoping during which input will be sought to determine existing and future water needs, potential service areas, and needs for water distribution facilities. With data gathered during the informal scoping process, alternatives will be developed and presented at the second phase of scoping. The second phase, or formal scoping, will begin within 12 months and will give the public an opportunity to review and provide comments on alternatives developed for the Utah Lake System and potential impacts associated with each alternative. Additional scoping information and meetings related to the second phase will be announced at a future time. Information obtained through the formal scoping process will be used to develop the final set of alternatives for analysis in an EIS for the Utah Lake System.

Scoping Meeting: The joint lead agencies will hold an informal public scoping meeting to receive input from potential water purchasers/petitioners and the public on existing and future water needs and facilities to deliver water within the Wasatch Front Area. The scoping meeting will be conducted in an open house format during a 3-hour period in which representatives of the joint lead agencies will be available to receive input, provide information, and answer questions. To allow sufficient time for all potential purchasers/petitioners and the public, there will be a 30-minute time limit to meet with the joint lead representatives. The meeting will be held: Thursday, September 28, 2000, 5:00 p.m.–8:00 p.m., Student Center Ballroom, Utah Valley State

College, 800 West 1200 South, Orem, Utah.

The time and location of the meeting will also be announced in local media.

Deadlines for Submitting First Phase Scoping Comments: Monday, October 31, 2000. All written comments should be submitted to : Mr. Harold Sersland, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058–7303.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Department of the Interior, 302 East 1860 South, Provo, Utah 84606–6154, Telephone (801) 379–1237.

Dated: August 17, 2000.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 00–21458 Filed 8–22–00; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–912–0777–HN–003E]

Notice of Closures and Conditions of Use in the Butte, Dillon, Billings, and Lewistown Field Offices; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 43 Code of Federal Regulations 9212.2, all Bureau of Land Management lands administered by the Butte, Dillon, Billings and Lewistown Field Offices east of the Continental Divide in Madison, Beaverhead, Gallatin, Park, Jefferson, Broadwater, Meagher, Lewis and Clark, Cascade, Teton, Pondera, Glacier, Toole, Stillwater, and Sweet Grass counties are *closed to public entry or use.* These closures are in addition to restrictions enumerated in 43 Code of Federal Regulations 9212.1 and become effective as of 12:01 a.m. mountain daylight time (MDT) August 23, 2000, and will remain in effect until rescinded or revoked. This amends or replaces the restrictions Order No. MT–00–04 enacted on August 15, 2000, for the Butte, Dillon, Billings and Lewistown Field Offices.

Exemptions: Pursuant to 43 Code of Federal Regulations 9212.2, the following persons are exempt from this order:

1. Any federal, state, or local officer or member of an organized rescue, law enforcement or firefighting force in the performance of an official duty.

2. Persons with a permit or other written authorization specifically allowing the otherwise prohibited act or omission.

3. Private landowners requiring access to their lands across closed public lands.

4. Grazing permittees in the performance of activities directly related to management of their livestock.

All exemptions will observe the following:

A. Driving will only be allowed on ''cleared roads.'' These are roads that are at least 12' wide and cleared of vegetation shoulder to shoulder. All other access will be by foot or horseback.

B. Anyone using public lands must have a reliable form of communication.

Recreation Use

Camp Grounds

No open flames permitted in open camp grounds listed.

5. Campgrounds around Canyon Ferry open to the public are: Lewis and Clark County: Chinamen's Gulch, Court Sheriff, Jo Bonner, Riverside and day-use areas; Shannon, Cave Bay, Cemetary Island and Sandy Beach. Broadwater County: Indian Road, Silos and White Earth

6. Campgrounds around Holter Lake open to the public are: Lewis and Clark County: Log Gulch, Holter Lake, and Holter Dam

7. Campgrounds on the Lower Madison River that will remain open are: Red Mountain

8. Campgrounds on the Upper Madison River that will remain open are: West Madison (Ruby Creek) and day-use of the South Madison Campground

9. Campgrounds on Ennis Lake that will remain open for day-use are: Kobyashi Beach

River Access (for Floating and Fishing)

10. Day-use on rivers to remain open from existing developed public access, except for the Gallatin River

Violation of this order is prohibited by the provisions of the regulations cited. Under 43 Code of Federal Regulations 9212.4, any violation is subject to punishment by a fine of not more than $1,000 and/or imprisonment of not more than 12 months.

DATES: Restrictions go into effect at 12:01 a.m. Wednesday, August 23, 2000, and will remain in effect until further notice.

ADDRESSES: Comments should be sent to BLM Montana State Director, Attention: Pat Mullaney, P.O. Box 36800, Billings, Montana 59107–6800.

FOR FURTHER INFORMATION CONTACT: Pat Mullaney, Fire Management Specialist, 406–896–2915.

Dated: August 21, 2000.

Roberta A. Moltzen,

Acting State Director.

[FR Doc. 00–21711 Filed 8–22–00; 9:39 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–41834; CA–188–1430–00]

Notice of Realty Action; Land Use Lease of Public Land, Nevada County, California

AGENCY: Department of the Interior, Bureau of Land Management.

REALTY ACTION: Land Use Lease, Nevada County, CACA41834.

SUMMARY: The following described public land is being considered for a land use lease pursuant to Section 302 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

T. 15N., R. 10E., MDM
Section 6: lot 89 (portion of) Nevada County, CA
Containing 4.71 acres, more or less.

The above parcel of public land would be leased to the Nevada Irrigation District, Grass Valley, CA, through a non-competitive process. The lease would authorize a continued gravel operation plant on the public lands and would be issued for an initial term of five years, subject to renewal. The land will be leased at fair market value.

The lease would be subject to any prior existing rights. A categorical exclusion and decision record have been completed. The proposal is consistent with the Bureau's land use plans.

ADDRESSES: Interested parties may submit comments to the Field Manager, 63 Natoma Street, Folsom, California 95630. Comments must be received within 45 days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: Contact Jodi Swaggerty, Realty Specialist at (916) 985–4474 or at the address above.

D.K. Swickard,

Field Manager.

[FR Doc. 00–21456 Filed 8–22–00; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–435]

Certain Integrated Repeaters, Switches, Transceivers, and Products Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 20, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052, and Level One Communications, Inc., 9750 Goethe Road, Sacramento, California 95827. The complaint alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated repeaters, switches, transceivers, and products containing same by reason of infringement of claims 1, 3, 7–8, 13–19, and 23–29 of U.S. Letters Patent 5,894,410; claims 1, 3, 10–13, 15–16, and 19 of U.S. Letters Patent 5,608,341; and claims 1, 3, 5, 10, and 11 of U.S. Letters Patent 5,726,860. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (1999).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 16, 2000, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated repeaters, switches, transceivers, or products containing same by reason of infringement of claims 1, 3, 7–8, 13–19, or 23–29 of U.S. Letters Patent 5,894,410; claims 1, 3, 10–13, 15–16, or 19 of U.S. Letters Patent 5,608,341; or claims 1, 3, 5, 10, or 11 of U.S. Letters Patent 5,726,860; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052

Level One Communications, Inc., 9750 Goethe Road, Sacramento, California 95827

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Altima Communications, Inc., 2055 Gateway Place, San Jose, California 95110

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–Q, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation;

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge;

(4) The presiding administrative law judge is authorized to consolidate Inv. No. 337–TA–430 and this investigation if he deems it appropriate.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 17, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–21499 Filed 8–22–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation 332–419]

Pricing of Prescription Drugs

AGENCY: United States International Trade Commission

ACTION: Extension of dates for delivery of the initial report and for written submissions by interested parties for Inv. No. 332–419, Pricing of Prescription Drugs.

EFFECTIVE DATE: August 17, 2000.

SUMMARY: In response to a request on August 9, 2000, from the Committee on Ways and Means (the Committee) of the United States House of Representatives, the Commission has extended the date for reporting the initial results of its investigation No. 332–419, Pricing of Prescription Drugs, until December 1, 2000. The deadline for written submissions by interested parties has been extended to September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Nesbitt, Project Leader (202–205–3355) or Raymond L. Cantrell, Deputy Project Leader (202–205–3362), Office of Industries, or Michael Barry, Deputy Project Leader (202–205–3246), Office of Economics, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

WRITTEN SUBMISSIONS: The deadline for written submissions has been extended until September 8, 2000. Interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. In addition to general information regarding prices and pricing practices prevalent in each of the countries under consideration, the Commission is particularly interested in comments regarding the question raised by the Committee in their request regarding the extent to which price control systems utilized by the countries under consideration impact pricing for comparable drugs in the United States. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions must conform with the provisions of section 201.8 of the Commission's Rules. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on September 8, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Notice of institution of the investigation was published in the **Federal Register** of July 26, 2000 (65 FR 45998).

List of Subjects

Prescription drugs, Price controls, Compulsory licensing.

By order of the Commission.

Issued: August 17, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–21501 Filed 8–22–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–864–867 (Final)]

Certain Stainless Steel Butt-Weld Pipe Fittings From Germany, Italy, Malaysia, and the Philippines

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA–864, 865, and 867 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Germany, Italy, and the Philippines of stainless steel butt-weld pipe fittings, provided for in subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States.[1] Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling for the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that certain stainless steel butt-weld pipe fittings from Malaysia are not being sold, nor are likely to be sold, in the United States at less than fair value, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of the antidumping investigation No. 731-TA–866 (Final) under section 735(b) of the Act. The Commission is taking this action so that the final phases of the antidumping investigations may proceed concurrently in the event that Commerce makes a final affirmative antidumping determination with respect to Malaysia. If Commerce makes a final negative antidumping determination with respect to Malaysia, the Commission will terminate its antidumping investigation under section 735(c)(2) of the Act (19 U.S.C. 1673d(c)(2)), and section 207.2(d) of the Commission's rules.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

[1] For purposes of these investigations, Commerce has defined the subject merchandise as follows: ''Certain stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and ''commodity'' and ''specialty'' fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel. The fittings subject to these investigations are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (e.g., DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations. These investigations do not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.''

Background.—The final phase of these investigations is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of stainless steel butt-weld pipe fittings from Germany, Italy, and the Philippines are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on December 29, 1999 by Alloy Piping Products, Inc., Shreveport, LA; Flowline Div. of Markovitz Enterprises, Inc., New Castle, PA; Gerlin, Inc., Carol Stream, IL; and Taylor Forge Stainless, Inc., North Branch, NJ.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 4, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 17, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 6, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 12, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 11, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 24, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 24, 2000. On November 13, 2000 (for Germany) and January 11, 2001 (for all other investigations), the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 15, 2000 (for Germany) and January 16, 2001 (for all other investigations), but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 17, 2000.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–21502 Filed 8–22–00; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–872–883 (Preliminary)]

Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars, provided for in subheading 7214.20.00 of the Harmonized Tariff Schedule of the United States,[2] that are alleged to be sold in the United States at less than fair value (LTFV). The Commission further

[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] For purposes of these investigations, certain steel concrete reinforcing bars are all steel concrete reinforcing bars (''rebar'') sold in straight lengths. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth bars) and rebar that has been further processed through bending or coating.

determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of such imports from Japan.[3] Finally, pursuant to 19 U.S.C. 1677(24)(A) the Commission determines that the subject imports from Austria, Russia, and Venezuela are negligible,[4] and thereby, pursuant to 19 U.S.C. 1673b(a)(1), the Commission's investigations with respect to Austria, Russia, and Venezuela are terminated.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 28, 2000, petitions were filed with the Commission and the Department of Commerce by the Rebar Trade Action Coalition (RTAC) (Washington, DC) and its individual members[5] alleging that a regional industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain steel concrete reinforcing bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela. Accordingly, effective June 28, 2000, the Commission instituted antidumping duty investigations Nos. 731–TA–872–883 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 July 7, 2000 (65 FR 42029). The conference was held in Washington, DC, on July 19, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 14, 2000. The views of the Commission are contained in USITC Publication 3343 (August 2000), entitled Certain Steel Concrete Reinforcing Bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela: Investigations Nos. 731–TA–872–883 (Preliminary).

Issued: August 17, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–21500 Filed 8–22–00; 8:45 am]

BILLING CODE 7020–02–U

[3] Commissioner Lynn M. Bragg dissenting.

[4] Commissioner Lynn M. Bragg dissenting. Commissioner Bragg finds that there is a potential that such imports from Austria, Russia, and Venezuela will imminently account for more than 7 percent of the total import volume of all such merchandise such that there is a reasonable indication that a regional industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Austria, Russia, and Venezuela that are alleged to be sold in the United States at LTFV.

[5] The members of RTAC are AmeriSteel (Tampa, FL); Auburn Steel Co., Inc. (Auburn, NY); Birmingham Steel Corp. (Birmingham, AL); Border Steel, Inc. (El Paso, TX); CMC Steel Group (Seguin, TX); Marion Steel Co. (Marion, OH); Riverview Steel (Glassport, PA); and Nucor Steel (Darlington, SC). Auburn Steel Co., Inc., is not a petitioner with respect to Indonesia and Japan.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 13, 2000, Applied Sciences Labs, Inc., a Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import these controlled substances for the manufacture of reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 22, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 14, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–21483 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 16, 2000, Calbiochem-Novabiochem Corporation, 10394 Pacific Center Court, Attn: Receiving Inspector, San Diego, California 92121–4340, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances to make reagents for distribution to the biomedical research community.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comment, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 22, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I and II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 8, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–21485 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 18, 2000, and published in the **Federal Register** on April 25, 2000, (65 FR 24226), Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to bulk manufacture controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Malllinckrodt, Inc. is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mallinckrodt, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 8, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 00–21487 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 15, 2000, Radian International LLC, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78720–1088, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Thebaine (9333)	II

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and non-deuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator,

Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 23, 2000.

Dated: August 8, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–21486 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 25, 2000, Roxane Laboratories, Inc., 1809 Wilson Road, P.O. Box 16532, Columbus, Ohio 43216–6532, made application by renewal to the Drug Enforcement Administration to be registered as an importer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to import cocaine to manufacture topical solutions for distribution to customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 22, 2000.

This procedure is to be conducted simultaneously with and independent of the procedure described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 14, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–21484 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated April 25, 2000, and published in the **Federal Register** on May 23, 2000, (65 FR 33355), Sigma Chemical Company, Subsidiary of Sigma-Aldrich Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381).	
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Psilocyn (7438)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to repackage and offer as pure standards controlled substances in small milligram quantities for drug testing and analysis.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Sigma Chemical Company is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Sigma Chemical Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a view of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic

classes of controlled substances listed above.

Dated: August 14, 2000.

John H. King,

Deputy Assistant Administrators, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–21488 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket Nos. 98–23, 98–32, 98–33]

January 17, 1998 Shipment of 10,000 Kilograms of Potassium Permanganate, December 16, 1997 Shipment of 20,000 Kilograms of Potassium Permanganate and November 17, 1997 Shipment of 20,000 Kilograms of Potassium Permanganate; Suspension of Shipments

On March 4, 1998, the then-Acting Deputy Administrator of the Drug Enforcement Administration (DEA) issued an Order to Suspend Shipment to Zhaoquing Chemicals Import & Export Company of Guandong, notifying it that pursuant to 21 U.S.C. 971, DEA had ordered the suspension of a shipment of 10,000 kilograms of potassium permanganate that was transshipped through Oakland, California on January 17, 1998, on its way to GMP Productos Quimicos, S.A. (GMP) in Medellin, Colombia. The Order to Suspend Shipment stated that DEA believed that the listed chemical may be diverted based on the failure to notify DEA of the transshipment in violation of 21 CFR 1313.31; associations between GMP and other violating chemical companies in Colombia; and other diversionary practices of GMP. On May 14, 1998, GMP requested a hearing and the matter was docketed before Administrative Law Judge Gail Randall.

At some point this Order to Suspend Shipment was withdrawn and was reissued on May 20, 1998 to Eland Chemical Ltd. (Eland) of Hong Kong. Also on May 20, 1998, the then-Acting Deputy Administrator of DEA issued two other Orders to Suspend Shipment to Eland, notifying it that DEA had ordered the suspension of two shipments of 20,000 kilograms each of potassium permanganate on their way to GMP. One shipment was transshipped through Long Beach, California on November 17, 1997, and the other was transshipped through Oakland, California on December 16, 1997. These Orders to Suspend Shipment asserted the same bases for the suspensions as the order regarding the January 17, 1998 shipment.

On May 29, 1998, Judge Randall issued an order consolidating for hearing purposes only the proceedings involving the suspension by the United States of the three separate shipments of potassium permanganate en route to GMP. Following prehearing procedures, a hearing was held in Miami, Florida on February 8 through 12, 1999, and in Arlington, Virginia, on February 16 through 18, 1999. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law and argument.

On November 4, 1999, Judge Randall issued separate Recommended Rulings, Findings of Fact, Conclusions of Law, and Decisions, regarding each of the three shipments, recommending that the suspended shipments be released to GMP. The Government and GMP both filed exceptions to Judge Randall's Recommended Rulings, Findings of Fact, Conclusion of Law, and Decisions, and on January 27, 2000, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1313.57, hereby issues his final order regarding the suspension of all three of the shipments based upon findings of fact and conclusion of law as hereinafter set forth. The Administrator is issuing one final order regarding all three of the suspensions since the same findings of fact and conclusions of law apply to all three suspensions. The Administrator adopts the findings of fact and conclusions of law of the Administrator Law Judge except as noted below and rejects the recommended ruling of the Administrative Law Judge.

The Administrator finds that based upon the evidence in the record, Colombia produces between 70–80% of the world's cocaine hydrochloride. Potassium permanganate and hydrochloric acid are List II chemicals that may be used for a variety of legitimate purposes, but are also used in the illicit manufacture of cocaine. Potassium permanganate is not produced in South America and therefore must be imported.

GMP is a company founded in 1938 that distributes chemical products, with four locations throughout Colombia, South America. Its president, Pedro Juan Moreno Villa (Mr. Moreno), has served on the board of directors of other companies in Colombia. In addition, from 1995 through 1997, Mr. Moreno served as the Secretary of the Government of Antioquia. An extensive security investigation of Mr. Moreno was conducted for this position. During his tenure, Mr. Moreno supported the Govenor's goal to fight narcotics traffic. According to Mr. Moreno, his life was endangered because of his duties against drug traffickers and guerillas, resulting in his taking extensive security precautions.

Between 1994 and 1998, GMP was the largest importer of potassium permanganate into Colombia. Since approximately 1994, GMP conducted business with Eland, a Hong Kong company. From 1996 through 1998, Eland's sale of potassium permanganate to GMP had become consistent, with Eland selling GMP in excess of 200 metric tons during that time.

Eland arranged for the sale and shipment of the potassium permanganate that is the subject of these proceedings. Eland purchased the potassium permanganate from two chemical suppliers in China. The first shipment from Eland of 20,000 kilograms of potassium permanganate was en route to GMP in Medellin, Colombia when it transited through the port of Long Beach, California on November 17, 1997. The second shipment of 20,000 kilograms from Hong Kong to GMP Medellin, Colombia transited through the port of Oakland, California on December 16, 1997, and the third shipment of 10,000 kilograms transited the port of Oakland, California on January 17, 1998.

Evidence presented at the hearing indicates that ''transit'' or ''in transit'' means that the vessel ''is just passing through'' a port without unloading cargo, whereas a ''transshipment'' is known within the shipping industry as cargo that goes from the point of origin to someplace other than the ultimate destination and is transferred from one conveyance to another for further transit.

The bill of lading and manifest for these shipments clearly disclosed potassium permanganate as the chemical being shipped. The route of the shipments at issue had scheduled stops at Oakland, California and Long Beach, California, however none of the shipping documents provided advance notice to Eland or to GMP that the potassium permanganate shipments would transit through the United States. The scheduled route did not intend for the chemicals to be unloaded from the carrier ship in the United States. A representative of the shipping company stated that ''[t]he goods at issue in this case were not intended to be discharged in any port in the U.S. or transferred

from one vessel to another or to any other means of conveyance in any U.S. port.'' It is common practice in the international shipping industry for the shipping company to reserve the right to change the route.

GMP maintained the requisite import documentation needed to import the shipments at issue in this proceeding into Colombia. GMP was legally authorized to import the potassium permanganate into Colombia.

However, the United States Customs Service (USCS) seized each of these shipments as they transited the ports in California pursuant to its belief that it had the authority to do so under 18 U.S.C. 545. This action was taken by the USCS since no advance notice was filed with DEA that these shipments would be sent from Hong Kong, through the United States, to Colombia.

Pursuant to 21 U.S.C. 971(a), each regulated person who imports or exports a listed chemical to or from the United States is required to file advance notification of the importation or exportation not later than 15 days before the transaction is to take place. One of the regulations implementing this provision 21 CFR 1313.31, states that a threshold quantity of a listed chemical ''may be imported into the United States for transshipment, or may be transferred or transshipped within the United States for immediate exportation, provided that advance notice is given * * *.''

There is no dispute that no advance notice of these shipments was provided to DEA by GMP or any other party. However, there is a dispute over whether such advance notice was required for these shipments. An expert in freight forwarding testified that in his opinion, since the goods were not to leave the ship at a United States port, then the DEA notification requirements would not apply. The Administrator disagrees and will address this issue in detail later in this order.

On May 20, 1998, DEA issued the Orders to Suspend Shipment to Eland that are the subject of these proceedings. The Orders asserted as a basis for the suspensions that the potassium permanganate may be diverted.

At the time the shipments at issue transited the United States, the President of the United States had decertified the Government of Colombia after determining that the controls utilized by the Government of Colombia to prevent the processing and trafficking of illicit drugs were inadequate. As a result, DEA issued a policy statement that declared that ''regular customer status'' was revoked for all Colombian customers under 21 U.S.C. 971(c)(1), thereby requiring advance notification of all shipments of listed chemicals over the threshold amount. The policy statement further indicated that a heightened review process would be used for shipments of listed chemicals to Colombia. See 61 FR 13,759 (1996).

On February 26, 1998, the President of the United States determined that Colombia did meet the statutory standards for certification ''in the vital national interests of the United States.'' However, DEA's policy statement has not been revoked or amended.

Evidence was presented at the hearing regarding GMP's compliance with Colombian law relating to controlled chemicals. Potassium permanganate and hydrochloric acid are controlled chemicals in Colombia.

The Direccion Nacional de Estupefacientes (DNE) is the Colombia government agency that issues, revokes, and renews chemical permits for individuals or companies that handle controlled chemicals. The DNE also establishes the total quota of controlled chemicals to be imported per month by permit holders. A company may not import more than its quota in any given calendar month without the permission of the DNE.

In general, a DNE permit is required if an individual or company wants to handle in excess of five kilograms or five liters of a controlled chemical per calendar month. Therefore, no permit is required if a person wishes to purchase less than five kilograms or five liters in a calendar month. However, multiple sales to an individual or company of less than five kilogram or liter quantities, that total more than the threshold in a calendar month, would require a permit.

Evidence was presented by both the Government and GMP regarding whether multiple sales of less than five kilograms of a controlled chemical to multiple individuals listing the same address would violate Colombian law. Judge Randall noted that no evidence was presented that cited to a specific law or regulation making such sales illegal. Therefore, Judge Randall concluded, and the Administrator agrees, that a preponderance of the evidence in the record does not support a finding that sales of less than the threshold amount of controlled chemicals to multiple individuals at the same address is a violation of Colombian law.

A Colombian distributor of a controlled chemical must maintain a control log that reflects receipt and distribution of the chemical. One log book must be maintained for each controlled chemical. For each transaction, the log must contain the name of the purchaser, the purchaser's address and identification number, and the purchaser's intended final use of the chemical.

At the hearing, GMP indicated that its salesmen did not go out to sell quantities of listed chemicals below the threshold amount. Instead, buyers seeking to purchase below the threshold amounts would go to GMP's retail outlet facility in Medellin. This facility's security exceeds what is required by local law. In addition, GMP's employees were instructed to copy the identification document, called the cedula, of a buyer and to attach it to one of the copies of the sales invoice.

According to evidence presented by GMP, in Colombia, if the seller of a controlled chemical knows that the buyer's presented identification document is false, then the seller may not lawfully sell controlled chemicals to that buyer. Howerver based upon the record in this proceeding, it does not appear that the buyer is prohibited by Colombian law from using the identification paperwork of another person to buy controlled chemicals. In an official report, a Colombian prosecutor found that GMP was ''not forced to by law to keep a follow up of its purchasers to find out the final destination of its products.''

The Colombian National Police (CNP) is the enforcement entity of the DNE, and is authorized by the DNE to conduct investigations that could result in criminal or administrative penalties. In November 1992, the CNP seized a GMP vehicle which was transporting potassium permanganate from one GMP location to another. The CNP alleged that GMP did not possess the requisite permit to handle such a controlled chemical. However, a Colombian prosecutor chose not to prosecute and ordered the release of the potassium permanganate to GMP.

On June 10, 1997, the CNP inspected one of GMP's facilities finding that on nine occasions between June 3, 1997 and June 6, 1997, GMP had failed to enter required information into its control logs concerning the sale of 2,450 kilograms of potassium permanganate. The CNP also discovered that in October 1997, GMP sold five gallons of hydrochloric acid to a company not registered to handle that amount of the chemical. Further in October 1997, GMP sold two gallons of hydrocholoric acid to a single individual who lacked a permit. Then in November 1997, GMP sold three gallons of hydrochloric acid to a company that was not registered to handle that chemical.

On December 15, 1997, the CNP inspected GMP and found record keeping discrepancies. GMP kept its control log tracking its sales and purchases of controlled chemicals on a computer. GMP was not authorized to maintain its records in this manner. GMP's general manager at that time testified that he was confused by this allegation by the CNP since GMP had been keeping computerized records since 1991, and the company had never been told that this was not authorized. GMP nonetheless stopped maintaining computerized records after receiving the inspection notations from the CNP in 1998.

On January 20, 1998, a follow-up inspection was conducted. The CNP took approximately 55 GMP sales invoices dated from October through December 1997, which reflected sales in less than the threshold quantity of controlled chemicals. During this time period, GMP generated approximately 4,490 invoices with the overall sales of both controlled and non-controlled chemicals of approximately $800,000. The 55 questioned invoices totaled $635.48 in sales and accounted for .08% of GMP's total sales during this time period.

It is in dispute as to whether the copies of the invoices given to the CNP had copies of cedulas attached. The Administrator finds that regardless of what was given to the CNP, GMP had copies of cedulas in the files for most of the invoices. However, in light of findings and conclusions made below, the Administrator does not find that the fact that GMP obtained and maintained copies of cedulas protected against the possible diversion of these chemicals.

After obtaining these invoices, the CNP investigated the addresses and telephone numbers listed on GMP's seized invoices. This investigation revealed discrepancies including addresses that did not exist, telephone numbers that did not match the addresses listed on the invoices, and telephone numbers that did not exist.

In addition, the CNP noted invoices issued on the same date to different named individuals listing the same address and telephone number. The invoices each reflected sales of 4.6 kilograms of potassium permanganate, below the threshold amount. The CNP discovered that the individuals listed on the invoices had not actually purchased the potassium permanganate, but their personal identification cards had been used by their employer to obtain the chemical.

By letter dated January 22, 1998, CNP officials concluded that GMP, ''may be guilty of selling controlled chemical substances, for which purpose it is using fictitious addresses, names of actual persons and is making sales of controlled chemicals in amounts greater than those stipulated by the Office of the National Director of Narcotics without receiving a license from the D.N.E.'' This report was updated on March 5, 1998.

Evidence was represented at the hearing that GMP representatives also investigated the questioned invoices to determine the identity and location of the purchasers listed on the invoices. While GMP representatives were able to locate some of the individuals and companies named on the invoices, many remained unknown. Many contained fictions addresses, and in some instances, no addresses were provided on the invoices.

After reviewing this invoice information, a Columbian prosecutor determined that GMP had not violated Colombian law and that further investigation was not warranted. A DEA investigator testified that he had no information that any of the individuals named on these invoices were involved in the manufacturing of cocaine.

The Administrator finds that evidence was presented regarding allegations by the Government that GMP sold potassium permanganate and hydrochloric acid from September 1997 through June 1998, to an individual whose chemical permit was ''annulled'' or revoked effective July 1997. Evidence was also presented regarding GMP's maintenance of two separate control log books for potassium permanganate. One book covered the period December 3, 1997 to June 17, 1998; and the other covered the period December 3, 1997 to July 10, 1998. Finally, evidence was presented as to whether GMP exceeded its importation quota in July 1998.

It was not until July 1998 that the CNP and DEA discovered the sales to the individual with the revoked permit, the two control logs, and the issue regarding GMP's importation quota, clearly after the suspension of the shipments in March 1998. In light of the Administrator's conclusion below regarding the scope of this proceeding, the Administrator is not reiterating the findings of fact of the Administrative Law Judge regarding these three areas.

Effective August 25, 1998, DNE revoked GMP's chemical permit in Colombia. The DNE's order was affirmed by the Board of Justice and Rights, National Administration of Addictive Drugs on November 23, 1998. The DNE's order was based, to a large extent, on the CNP's investigation of the invoices that are at issue in this proceeding.

As of the hearing in this matter, GMP had appealed this order further, but no decision had been rendered. Therefore based upon the evidence in the record, GMP is unable to handle any controlled chemicals in quantities exceeding five kilograms or five liters. However, GMP was given permission to sell their in-stock controlled chemicals provided that they submit specific information to DNE in advance of the sale. According to GMP representatives, since approximately July 1998, GMP ceased selling controlled chemicals in quantities of less than five kilograms or five liters, choosing only to sell to customers with a chemical permit.

GMP presented evidence from different Colombian government entities that GMP is a law-biding company. Mr. Moreno testified that he was unaware of any GMP controlled chemicals being diverted to the manufacture of cocaine or any other illicit drug.

The issue before the Administrator is whether or not the record as a whole establishes by a preponderance of the evidence that DEA should suspend the three shipments; of potassium permanganate en route from Hong Kong, China, through the United States, to Medellin, Colombia pursuant to 21 U.S.C. 971(c)(1) and 21 CFR 1313.4(a).

As a preliminary matter, GMP argued that the shipment were suspended illegally by the USCS. Specifically, GMP argued that the statutory authority cited by the USCS, 18 U.S.C., does not provide the USCS with the authority to detain shipments and therefore the suspensions were defective and the chemicals should be released.

The Administrator agrees with Judge Randall that this issue is outside the scope of this proceeding. As Judge Randall stated, ''[t]hisi forum is to determine the legality of the DEA's actions, not the actions of USCS officials.''

The first issue to be determined by the Administrator is whether advance notification of the three shipments was required to be filed. Pursuant to 21 U.S.C. 971(a), each regulated person who imports or exports a listed chemical is required to notify DEA of the importation or exportation not later than 15 days before the transaction is to take place. A regulated person is defined in 21 U.S.C. 802(38) as ''a person who manufactures, distributes, imports or exports a listed chemical * * *.'' Further a chemical importer is defined in 21 CFR 1300.02(b)(8) as ''a regulated person who, as the principal party in interest in the import transaction, has the power and responsibility for determining and controlling the bringing in or

introduction of the listed chemical into the United States.''

The Administrator agrees with Judge Randall's conclusion that GMP is a regulated person. In a previous case, the Deputy Administrator determined that ''if the title to the potassium permanganate passed to (the customer) before the chemical entered the United States, then (the customer) is the principal party in interest.'' Yi Heng Enters. Dev. Co., 64 FR 2234 (1999). The invoices for these transactions contained the phrase ''FOB Huangpu,'' which means that the title to the goods passed to GMP as soon as the potassium permanganate was delivered to the carrier. Therefore, since title passed to GMP before the potassium permanganate entered the United States, GMP is considered the importer of the chemicals, and as such is a regulated person.

The next question is whether advance notification is required for the type of shipments at issue in this matter. One of the regulations implementing 21 U.S.C. 971(a) requires that advance notice be filed with DEA if a threshold amount of a listed chemical is ''imported in the United States for transshipment, or * * * transferred to transshipped within the United States for immediate exportation * * *.'' 21 CFR 1313.31.

There is no dispute that no advance notification was provided to DEA for these shipments. The parties also apparently agree that these shipments are considered ''in-transit'' transactions since the chemicals arrived in the United States with no intention of them being removed from the ships before departing the United States. However, the parties disagree as to whether these transactions are considered ''importations'' which require advance notification.

GMP argued that 21 CFR 1313.01 distinguishes between transshipments and in-transit shipments, yet in-transit shipments are not mentioned in 21 CFR 1313.31, the section requiring advance notification. Consequently, GMP argued that no advance notice is required for in-transit shipments.

Judge Randall stated that:

> (a)lthough the Respondent's argument, logically, may be compelling, I do not find that it is consistent with the plain language used in the statute and the implementing regulations. If the statutory provisions are irreconcilable with, even contradictory to, recognized international trade practices, the remedy is with Congress, not with this agency. I conclude that, pursuant to the plain meaning of the statute and its implementing regulations, an in-transit shipment, such as the one in question here, is an import and triggers the advance notice provision of 21 U.S.C. 971(a).

Neither ''transshipment'' nor ''in-transit shipment'' are defined in the statute or regulations. Therefore, in arriving at her conclusion, Judge Randall considered the language contained in 21 U.S.C. 954 relating to the shipment of controlled substances, wherein ''transshipment'' refers to the industry recognized definitions of in-transit shipments and transshipments. The title of this section is ''Transshipment and in-transit shipment of controlled substances,'' and provides in relevant part that:

> (1) A controlled substance in schedule I may—
>
> (A) be imported into the United States for transshipment to another country, or
>
> (B) be transferred or transshipped from one vessel, vehicle, or aircraft to another vessel, vehicle, or aircraft within the United States for immediate exportation. * * *

While 21 U.S.C. 954(1)(B) refers to the transfer of goods from one vessel to another, no such language is found in 954(1)(A). Instead, 954(1)(A) refers to the importation of controlled substances into the United States ''(f)or transshipment to another country.'' Although both subsections use the word ''transshipment'' or ''transshipped,'' they are clearly not intended to describe the same transaction. Unlike 954(1)(B), 954(1)(A) does not specifically refer to transferring of goods from one vessel to another and therefore it is reasonable to conclude that 954(1)(A) describes in-transit shipments, such as the ones at issue, as an importation. This conclusion is further supported by the title of section 954 which explicitly includes in-transit shipments.

Similar language is used in 21 CFR 1313.01 and 1313.31 relating to the importation of listed chemicals. As Judge Randall found,

> Section 1313.01 describes the scope of the regulations under part 1313, ''Importation * * * of Precursors and Essential Chemicals,'' and explicitly states that these procedures apply to the ''importation, exportation, transshipment and in-transit shipment of listed chemicals.'' 21 CFR 1313.01. Next, within Part 1313, the subtitle of the applicable regulations explicitly covers: ''Transshipments, In-Transit Shipments and International Transactions Involving Listed Chemicals.'' Significantly, the language of sections 954(1)(A) and (1)(B) is essentially duplicated in 21 CFR 1313.31(a), which states in relevant part, that a listed chemical ''may be imported into the United States for transshipment, or may be transferred or transshipped within the United States for immediate exportation, provided that advance notice is given to the Administration.''

Accordingly, Judge Randall concluded, and the Administrator agrees, that ''in light of the parallel language of statutory section 954 and regulatory § 1313.31, the most logical conclusion is that the advance notification requirement applies to in-transit shipments.'' As a result, advance notice of these shipments was required to be filed under 21 U.S.C. 971 and 21 CFR 1313.31.

As previously noted, there is no question that GMP did not file advance notice of these shipments. However failure to file, by itself, does not justify the suspension of the shipments. A shipment may be suspended upon a showing that the chemical may be diverted to the clandestine manufacture of a controlled substance. 21 U.S.C. 971(c).

As Judge Randall noted, DEA previously held that failure to notify DEA of a shipment justified suspension of a shipment. See Yi Heng, 64 FR at 2234. But, Judge Randall also correctly noted that this conclusion was based upon the fact that the Respondent in that proceeding conceded that ''the suspension orders can be sustained based on the absence of notice.'' Yi Heng, 64 FR at 2235. However in Yi Heng, the Deputy Administrator did not uphold the suspensions on that basis alone, but made additional findings that the chemicals may be diverted.

In its exceptions to Judge Randall's recommended decision, GMP argued that the fact that a carrier can alter shipping routes without notice ''would expose the innocent shipper to the expense and delay of an administrative proceeding and the possible suspension of his shipment,'' since no advance notice would be filed. However as just noted, DEA would not suspend a shipment solely on the basis that no advance notice was filed. There would need to be evidence that the chemicals may be diverted to the clandestine manufacturer of a controlled substance.

Following the suspension, a regulated person is entitled to a hearing. 21 U.S.C. 971(c)(2). While the statute and legislative history is silent as to what constitutes ''grounds'' to support a finding that the chemicals may be diverted, the Government has the burden of proof, 21 CFR 1313.55. The government must prove by a preponderance of the evidence that the chemical may be diverted, not that it necessarily will be diverted.

Judge Randall concluded that the initial suspensions of the chemicals were supported by the evidence. Judge Randall found that:

> At the time the shipment transited the U.S. port, Colombia had been decertified by the

President and denied ''regular customer'' status by the DEA. * * * Lacking this status, (GMP) was required to provide notice to the DEA when over-the-threshold amounts of potassium permanganate transited a U.S. port; a requirement that (GMP) did not meet. * * * Further, at that time Colombia produced 70–80% of the world's cocaine hydrochloride. * * * and potassium permanganate is essential in this production process. * * * Thus, the preponderance of the evidence supported the DEA's initial suspension decision(s).

However, Judge Randall then concluded that the chemicals should nonetheless be released to GMP in Colombia in light of ''the lawful nature of GMP's extensive and longstanding business activities in Colombia,'' the changes made by GMP regarding its sale of listed chemicals, and the oversight of its sales by the DNE.

Before determining the ultimate outcome of these proceedings, the scope and purpose of the hearing must be determined. Pursuant to 21 CFR 1313.52, the purpose of a hearing regarding suspended shipments if for ''receiving factual evidence regarding the issues involved in the suspension.''

Judge Randall found that while the statute does not reveal the type of remedy that such a hearing may provide, GMP clearly is entitled to due process of law. Judge Randall stated that, ''(m)erely offering (GMP) a post-detention opportunity to present evidence without the possibility of obtaining relief does not fulfill the 'meaningful hearing' requirement of due process. See *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). Therefore, I find that the hearing provision in 21 U.S.C. 971(c)(2) allows the Administrator to review the action de novo and to provide a post-hearing remedy to (GMP).'' Consequently, Judge Randall concluded that the purpose of the hearing is to review DEA's initial suspension and to determine whether the continued detention of the chemicals is justified based upon the evidence presented at the hearing.

The Administrator disagrees. Congress gave no specific guidance regarding the scope of a hearing regarding such suspensions. However, Congress clearly intended to treat these hearings differently from hearings regarding the suspension of a DEA registration. Pursuant to 21 U.S.C. 824(d), a DEA registration can be immediately suspended, simultaneous with the institution of proceedings to revoke the registration, upon a finding that there is an imminent danger to the public health and safety. Then, 21 U.S.C. 824(a) gives specific grounds for the revocation fo a registration.

There is no such similar language regarding the suspension of chemical shipments. Congress only stated that a chemical shipment may be suspended if it may be diverted to the clandestine manufacture of a controlled substance. There is no requirement in 21 U.S.C. 971 for the simultaneous intitution of proceedings to determine whether the chemicals should continue to be detained or forfeited based upon evidence adduced at the hearing. Therefore, it is reasonable to conclude that the purpose of a hearing regarding the suspension of a chemical shipment is to determine whether DEA had evidence at the time to support its finding that the chemical may be diverted, thereby warranting the suspension of the shipment.

The Administrative Law Judge noted that for a hearing to be meaningful it must provide the requestor with the possibility of some sort of post-hearing relief. The Administrator concludes that even with a narrow interpretation of the scope of the hearing, a requestor could be entitled to post-hearing relief. If there is a finding that the initial suspension was not warranted, then the chemicals would be released.

The Administrator next must determine whether evidence exists to support DEA's initial suspension based upon a finding that the chemicals may be diverted. Since the focus of these proceedings is whether the initial suspension was justified, the Administrator has confined his review to the evidence available to DEA at the time of the suspensions and to the evidence presented by GMP of its business practicews prior to the suspensions and its reputation as a law-abiding company.

Judge Randall found that the government presented ''extensive evidence concerning what it viewed to be suspicious activity by GMP. * * *'' However, Judge Randall also found that ''the Government has failed to prove that it possessed any of this information prior to the seizure of these goods * * *.'' Judge Randall was concerned that the CNP report that was heavily relied upon by the Government was dated January 22, 1998, well after the seizure of the chemicals.

As previously noted, Judge Randall concluded, and the Administrator agrees, that this proceeding is not to look at the legality of the seizures by the USCS, but rather to look at the actions of DEA. Therefore, the Administrator disagrees with Judge Randall and concludes that what is relevant is what evidence was possessed by DEA prior to the suspensions on May 20, 1998, not prior to the seizures. Further, the Administrator does not share Judge Randall's concern that the CNP's report was generated in close proximity to the suspension orders. The DEA investigator who testified worked closely with the CNP during this investigation, and was most likely aware of the information in the report before the report was actually written.

Consequently, in determining whether the suspensions were justified, the Administrator has considered evidence of allegations that were known to DEA prior to the suspensions, as well as GMP's evidence of its practices prior to that time. Given that these proceedings are to determine whether the initial suspension was justified, the Government cannot conduct an investigation after the suspensions to acquire evidence to justify its actions. The Government cannot have it both ways. It cannot put in evidence discovered after the suspensions yet at the same time try to preclude consideration of GMP's change in practices, since the suspensions, that are designed to prevent diversion.

Therefore, the Administrator has not considered evidence presented regarding the sales to the individual with the revoked permit, the two control logs, and GMP's July 1998 importation quota, since all were discovered well after the May 1998 suspension orders. Likewise, the Administrator has not considered GMP's changes in its practices since the suspensions. The Administrator has considered evidence of GMP's long-standing business activities, as well as evidence available to DEA at the time of the suspensions, to determine whether the suspensions were justified.

The Administrator agrees with Judge Randall that the initial suspension was justified. However, the Administrator relies upon more evidence than Judge Randall did in arriving at the conclusion. Judge Randall found that the initial suspensions were justified based upon the President's decertification of Colombia at the time of the shipments, GMP's failure to file advance notification of the shipments, and the fact that potassium permanganate is essential in the production of cocaine and at that time Colombia produced 70–80% of the world's cocaine hydrochloride. In addition, the Administrator finds that on a number of occasions, GMP made multiple sales to the same address on the same day to individuals without permits for total amounts in excess of five kilograms. GMP also sold total amounts in excess of five kilograms or five liters to individuals or companies without a permit and in some instances

to individuals who presented identifications of other people. Also, evidence was presented that GMP's sales invoices reflected addresses that do not exist, telephone numbers that did not match the addresses listed on the invoices, and telephone numbers that did not exist.

The Administrator recognizes that a Colombia prosecutor found that these practices did not violate Colombian law and no further action would be taken. However, the standard for criminal charges is far greater than what is required in this proceeding. Evidence of a violation of law is not necessary to demonstrate that the suspensions were lawful. The Government needs only to show by a preponderance of the evidence that the chemicals may be diverted. GMP's practice of selling above thresholds amounts to individuals presenting the identifications of others and of making multiple sales to the same address on the same day to individuals without permits, greatly increase the possibility of diversion of the chemicals. These practices circumvent the requirement of a permit for sales under five kilograms or five liters. Also, the invoices containing fraudulent and/or incorrect information are further evidence that the chemicals may be diverted. As a result of these practices, it is difficult, if not impossible, to ascertain the actual final destination of the chemicals sold by GMP.

The Administrator recognizes that GMP is a well-respected company in Colombia and that several Colombian government entities asserted that there was no evidence of wrongdoing by GMP in their files. However, this does not negate the fact that the shipments at issue may be diverted based upon the large scale production of cocaine in Colombia and the sales practices of GMP.

Judge Randall recommended that the chemicals at issue be released based in large part on GMP's subsequent change to its sales procedures where it no longer sells below five kilogram or five liter amounts to unregistered individuals or companies. The Administrator concludes that this evidence is not relevant to a determination as to whether DEA's initial suspension of the chemicals was justified. Such evidence would be relevant regarding any future shipments to GMP, should its Colombian chemical permit be reinstated.

Judge Randall gave great weight to the fact that despite the revocation of GMP's chemical permit, the DNE has allowed it to continue to sell controlled chemicals under heightened review. Again, the Administrator concludes that this is not relevant to a determination as to whether evidence that the chemicals may be diverted existed at that time to justify the suspensions. Even if the Administrator did find it relevant that the DNE has allowed GMP to continue to sell its in-stock chemicals, there are no assurances in the record that this oversight by DNE would apply should these shipments be released to GMP.

It should be noted that the Government argued in its exceptions that DEA is bound by the decision of the DNE revoking GMP's chemical permit. However since the DNE's action occurred in August 1998, the Administrator concludes that this cannot be considered as a basis for the suspension of the shipments in May 1998.

Judge Randall concluded that the ''evidence shows that the suspended chemicals will not likely be used for illicit purposes,'' and recommended that the chemicals be released to GMP. Judge Randall found that ''GMP is a reputable company in business in Colombia for over 60 years. Further, the company's president is knowledgeable of the country's drug producing and trafficking problems from his past government service. He credibly testified about the anti-drug efforts taken by his governmental office, and his commitment to these actions.''

Both parties filed exceptions to Judge Randall's recommended decision. The Administrator has carefully considered these exceptions and concludes that they have been addressed throughout this final order. The Administrator disagrees with Judge Randall that the chemicals should be released to GMP.

In arriving at his decision, the Administrator has considered GMP's stature in the business community and the anti-drug efforts of its president, however the chemicals should nonetheless not be released. The Administrator concludes that there is ample evidence to support DEA's finding at the time the shipments were suspended that the chemicals may be diverted. GMP's sales practices increased the chance of diversion of the chemicals. Some sales invoices contained fraudulent information. Colombia procedure 70–80% of the world's cocaine. The President of the United States had decertified Colombia and all shipments of listed chemicals were subjected to heightened scrutiny. Finally, GMP failed to file advance notification of these shipments. Therefore, the Administrator concludes that the suspensions of the November 17, 1997, December 16, 1997, and January 17, 1998 shipments of potassium permanganate to GMP were proper.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 971 and 28 CFR 0.100(b), hereby orders that the suspensions of the above described shipments, be, and they hereby are, sustained, and that these proceedings are hereby concluded. This final order is effective immediately.

Dated: August 3, 2000.

Donnie R. Marshall,

Administrator.

[FR Doc. 00–21482 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel, Literature section (Creative Writing Fellowships category), to the National Council on the Arts will be held from September 11–14, 2000 in Room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on September 14th, will be open to the public for policy discussion and guidelines review.

The remaining portions of this meeting, from 9:00 a.m. to 5:00 p.m. on September 11th, from 9:00 a.m. to 6:30 p.m. on September 12th and 13th, and from 11:00 a.m. to 5:00 p.m. on September 14th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the

Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY-TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: August 17, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–21489 Filed 8–22–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189); Workshop on Quantitative Systems Biology.

Date and Time: Sept. 13, 2000; 8:30 a.m.-5:00 p.m., Sept. 14, 2000; 8:30 a.m.-12:00 p.m.

Place: Room 110, NSF, 4201 Wilson Blvd, Arlington, VA (Room 580 on 9/14).

Type of Meeting: Open.

Contact Person: Michael Domach, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation, Suite 565, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 292–8320. For easier building access, individuals planning to attend should contact Marcia Rawlings at 703–292–8320 or at mrawlings@nsf.gov so that your name can be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To identify goals, opportunities and specific objectives for a new NSF research funding initiative in quantitative systems biology.

Agenda: Discussion on issues, opportunities, and future directions for quantitative systems biology, particularly systems (engineering) approaches to and applications for predicting the phenotypic behavior of a living organism from the genomic information being generated for that organism and the well defined environmental conditions that cause the expression of that genome.

Dated: August 18, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–21552 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Bimolecular Processes; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biomolecular Processes (5138) (Panel B)

Date and Time: November 1–3 2000 8 A.M. to 5 P.M.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 310, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Joanne Tornow, Program Director, or Susan Porter Ridley, Assistant Program Manager, of Biochemistry of Gene Expression, Molecular and Cellular Biosciences Division, National Science Foundation, 4201 Wilson Boulevard, Room 655, Arlington, Virginia 22230 (703) 292–8441.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Biochemistry of Gene Expression Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including, technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–21556 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee For Computer and Information Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (1115)

Date and Time: October 26, 2000; 8:30 a.m. to 5:00 p.m., October 27, 2000; 8:30 a.m. to 2:00 p.m.

Place: Hilton Hotel Newark/Fremont, Newark, CA.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant Director/CISE on the issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Day 1—Discussion of Information Technology Research and CISE FY 2002 Budget. Day 2—Report from the Assistant Director and complete writing assignments on recommendations to the Director and Assistant Director.

Dated: August 18, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–21554 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: November 2, 2000, 8:00 am–5:30 pm.

Place: Rooms 320, 340, 380, and 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Delcie Durham, George Hazelrigg, Kamalakar Rajurkar, and Ronald Rardin, Program Directors, DMII, (703) 292–8330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–21555 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetics; Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetics (1149) Panel B.

Date/Time: October 25–27, 2000, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, Room 310, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: DeLill Nasser and Philip Harriman, Program Directors, Molecular and Cellular Biosciences Division, National Science Foundation, Room 655, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Eukaryotic Genetics Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–21550 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetics (1149) Panel A

Date/Time: October 30–31, 2000, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Philip Harriman or Philip Youderian, Program Directors, Molecular and Cellular Biosciences Division, National Science Foundation, Room 655, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Microbial Genetics Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–21557 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Integrative Activities (1373).

Date and Time: September 27–28, 2000; 8:30 a.m.–5:00 p.m.

Place: Cornell University, Nanobiotechnology Science and Technology Center, Ithaca, NY 14853.

Type of Meeting: Closed.

Contact Person: Lawrence Goldbert, Senior Advisor, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230. (703) 292–8339.

Purpose of Meeting: To provide advice and recommendations concerning further NSF support of the Nanobiotechnology Science and Technology Center.

Agenda: To review and evaluate the progress to date on all aspects of the Nanobiotechnology Science and Technology Center.

Reason for Closing: The project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–21551 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Integrative Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Integrative Activities (1373).

Date and Time: Tuesday, September 11, 2000—8:30 a.m.–10:00 p.m., Wednesday, September 12, 2000—8:00 a.m.–5:00 p.m., Thursday, September 13, 2000—8:00 a.m.–4:00 p.m.

Place: Department of Chemistry, University of North Carolina, Chapel Hill, NC 27599.

Type of Meeting: Closed.

Contact Person: Donald Burland, Executive Officer, Division of Chemistry National Science Foundation, Room 1055, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–4949.

Purpose of Meeting: To provide advice and recommendations concerning further NSF support of the Center for Environmentally Responsible Solvents and Processes.

Agenda: To review and evaluate the progress to date on all aspects of the Center for Environmentally Responsible Solvents and Processes.

Reason for Closing: The project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–21553 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision

2. The title of the information collection: Final rule, Requirements for certain generally licensed industrial devices containing byproduct material (10 CFR Parts 30, 31, and 32)

3. The form number, if applicable: NRC Form 653, Transfers of Industrial Devices Report

4. How often the collection is required: Quarterly, annually, on occasion

5. Who is required or asked to report: NRC licensees and Agreement State licensees

6. An estimate of the number of responses:

Part 30: 5 responses (5 NRC licensees);

Part 31: 65,904 responses (13,251 NRC licensees and 52,653 Agreement State licensees);

Part 32: 16,278 responses (4,277 NRC licensees and 12,001 Agreement State licensees);

NRC Form 653: 2,208 responses (504 NRC licensees and 1,704 Agreement State licensees)

7. The estimated number of annual respondents:

Part 30: 5 respondents (5 NRC licensees);

Part 31—30,380 respondents (7,595 NRC licensees and 22,785 Agreement State licensees);

Part 32—92 respondents (21 NRC licensees and 71 Agreement State licensees);

NRC Form 653—92 respondents (21 NRC licensees and 71 Agreement State licensees).

8. An estimate of the number of hours needed annually to complete the requirement or request:

Part 30—3 hours (NRC licensees);

Part 31—35,488 hours (35,792 reporting hours—7,884 hours NRC licensees and 27,907 hours Agreement State licensees and a reduction of 304 recordkeeping hours—76 hours NRC licensees and 228 hours Agreement State licensees).

Part 32—583 hours (490 reporting hours—128 hours NRC licensees and 362 hours Agreement State licensees plus 93 recordkeeping hours—21 hours NRC licensees and 72 hours Agreement State licensees).

Form 653—516 hours (118 hours NRC licensees and 398 hours Agreement State licensees).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable

10. Abstract: The final rule amends regulations governing the use of byproduct material in certain measuring, gauging, or controlling devices. The amendments include specific criteria for inclusion in the registration program and details about the information required. The amendments also modify the quarterly transfer reporting, recordkeeping, and labeling requirements for specific licensees who distribute these generally licensed devices and provide clarification concerning provisions of the regulations applicable to all general licensees for byproduct material. The rule is intended to allow the NRC to better track general licensees so that they can be contacted or inspected, to make sure that the devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by September 22, 2000: Erik Godwin Office of Information and Regulatory Affairs (3150–0017, –0016, and –0001), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 16th day of August, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–21514 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Information pertaining to the requirement to be submitted:

1. Type of submission, new, revision, or extension: Revision to the extension.

2. The title of the information collection: 10 CFR Part 71, ''Packaging and Transportation of Radioactive Material.''

3. The form number, if applicable: None.

4. How often the collection is required: Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

5. Who is required or asked to report: All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

6. An estimate of the number of responses: 1,106 responses.

7. The number of annual respondents: 350 licensees.

8. The number of hours needed annually to complete the requirement or request: 57,012 hours for reporting requirements and 6,825 for recordkeeping requirements, or a total of 63,837 hours (approximately 182 hours per respondent).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: NRC regulations in 10 CFR Part 71 establish requirements for packing, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for

fissile material and for quantities of licensed material in excess of Type A quantities.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by September 22, 2000: Erik Godwin, Office of Information and Regulatory Affairs (3150–0008), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of August 2000.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–21515 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–412]

Pennsylvania Power Company, Ohio Edison Company, the Cleveland Electric Illuminating Company, the Toledo Edison Company, Firstenergy Nuclear Operating Company, Beaver Valley Power Station, Unit 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–73 issued to FirstEnergy Nuclear Operating Company (the licensee) for operation of the Beaver Valley Power Station, Unit 2 (BVPS–2), located in Beaver County, Pennsylvania.

This notice supersedes the notice published on July 12, 2000 (65 FR 43046) in its entirety.

The proposed amendment would: (1) revise Technical Specification (TS) requirements regarding the minimum number of radiation monitoring instrumentation channels required to be operable during movement of fuel within the containment; (2) revise the Modes in which the surveillance specified by Table 4.3–3, ''Radiation Monitoring Instrumentation Surveillance Requirements,'' Item 2.c.ii is required; (3) revise TS 3.9.4, ''Containment Building Penetrations,'' to allow both personnel air lock (PAL) doors and other containment penetrations to be open during movement of fuel assemblies within containment, provided certain conditions are met; (4) revise applicability and action statement requirements of TS 3.9.4. to be for only during movement of fuel assemblies within containment; (5) revise periodicity and applicability of Surveillance Requirement (SR) 4.9.4.1; (6) revise SR 4.9.4.2 to verify flow rate of air to the supplemental leak collection and release system (SLCRS) rather than verifying the flow rate through the system; (7) add two new SRs, 4.9.4.3 and 4.9.4.4, for verification and demonstration of SLCRS operability; (8) modify TS 3/4.9.9 for the containment purge exhaust and isolation system to be applicable only during movement of fuel assemblies within containment; (9) revise associated TS Bases as well as make editorial and format changes; and, (10) revise the BVPS–2 Updated Final Safety Analysis Report (UFSAR) description of a fuel-handling accident (FHA) and its radiological consequences. The changes to the BVPS–2 UFSAR reflect a revised FHA analysis that the licensee performed to evaluate the potential consequences of having containment penetrations and/or the PAL open during movement of fuel assemblies within containment. These UFSAR revisions include potential exclusion area boundary, low population zone, and control room operator doses as a result of an FHA.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment involves changes to accident mitigation system requirements. These systems are related to controlling the release of radioactivity to the environment and are not considered to be accident initiators to any previously analyzed accident.

Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Based on the current technical specification requirements, an environmental release due to a fuel handling accident (FHA) occurring within containment is precluded by a design which automatically isolates the containment following detection of radioactivity by redundant containment purge monitors. The proposed amendment, which permits containment penetrations to be open during movement of fuel assemblies within containment, increases the dose at the site boundary and the control room operator dose due to a FHA occurring within containment; however, the dose remains within acceptable limits. Based on a radiological analysis of a FHA within containment with open containment penetrations being filtered by the Supplemental Leak Collection and Release System (SLCRS), the resultant radiological consequences of this event are well within the 10 CFR Part 100.11 limits, as defined by acceptance criteria in the Standard Review Plan (SRP) Section 15.7.4. Control room operator doses remain less than the 10 CFR Part 50 Appendix A General Design Criteria (GDC) 19 limit of 5 rem whole body or its equivalent to any part of the body. The proposed changes to LCO 3.9.4 and associated surveillance requirements will ensure that SLCRS filtration assumptions in the associated radiological analysis are met.

LCO 3.9.10 titled ''Water Level—Reactor Vessel'' will continue to ensure that at least 23 feet of water is maintained over the fuel during fuel movement when the plant is in Mode 6. LCO 3.9.3 titled ''Decay Time'' will continue to ensure that irradiated fuel is not moved in the reactor pressure vessel until at least 150 hours after shutdown. These LCOs will continue to ensure that two of the key assumptions used in the radiological safety analysis are met.

The radiological consequences of the Core Alteration events other than the FHA remain unchanged. These events do not result in fuel cladding integrity damage. A radioactive release to the environment is not postulated since the activity is contained in the fuel rods. Therefore, the affected containment systems are not required to mitigate a radioactive release to the environment due to a Core Alteration event.

The proposed revision in the minimum number of the Containment Purge Exhaust

Radiation Monitoring Instrumentation channels required to be operable from one to two, ensures that redundant instrument channels are available to detect and initiate isolation of the containment purge and exhaust containment penetrations during a FHA inside containment.

The proposed administrative, editorial, and format changes do not affect plant safety. The Bases section has been revised as necessary to reflect the changes to these Specifications. Bases Section 3/4.9.9 will also be revised to remove text pertaining to Mode 5 applicability that is not relevant to this specification.

Therefore, the proposed amendment does not significantly increase the consequences of any previously evaluated accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment affects a previously evaluated accident; *e.g.,* FHA. The proposed amendment does not represent a significant change in the configuration or operation of the plant. The proposed amendment does not impact Technical Specification requirements for systems needed to prevent or mitigate other Core Alteration events. The filtered SLCRS that will be utilized to control and filter the radioactive release from a FHA occurring within containment is the same system (with the exception of the flow path to the filter banks) currently relied upon to control and filter the release from a FHA in the fuel building. The primary function of SLCRS is to ensure that radioactive leakage from the primary containment following a Design Basis Accident (DBA) or radioactive release due to a fuel building FHA is collected and filtered for iodine removal prior to discharge to the atmosphere at an elevated release point through a ventilation vent. This system will be relied upon to control the releases from open containment penetrations should a FHA occur inside of containment until such time that these open containment penetrations can be isolated. The proposed amendment contains the requirement to maintain the capability to close open containment penetrations within 30 minutes following a FHA inside containment.

The filtered SLCRS that will be relied upon to mitigate a FHA within containment is classified as Quality Assurance (QA) Category I, Safety Class 3 and Seismic Category I as stated in Updated Final Safety Analysis Report (UFSAR) Section 6.5.3.2.1 titled ''Design Bases.'' As described in UFSAR Section 6.5.1 titled ''Engineered Safety Feature Filter Systems,'' filtered SLCRS is considered to be an engineered safety features (ESF) filter system used to mitigate the consequences of accidents.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Based on the current technical specification requirements, an environmental release due to a FHA occurring within containment is precluded by a design which automatically isolates the containment following detection of radioactivity by redundant containment purge monitors. The proposed amendment increases the dose at the site boundary and the control room operator dose due to a FHA occurring within containment; however, the dose remains within acceptable limits. The margin of safety as defined by 10 CFR Part 100 has not been significantly reduced.

The revised radiological analysis based on the proposed amendment demonstrates that during a FHA inside containment, the projected offsite doses will be well within the applicable regulatory limits of 10 CFR Part 100.11 of 300 rem thyroid and 25 rem whole body, and are less than the more restrictive guidance criteria in the SRP Section 15.7.4 of 75 rem thyroid and 6 rem whole body. Control room operator doses are less than the 10 CFR Part 50 Appendix A GDC 19 limit of 5 rem whole body or its equivalent to any part of the body. This radiological analysis is based on all airborne activity reaching the containment atmosphere, as a result of a FHA inside containment, being released to the environment over a 2 hour period. The 2 hour release period is based on the guidance contained in Regulatory Guide 1.25 titled ''Assumptions Used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors.'' The proposed amendment contains a Bases requirement to maintain the capability to close open containment penetrations within 30 minutes following a FHA inside containment. Completion of this action will reduce the dose consequence of a FHA within containment by terminating the release to the environment prior to all airborne activity being released from the containment.

The margin of safety for Core Alteration events other than the FHA is not significantly reduced due to this proposed amendment. The proposed amendment does not impact Technical Specification requirements for systems needed to prevent or mitigate such Core Alteration events. These events do not result in fuel cladding integrity damage. Therefore, a radioactive release to the environment is not postulated since the activity is contained in the fuel rods.

The proposed revision in the minimum number of the Containment Purge Exhaust Radiation Monitoring Instrumentation channels required to be operable from one to two, ensures that redundant instrument channels are available to detect and initiate isolation of the containment purge and exhaust containment penetrations during a FHA occurring inside containment.

The proposed changes to SR 4.9.4.1 and SR 4.9.9, to remove unnecessary detail on when these surveillances are required to be performed, are administrative in nature and do not affect plant safety.

The proposed revision of the words ''through the'' to the words ''to filtered'' in SR 4.9.4.2.a does not change the LCO 3.9.4 requirements. This change makes the LCO and surveillance requirements consistent. This change is administrative in nature and does not affect plant safety.

The proposed administrative, editorial, and format changes do not affect plant safety. The Bases section has been revised as necessary to reflect the changes to these Specifications. Bases Section 3/4.9.9 will also be revised to remove text pertaining to Mode 5 applicability that is not relevant to this specification.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 22, 2000, the licensee may file a request for a hearing with

respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 1, 2000, as supplement by letter dated July 21, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 17th day of August, 2000.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–21517 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Company; Dresden Nuclear Power Station, Units 2 and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of 10 CFR 50.60(a) for Facility Operating Licenses Nos. DPR–19 and DPR–25, issued to Commonwealth Edison Company (ComEd, or the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

10 CFR Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing

conditions. Specifically, 10 CFR Part 50, Appendix G, states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G Limits.

To address provisions of amendments to the technical specifications (TS) P–T limits, the licensee requested in its submittal dated February 23, 2000, that the staff exempt ComEd from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Cases N–588 and N–640. Code Case N–588 permits the postulation of a circumferentially-oriented flaw (in lieu of an axially-oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the pressure stresses on a circumferentially-oriented flaw are lower than the pressure stresses on an axially-oriented flaw by a factor of two, using Code Case N–588 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60(b). Likewise, since the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would also be required by 10 CFR 50.60(b).

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–588 and Code Case N–640 in order to revise the method used to determine the reactor coolant system (RCS) P–T limits, because continued use of the present curves unnecessarily restricts the P–T operating window. Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Section XI, Appendix G procedure, continued operation of Dresden with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the RPV to maintain a temperature exceeding 212 degrees Fahrenheit in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P–T curves, as allowed by ASME Code Cases N–588 and N–640, does not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at a lower coolant temperature.

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of these Code Cases.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there are no significant adverse environmental impacts associated with the proposed action.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Dresden Nuclear Power Station, Units 2 and 3, dated November 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on July 19, 2000, the staff consulted with the Illinois State official, Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 23, 2000, which is available for public inspection at the NRC Public Document Room,The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of August 2000.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–21513 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company, et al., Haddam Neck Plant; Notice of Receipt and Availability for Comment of License Termination Plan

The Nuclear Regulatory Commission (NRC) is in receipt of and is making available for public inspection and comment the License Termination Plan (LTP) for the Haddam Neck Plant (HNP) located in Haddam, Connecticut.

Connecticut Yankee Atomic Power Company (CYAPC, or the licensee) announced permanent cessation of power operations of HNP on December 5, 1996. In accordance with NRC regulations, CYAPC submitted a Post-Shutdown Decommissioning Activities Report (PSDAR) for HNP to the NRC on August 22, 1997. The facility is undergoing active decontamination and dismantlement.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for termination of license must be accompanied or preceded by an LTP to be submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. CYAPC submitted the proposed LTP for HNP by application dated July 7, 2000. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of the HNP LTP and will accept comments from affected parties. Also, the NRC staff will conduct a public meeting in the vicinity of the HNP site in the near future to discuss the HNP LTP. A separate notice regarding this meeting will be published in the **Federal Register** when specific arrangements for the meeting have been made.

Written comments should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Mail Stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

The HNP LTP (ADAMS Accession Number ML003735143) is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, N.W, Washington, DC and is accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). The LTP may also be viewed at the CYAPC Web site at *www.connyankee.com.*

For further information, contact: Mr. Louis L. Wheeler, Mail Stop O–7-C2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone 301–415–1444, or e-mail dxw@nrc.gov.

Dated at Rockville, Maryland, this 16th day of August 2000.

For the Nuclear Regulatory Commission

Louis L. Wheeler,

Acting Chief, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–21516 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Biweekly Notice

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 31, 2000, through August 11, 2000. The last biweekly notice was published on August 9, 2000 (65 FR 48744).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 22, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10

CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: July 14, 2000

Description of amendment request: The proposed amendment would slightly reduce the required minimum reactor cavity water level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change to the Technical Specifications involves the minimum or reference reactor cavity water level requirement (relative to the reactor pressure vessel [RPV] flange) during refueling operations. Reactor cavity water level can affect the consequences of events that may be postulated to occur during shutdown conditions (including fuel handling operations), namely a fuel handling accident, loss of normal decay heat removal capability, or inadvertent reactor draindown. Such events, however, are caused by equipment failures or human errors. The proposed change has no impact on such failures or errors, particularly their probability of occurrence. Therefore, the proposed change will not significantly increase the probability of a fuel handling accident, loss of decay heat removal, or inadvertent reactor draindown.

With regard to impact on the consequences of postulated events/accidents, the effect of the change on the consequences of a fuel handling accident is minimal. The accident producing the largest number of failed irradiated fuel rods is the drop of an irradiated fuel assembly onto the reactor core when the reactor vessel head is removed (Reference USAR 15.7.4.1.1). Since this event takes place only in the containment and the release associated with this event must be transferred from the containment atmosphere to the secondary containment, the accident which produces the most severe radiological release is a drop of channeled fuel onto unchanneled spent fuel in the fuel storage racks in the fuel building i.e. directly within the secondary containment. The proposed change has no impact on a fuel handling accident in the fuel building. A drop of a fuel

bundle on the RPV flange may involve a release of fission products from the dropped fuel bundle, but such a release would be less severe as it would involve much less fuel damage (notwithstanding potentially less pool depth), compared to the drop of a fuel bundle onto the reactor core. It has therefore been determined that lowering the minimum water level from 23 feet (ft) to 22 ft, 8 inches has no significant effect on the consequences of a fuel handling accident.

With respect to a loss of normal decay heat removal capability, or an inadvertent reactor draindown, the change reduces slightly the volume of water required for decay heat removal capability and reactor coolant inventory to mitigate a draindown event. Since the volume change has an insignificant effect on the reactor/pool volume's total available decay heat removal capability (as a backup in the event of a loss of normal decay heat removal capability) and has a negligible effect on the operator's ability to mitigate a draindown event, lowering the minimum specified water level from 23 feet to 22 ft, 8 inches will not increase the consequences of such events.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Technical Specifications involves a slight change to the minimum required/reference reactor cavity water level during refueling operations. No new modes of operation or the utilization of equipment are involved. No new accident initiators are introduced as a result of allowing a lower minimum/reference water level. Therefore, this change does not involve a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in the margin of safety.

The margin of safety involved with this change involves the consequences that could result from the release of radioactive material from damaged fuel following a fuel handling accident, loss of decay heat removal, or inadvertent reactor draindown. The consequences of a dropped fuel bundle in the upper containment pool are insignificantly affected by allowing a slightly lower reactor cavity water level, as such an event would remain bounded by a dropped fuel bundle in the fuel building. Allowing a slightly lower required minimum reactor cavity water level during refueling operations would also have an insignificant effect on the volume of water available for decay heat removal capability, or to mitigate a draindown event. Therefore, the changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW, Washington, DC 20036–5869.

NRC Section Chief: Anthony J. Mendiola.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: July 27, 2000.

Description of amendment request: The proposed amendment revises the Safety Limit Minimum Critical Power Ratio (SLMCPR) in the Technical Specifications (TSs) and makes some administrative changes associated with the revised SLMCPR to the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The SLMCPR, which is determined by using NRC approved methods, ensures that during normal operation and/or anticipated operational occurrences greater than 99.9% of all fuel rods in the core avoid the onset of transition boiling. (The operating limit for MCPR is determined by adding the change in Critical Power Ratio for anticipated operational occurrences to the SLMCPR. For limiting faults such as a loss of coolant accident, SLMCPR does not apply.) Although the SLMCPR is established to minimize the potential for fuel damage in response to anticipated operational occurrences, it has no impact on the cause of such occurrences. That is, establishment of the SLMCPR has no impact on the equipment failures or events that can lead to such occurrences. Therefore, the proposed change does not involve an increase in the probability of an accident.

The derivation of the cycle-specific SLMCPRs for incorporation into the TS has been performed using the methodology discussed in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–14 (GESTAR–II), June 2000. Amendment 25, which describes the methodology for determining the SLMCPR, was incorporated into GESTAR–II in June 2000. GESTAR–II, Amendment 25 was approved by the NRC as of a March 11, 1999 safety evaluation report.

The basis of the MCPR safety limit is to ensure that greater than 99.9% of all fuel rods in the reactor core avoid the onset of transition boiling if the limit is not violated. The proposed SLMCPR preserves the existing margin to transition boiling and fuel damage in the event of a postulated transient/accident. The fuel licensing acceptance criteria for the SLMCPR calculation apply to the next operating cycle at CPS (Cycle 8) in the same manner as they have applied previously. The new core design for two-loop and single-loop operation that includes GE14 fuel, is in compliance withAmendment 22 to ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–14 and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000 (GESTAR–II) which provides the NRC approved fuel licensing criteria. Since the basis of the MCPR safety limit remains unchanged, the probability of fuel damage and the potential consequences of anticipated operational occurrences is not increased. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

In addition to the proposed change to the single-loop SLMCPR, the Note preceding TS 2.1.1.2 previously incorporated as part of License Amendment 113 is being proposed to be deleted. The Note associated with TS 2.1.1.2 was originally included to ensure that the SLMCPRs values were only applicable for the identified cycle (Cycle 7). Since that time, Amendment 25 to NEDE–24011–P–A–14 has been approved by the NRC, and new SLMCPRs have been calculated for the forthcoming fuel cycle, so this Note is no longer necessary. The Note was for information only and has no impact on the design or operation of the reactor. The proposed deletion of the Note is an administrative change that does not involve an increase in the probability or consequences of an accident previously evaluated.

The analysis contained in TS 5.6.5, ''Core Operating Limits Report (COLR),'' Paragraph b., is proposed to be updated to remove the references to the three letters that were submitted to the NRC to support Cycle 7 and which are not applicable to subsequent operating cycles, and to retain the reference to the ongoing standard non-cycle specific analysis approved by the NRC (i.e., GESTAR). This is an administrative change to ensure that the references contained in the CPS TS are accurate and consistent with other licensing documents. Therefore, this change does not involve an increase in the probability or consequences of an accident previously evaluated.

Based on the above, the proposed changes to the TS do not involve an increase in the probability or consequences of an accident.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The new SLMCPR limit for CPS nuclear fuel, including GE–14 fuel, has been determined using NRC approved methods. Use of the NRC-approved methodology preserves the basis for the MCPR safety limit which ensures that during normal operation and during an anticipated operational occurrence greater than 99.9% of all fuel rods in the core avoid the onset of transition boiling. For other accidents such as a loss of coolant accident, the SLMCPR does not apply. The proposed change does not involve any new modes of operation, modifications to plant equipment, and any setpoint changes. As a result, the proposed change does not involve a new or different kind of accident from any accident previously evaluated.

With regard to the previously described changes concerning the Note associated with TS 2.1.1.2 and references in TS 5.6.5, Paragraph b, these changes are administrative in nature. As such, these changes do not create the possibility of a new or different kind of accident from any that were previously evaluated.

Based on the above, the proposed changes to the TS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The SLMCPRs ensure that greater than 99.9% of all fuel rods in the core will avoid the onset of transition boiling if the limit is not violated when all uncertainties are considered, thereby preserving the fuel cladding integrity. In addition, appropriate MCPR Operating Limits will continue to be enforced by procedures such that in the event of a transient, there will be adequate margin to the SLMCPR. The MCPR Operating Limits are based on the SLMCPR and NRC approved methods in GESTAR–II. Therefore, the proposed change to the single-loop SLMCPR will not involve a reduction in the margin of safety previously approved by the NRC.

Additionally, the proposed changes that remove the note preceding TS 2.1.1.2 and the removal of outdated references in TS 5.6.5, Paragraph b, are administrative changes that will not reduce the margin of safety previously approved by the NRC.

Based on the above, the proposed changes to the TS do not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW, Washington, DC 20036–5869.

NRC Section Chief: Anthony J. Mendiola.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: April 1, 1999, as supplemented June 14, and July 27, 2000, (the April 1, 1999 application was submitted by GPU Nuclear, Inc., but has subsequently been adopted by AmerGen Energy Company, LLC). The June 14 and July 27, 2000, supplements did not supercede the original April 1, 1999 application in its entirety. The April 1, 1999, application was noticed in the **Federal Register** on July 28, 1999 (64 FR 40906).

Description of amendment request: The June 14 and July 27, 2000, supplements revised the original application to change the Technical Specification (TS) limiting conditions for operation (LCOs) and the surveillance requirements related to the core flood tanks to be more consistent with the Standard Technical Specifications for B&W [Babcock & Wilcox] Plants (NUREG–1430 Rev. 1) than the proposed TS changes of the original application. This included the addition of a new surveillance Table 4.1–5. The supplements also revised TS 3.3.1.3.b and c related to the sodium hydroxide tank limits by moving them to a new TS 3.3.2.1. The proposed change to TS 4.5.3.1.b.2 has been revised to reflect the issuance of Amendment No. 212 on June 21, 1999, which had previously changed that TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed amendment makes administrative corrections, adds conditions to the limiting conditions for operation [LCOs], revises selected time clocks and surveillance requirements consistent with NUREG 1430, and adds a time clock to a unique LCO. These changes have no effect upon the plant design or operation. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed changes. Therefore, operation in accordance with the proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated, because no new accident initiators would be created.

(3) Operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because no changes to plant operating limits or limiting safety system settings are proposed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.77

Attorney for licensee: Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

NRC Section Chief: Marsha Gamberoni.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina, and Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 29, 2000, as supplemented by letter dated July 27, 2000.

Description of amendment request: The amendments would revise McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2 Technical Specification 5.6.5 Core Operating Limits Report, and the Bases of Sections 3.2.1 Heat Flux Hot Channel Factor $F_Q(X,Y,Z)$, 3.2.2 Nuclear Enthalpy Rise Hot Channel Factor $F_{DH}(X,Y)$, 3.2.4 Quadrant Power Tilt Ratio, 3.5.1 Accumulators, and 3.5.2 ECCS-Operating.

These changes are being proposed to incorporate the Westinghouse Best-Estimate Large Break Loss of Coolant Analysis Methodology into the licensing basis for McGuire and Catawba units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, Duke Energy Corporation has made the determination that this license amendment involves no significant hazards considerations by applying the standards established by NRC regulations in 10 CFR 50.92(c). This ensures that operation of the facility in accordance with the proposed amendment would not:

Involve a significant increase in the probability or consequence of an accident previously evaluated?

No. The proposed changes involve use of the Best-Estimate Large Break Loss of Coolant Accident (LOCA) Analysis Methodology and implementation of associated Technical Specifications changes. The plant conditions assumed in the analysis are bounded by the design conditions for all of the equipment in the plant. Therefore, there will be no increase in the probability of a LOCA. Additionally, the consequences of a LOCA are not being increased, since it has been demonstrated that the Emergency Core Cooling System performance conforms to the criteria contained in 10 CFR 50.46(b). No other accidents are potentially affected by this change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes to the Technical Specifications are to support implementation of Best-Estimate Large Break LOCA Analysis Methodology. There are no new modes of plant operation being introduced. The plant parameters assumed in the analysis are within the design limits of the existing plant equipment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Involve a significant reduction in a margin of safety?

No. The analytic technique used in the analysis realistically describes the expected behavior of the McGuire/Catawba reactor system during a postulated LOCA. Uncertainties were accounted for as required by 10 CFR 50.46. A sufficient number of LOCA cases with different break sizes, different locations, and other variations in properties were analyzed to provide assurance that the most severe cases are calculated. It has been shown by the analysis that there is a high level of probability that all criteria contained in 10 CFR 50.46(b) are met.

Therefore the proposed amendment does not involve a significant reduction in any margin of safety.

Duke Energy Corporation has concluded, based on the above discussion, that there are no significant hazards considerations involved in this license amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Catawba Nuclear Station, Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006. McGuire Nuclear Station, Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 29, 2000, supplemented by letter dated July 5, 2000.

Description of amendment request: The proposed amendments would revise Technical Specifications, Table 3.3.2–1, Engineered Safety Feature Actuation System Instrumentation, Function 6.f, Auxiliary Feedwater Pump Suction Pressure-Lo.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Only the trip setpoint and allowable value for CA pump low suction pressure auto-realignment to RN System are being modified in the Technical Specifications to accurately document the valid analyzed values stated in the calculations. The proposed change is consistent with the current licensing basis for the McGuire Nuclear Station, the setpoint methodologies used to develop the trip setpoints, the McGuire Safety Analyses, and current station calibration procedures and practices. The Engineered Safety Features Actuation System (ESFAS) is an accident mitigating system, and not an accident initiator. Therefore, the proposed change will have no impact on any accident probabilities. Accident consequences will not be affected, as no changes are being made to the plant which will involve a reduction in reliability or effectiveness of the CA System. Consequently, any previous evaluations associated with accidents will not be affected by these changes.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Only the trip setpoint and allowable value for CA pump low suction pressure auto-realignment to RN System are being modified in the Technical Specifications to accurately document the valid analyzed values stated in the calculations. No changes are being made to actual plant hardware which will result in any new failure modes or new accident initiation mechanisms. Also, no changes are being made to the way the plant is being operated. The McGuire Nuclear Station will continue the current practice of using the valid trip setpoint values documented in the instrumentation procedure. Consequently, no new plant accidents will be created by these changes.

3. Does this change involve a significant reduction in a margin of safety?

No. Only the trip setpoint and allowable value for CA pump low suction pressure auto-realignment to RN System are being modified in the Technical Specifications to accurately document the valid analyzed values stated in the calculations. The methods used for analyzing the allowable value are endorsed by Duke Power's EDM 102, ''Instrument Uncertainty Calculations''. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following accident conditions. The impact of the proposed change will not challenge or exceed any safety limits or design limits during a design basis accident. Consequently, the integrity of the fission product barriers will still be maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Section Chief: Richard L. Emch, Jr.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: June 16, 1999, as supplemented on May 4 and July 10, 2000.

Description of amendment request: NEDE–24011–P–A ''General Electric Standard Application for Reactor Fuel'' (GESTAR–II) is one of the approved analytical methods for performing the reload analysis as specified in Technical Specification (TS) 5.6.5.b.1. The proposed amendment incorporates TS changes to comply with the operating requirements derived from GE Report, NEDO–21231, ''Banked Position Withdrawal Sequence (BPWS)'', dated January 1977, as referenced in NEDE–24011–P–A. NEDO–21231 forms the current basis for the Pilgrim reactor core design process. The Nuclear Regulatory Commission (NRC) staff approved NEDO–21231 by a letter to General Electric dated January 25, 1985. NEDO–21231 describes a revised method for developing control rod withdrawal sequences to mitigate the consequences of the control rod drop accident (CRDA) in the startup and low power operating ranges of 20% RTP and 280 cal/gram peak fuel enthalpy. The proposed TS changes incorporate Specifications and Actions based upon the plant-specific CRDA and BPWS for 20% rated thermal power (RTP) and 280 cal/gram peak fuel enthalpy.

The proposed TS changes also include changes to the control rod worth limits to resolve License Event Report (LER) 98–006–00, dated April 30, 1998, and its supplement LER 98–006–01, dated August 27, 1988.

The proposed changes are modeled after NUREG–1433, Rev. 1, BWR/4 Standard Technical Specifications (STS) for incorporating the Pilgrim cycle-specific data for CRDA and BPWS for 20% RTP. The STS format is adopted based upon GESTAR II to reflect the Specifications, Actions, and BASES derived from NEDO–21231. The proposed TS changes consist of (i) administrative changes, (ii) more restrictive changes, and (iii) less restrictive changes to comply with TS 5.6.5.b.1 incorporating the current Pilgrim core design based upon the NRC

approved NEDO–21231 and NEDE–24011–P–A.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

1. *Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?*

The proposed changes do not adversely affect accident initiators or precursors nor alter the design, conditions, and configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

This proposed change relocating the details of the methods for timing control rod drives from the Specifications to the BASES involves no technical changes to the Specifications. The requirement to verify scram times is incorporated into proposed SR 3.3.B.1.4; therefore, it does not eliminate any requirements, or impose a new or different treatment of the requirements. The BASES are subject to the Technical Specifications Bases Control Program contained in the Administrative Controls Section of the Technical Specifications. Since any changes to the BASES will be in accordance with these requirements, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed without prior staff approval.

The proposed changes provide more stringent requirements than those currently in the Technical Specifications. The more restrictive requirements will not alter the operation of process variables or SSCs as described in the safety analyses; therefore, they will not involve a significant increase in the probability of an accident occurring.

The proposed changes will ensure compliance with ''NEDO–21231, ''Banked Position Withdrawal Sequence (BPWS)''. The NEDO–21231 limits the maximum rod worth such that fuel enthalpy addition due to a control rod drop accident (CRDA) will not exceed 280 cal/gm, or require the plant to be placed in a condition where the LCOs do not apply sooner. In addition, changes are proposed to require entering a MODE in which the LCOs do not apply sooner than currently required. Therefore, the new requirements would decrease the consequences of an analyzed event.

Elimination of the requirement to shut down if one rod is stuck due to potential collet finger failure is being made concurrently with another change that will require a reactor shutdown if more than one rod is stuck for any reason. This additional restriction ensures that the reactor will be shut down as soon as it is determined that more than one rod may fail to scram. This differs from the existing requirement that allows operation with multiple stuck rods that are not fully inserted, provided reactivity margin is met. The consequences of an accident previously evaluated are not increased because the failure of a single control rod to insert will not prevent the reactor from reaching a subcritical condition as long as shutdown margin requirements are met.

The proposed SRs 4.3.B.1.1 and 4.3.B.1.2 only increase the interval between performance of a surveillance for about 10% to 20% of the control rods (those that are partially withdrawn). The purpose of the surveillance is to verify that rods can be inserted, thus verifying that rods are not stuck and scram capability is maintained. The 80% to 90% of the control rods that are fully withdrawn will continue to be tested at the 7-day frequency and should a stuck control rod be found, all withdrawn control rods will have to be tested within 24 hours. This change does not affect any initiating events for accidents previously evaluated. In addition, this change is being implemented concurrently with more restrictive requirements governing continued operation with stuck and inoperable control rods, which ensure the mitigative features of the control rods are maintained. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates the requirement to verify discernible neutron instrument response to control rod motion, the first time a rod is withdrawn after refueling or maintenance. The probability of an accident is not increased because the proposed change will not involve any physical changes to plant SSCs, or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The consequences of an accident are not increased because the CRDA analysis assumes a single failure of the control rod drive system when a single control rod drops out of the core from the fully inserted position after being disconnected from its drive and after the drive has been retracted to the fully withdrawn position while reactor power is less than 20%. During startup and before exceeding 20% reactor power, a large percentage of the rods are fully withdrawn in the normal course of a startup. All fully withdrawn rods are subjected to verification of coupling by the overtravel test, which verifies that the accident mitigation feature of the control rods is maintained.

The proposed change will allow either a second licensed operator or other qualified members of the technical staff to verify movement of control rods when the rod worth minimizer (RWM) is inoperable. The function of the RWM is to control adherence to the control rod withdrawal and insertion sequence. The use of a second licensed operator or other qualified members of the technical staff to perform these control rod movement verifications provides alternate means to accomplish the same function, thus, there is no change in the probability or consequences of an accident previously evaluated. Also, the proposed change will only require that the RWM sequence be verified when it is changed. The RWM does not monitor core thermal conditions, but simply enforces preprogrammed rod patterns as a backup intended to prevent reactor operator error in selecting or positioning control rods. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?*

The more restrictive and new requirements will not alter the plant configuration (no new or different type of equipment will be installed nor is any equipment being removed) or change methods governing normal plant operation. The changes do impose different requirements; however, they are consistent with assumptions made in the safety analyses, therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed less restrictive change that increases the interval between performance of surveillance designed to verify that rods can be inserted for only 10% to 20% of the control rods (those that are partially withdrawn) not the manner in which the surveillance is performed does not impact reactivity

controls. The changes in reactivity are not SSCs; therefore, the proposed changes will not involve any physical changes to the plant or the manner in which the plant is operated; and, therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does this change involve a significant reduction in a margin of safety?*

The proposed change relocating the details of the methods for timing control rod drives to the Bases does not impact the safety margin. The requirement to verify scram times is incorporated into proposed SR 3.3.B.1.4; thereby, preserving the analytic assumptions for the accident analyses, which also preserves the current margin of safety. The requirements to be transposed from the Technical Specifications, and are not being modified by the proposed change. Thus, there will be no significant reduction in the margin of safety.

Adding new requirements and making existing ones more restrictive does not involve a physical alteration of the plant (no new or different type of equipment will be installed nor is any equipment being removed), introduce any new tests, or change methods governing normal plant operation. The BPWS limits the maximum rod worth such that fuel enthalpy addition due to a CRDA will not exceed 280 cal/gm, the current bases for the TS limit. Therefore, the proposed change does not involve a reduction in the margin of safety.

Elimination of the requirement to shut down if one rod is stuck due to potential collet finger failure will not decrease a margin of safety because this change is being made concurrently with another change that will require a reactor shutdown if more than one rod is stuck for any reason. This additional restriction ensures that the reactor will be shut down as soon as it is determined that more than one rod may fail to scram, which ensures that the reactor is shut down when assumptions used in the analysis of those accidents and transients that depend on a scram may no longer be met. The failure of a single control rod to insert will not prevent the reactor from reaching a subcritical condition as long as shutdown margin requirements are met. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The proposed increase in the interval from weekly to monthly for partially withdrawn control rods for performances of a surveillance may increase the time before a partially withdrawn control rod is discovered to be stuck. Changing the interval between surveillances does not affect the surveillance acceptance criteria, thus, the proposed change does not affect the analysis assumptions concerning the number of control rods that insert following a scram.

The proposed change will allow control rod movement verification, by licensed operators or other qualified members of the technical staff (i.e., personnel trained in accordance with an approved training program) when the RWM is inoperable, and limit the use of this alternate method to once per 12 months. This change does not impact the margin of safety because the verification of rod sequence and thus the assumed reactivity insertion rates following a reactor trip are maintained.

Based on the staff's analysis, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: W. S. Stowe, Esquire, Entergy Nuclear Generation Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Section Chief: James W. Clifford

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2 (ANO–1&2), Pope County, Arkansas

Date of amendment request: September 17, 1999, as supplemented by letters dated June 29 and August 3, 2000. The September 17, 1999, application was originally noticed in the **Federal Register** on February 23, 2000 (65 FR 9004).

Description of amendment request: The proposed amendment would change the Arkansas Nuclear One, Unit 2 (ANO–2) heavy load handling requirements and transportation provisions to permit the movement of the original and replacement steam generators through the ANO–2 containment construction opening during the steam generator replacement outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

During the 2R14 refueling outage/steam generator replacement outage, the OSGs [original steam generators] and the RSGs [replacement steam generators] will be moved between the new steam generator storage area / original steam generator storage facility and the runway beam support system (RBSS) / outside lift system (OLS). The RBSS/OLS is the structure used to rig the SGs [steam generators] in and out of the reactor containment building. In consideration of the magnitude of the loads being handled, the RBSS, OLS and transporters are of a robust, rugged design, proven by many prior steam generator replacements and other heavy load handling operations. However, due to the location of safety related underground structures, systems, and components (SSCs) in the vicinity of the RBSS/OLS and along the steam generator (SG) haul route, potential load handling accidents along the load paths must be considered for their effects on the SSCs. At ANO–2, the ground cover over several buried SSCs is not sufficient to be able to rule out the potential for a load drop to damage or cause failure of these SSCs. The functions of the SSCs in question are as support systems to the ANO–1 [Arkansas Nuclear One, Unit 1] and ANO–2 emergency diesel generators and the ANO–1 service water system. The fire protection system, a non-safety related system, was also considered. Existing plant procedures adequately address the scenario in question for the fire protection system.

The cause of a SG drop is assumed to be a non-mechanistic failure of the RBSS/OLS (or associated rigging), a failure of the SG transporter leveling hydraulics, or a seismically-induced failure of the loaded RBSS/OLS or SG transporter. The possibility of drops associated with other external events, such as tornadoes, high winds, and tornado missiles will be substantially minimized by procedures that prevent load handling under these weather conditions.

With ANO–2 defueled, the impact on ANO–2 due to loss of the emergency diesel generators fuel oil transfer system will be minimal. Long term actions to provide makeup water to the spent fuel pool may be necessary, but no immediate actions are required.

For ANO–1, a steam generator drop could render both diesel generators inoperable due to the loss of the fuel oil transfer system, and the emergency cooling pond inoperable due to the loss of the service water return line to the pond. Since ANO–1 is expected to be at full power operation, these conditions would require prompt action in accordance with technical specifications. Immediately following a drop from the OLS or from the transporter in the vicinity of the OLS, where damage to these systems is possible, ANO–1 will begin a shutdown and cooldown to cold shutdown conditions. In conjunction with the unit shutdown, contingency measures will be taken to compensate for the loss of the normal fuel oil supply to the emergency diesel generators.

The ability of ANO–1 to safely respond to analyzed events would be undiminished with the possible exception of the functions affected by the damaged equipment. With the compensatory measures to be established prior to the steam generator handling operations, and with the planned responses to a steam generator drop, the support system functions of the diesel generators and the service water system can be assumed to be

maintained following the drop. Therefore, the drop will not affect the consequences of any analyzed event.

While the drop of a steam generator could cause damage to some safety related plant equipment, the failures of these components are not precursors to any analyzed accident. The drop of a steam generator will not have any other impact on plant equipment, and thus will not induce any analyzed plant transient. It will, however, result in a malfunction of equipment important to safety of a different type than any previously evaluated. Based on the compensatory measures and the low likelihood of the event during SG movement, this temporary condition is considered to be acceptable. On these bases, it is concluded that the proposed load handling operations will not significantly increase the probability or the consequences of accidents previously analyzed.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

As noted in the response to the first question above, the only potential for a new or different kind of accident associated with this change request arises from a drop of a steam generator which is assumed to cause the loss of emergency power support systems for ANO–1. The cause of a SG drop is assumed to be a non-mechanistic failure of the RBSS/OLS (or associated rigging), a failure of the SG transporter leveling hydraulics, or a seismically-induced failure of the loaded RBSS/OLS or SG transporter. In the absence of a seismic event, there is no initiator for any consequential events (e.g., loss of offsite power) other than those directly caused by impact of the SG. Given this scenario, the plant response to a SG drop event would be governed by the technical specifications and existing plant procedures.

If a SG drop is seismically-induced, the simultaneous loss of normal offsite power sources is also assumed in this case since these sources are not seismically qualified. While this event is very unlikely due to the low frequency of earthquakes and the small amount of time that a steam generator will be in a position to cause damage, Entergy [Operations, Inc.] will provide contingency plans and compensatory measures to compensate for the loss of the normal fuel oil supply to the emergency diesel generators. Long term actions to provide makeup water to the spent fuel pool may be necessary, but no immediate actions are required.

Availability of the redundant ANO–1 service water heat sink, the Dardanelle Reservoir, during a seismic event assures that an uninterrupted source of service water will be available to support shutdown cooling of ANO–1.

The proposed load handling plans will not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

ANO–1 Technical Specification 3.7.1.C requires both EDGs [emergency diesel generators] to be operable when the reactor temperature is ≥ 200 °F. If this condition is not met, Limiting Condition for Operation 3.0.3 applies. It requires that within one hour, action shall be initiated to place the unit in an operating condition in which the specification does not apply by placing it, as applicable, in at least hot standby within the next 6 hours, at least hot shutdown within the following 6 hours, and at least cold shutdown within the subsequent 24 hours. The bases for technical specification 3.7.1.C indicate that these operability requirements ensure that an adequate, reliable power source is available for all electrical equipment during startup, normal operation, safe shutdown, and handling of all emergency situations. The bases for EDG operation also require at least a seven day total diesel oil inventory during complete loss of electrical power conditions.

The postulated loss of both trains of the ANO–1 EDG fuel oil transfer system due to a SG drop would require that ANO–1 be shut down. This situation could be considered to involve a reduction in the margin of safety, because a new common cause failure mechanism is being introduced by the movement of the SGs over the EDG fuel oil lines and transfer pump power cables. To restore the margin of safety and return the EDGs to functionality, temporary compensatory measures are being proposed.

Based on the above discussions, with the implementation of the proposed compensatory measures and the low likelihood of such an event, the failures caused by a SG drop event will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas.

Date of amendment request: August 18, 1999, as supplemented by letters dated June 29, July 19, and August 9, 2000. The August 18, 1999, application was originally noticed in the **Federal Register** on February 23, 2000 (65 FR 9005).

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.4.5, ''Steam Generators,'' to note that the requirements for inservice inspection do not apply during the steam generator replacement outage (2R14), to delete inspection requirements associated with steam generator tube sleeving and repair limits, to revise the requirement for tube inspection to mean an inspection from tube end (cold leg side) to tube end (hot leg side), to revise the preservice inspection requirements on when the hydrostatic test and the eddy current inspection of the tubes would be performed, and to revise the reporting frequency of the results of steam generator tube inspections to within 12 months following completion of the inservice inspection. Related changes to the Bases would also be made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The accidents of interest are a tube rupture, loss of coolant accident (LOCA) in combination with a safe shutdown earthquake and a steam line break in combination with a safe shutdown earthquake. A reduction in tube integrity could increase the possibility of a tube rupture accident and increase the consequences of a steam line break or LOCA. The tubing in the replacement steam generators is designed and evaluated consistent with the margins of safety specified in the ASME [American Society of Mechanical Engineers] Code [Boiler and Pressure Vessel Code], Section III. The program for periodic inservice inspection provides sufficient time to take proper and timely corrective action if tube degradation is present. The ASME [Code], Section XI basis for the 40% through wall plugging limit is applicable to the replacement steam generators just as it was to the original steam generators. As a result there is no reduction in tube integrity for the replacement steam generators.

Addition of a ''Note'' to clarify that inservice inspection is not required during the steam generator replacement outage is an administrative change that provides clarification regarding inservice inspection requirements. The change in reporting requirements is also an administrative change. The requirements for inservice inspection or the plugging limit for the tubes are not altered by these administrative changes. Additionally, changes were made to the bases to remove potentially misleading information. Bases changes are considered to be administrative in nature.

Elimination of the repair option and the associated references to repair of the original steam generator tubes is an administrative adjustment since the sleeve design is not applicable to the replacement steam generators. The elimination of the repair option does not alter the requirements for inservice inspection or reduce the plugging limit for the tubes.

A preservice eddy current inspection will be performed onsite prior to installation of the replacement steam generators. The

orientation of the replacement steam generators during the eddy current exam will not impact the results. The hydrostatic test required by the ASME Code, Section III for the replacement steam generators is to be performed in the manufacturing facility and not as part of a reactor coolant system hydrostatic test.

The post-repair leakage test required by the ASME Code, Section XI for an operating plant is performed at a much lower pressure. No evolutions subsequent to the replacement steam generator hydrostatic test are expected to occur that will change the condition of the tubes prior to operation. This change does not alter the requirement to perform a preservice inspection. As a result, an inservice inspection is not required during the steam generator replacement outage.

The requested ANO–2 [Arkansas Nuclear One, Unit 2] Technical Specification changes do not alter the requirements for tube integrity or tube plugging limits. The change to the definition of tube inspection is a conservative change; therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes do not affect the design or function of any other safety-related component. There is no mechanism to create a new or different kind of accident for the replacement steam generators by eliminating repair criteria or by clarifying the applicable preservice and inservice inspection requirements because a baseline of tube conditions is established and plugging limits are maintained to ensure that defective tubes are removed from service.

The requested ANO–2 Technical Specification changes do not alter the requirements for tube integrity or tube plugging limits. The change to the definition of tube inspection is a conservative change; therefore, this change does not [create the possibility of a new or different kind of accident from any previously evaluated].

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The tubing in the replacement steam generators is designed and evaluated consistent with the margins of safety specified in the ASME Code, Section III. The program for periodic inservice inspection provides sufficient time to take proper and timely corrective action to preserve the design margin if tube degradation is present.

Based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations [, Inc.] has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida.

Date of amendment request: July 19, 2000.

Description of amendment request: The amendment will extend the applicability of the current reactor coolant system (RCS) pressure/temperature limits and maximum allowed RCS heatup and cooldown rates to 21.7 effective full power years (EFPY) of operation. The associated low temperature overpressure protection (LTOP) temperature limits, which are based on the pressure/temperature limits, will also be extended to 21.7 EFPY of operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure-temperature (P/T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of 10 CFR 50 Appendix G as supplemented by the ASME Code Section XI, Appendix G recommendations. The adjusted reference temperature (ART) values are based on the Regulatory Guide 1.99, Revision 2 shift prediction and attenuation formula and have been validated by a credible reactor vessel surveillance program. There are no changes to the limit curve, only a change in the period of applicability based on more recent fluence predictions. Based on the current fluence projections, analysis has demonstrated that the current P/T limit curves will remain conservative for up to 21.7 EFPY.

In conjunction with extending the effectiveness of the existing P/T limit curves, the low temperature overpressure protection (LTOP) analysis for 15 EFPY is also extended. The LTOP analysis confirms that the current setpoints for the power-operated relief valves (PORV) will provide the appropriate overpressure protection at low RCS temperatures. Because the P/T limit curves have not changed, the existing LTOP values have not changed, this includes the PORV setpoints.

The P/T limit curves and LTOP analysis have not changed; therefore, the proposed amendment does not represent a change in the configuration or operation of the plant. The results of the existing LTOP analysis have not changed, and the limiting pressures for given temperatures will not be exceeded for the postulated transients. Therefore, assurance is provided that reactor vessel integrity will be maintained. Thus, the proposed amendment does not involve an increase in the probability or consequences of accidents previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requirements for P/T limit curves and LTOP have been in place since the beginning of plant operation. The only changes in these curves are the extension of the period of applicability (EFPY), which is based on new fluence data and the operating time (EFPY) required to reach the same limiting fluence used for the current 15 EFPY P/T curves. Since there is no change in the configuration or operation of the facility as a result of the proposed amendment, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Analysis has demonstrated that the fracture toughness requirements of 10 CFR 50 Appendix G are satisfied and that conservative operating restrictions are maintained for the purpose of low temperature overpressure protection. The P/T limit curves will provide assurance that the RCS pressure boundary will behave in ductile manner and that the probability of a rapidly propagating fracture is minimized. Therefore, operation in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: March 7, 2000, as supplemented on April 21, 2000 and June 14, 2000.

Description of amendment request: The proposed amendment would revise the surveillance requirements from once per refueling interval for each excess flow check valve (EFCV) to testing a representative sample of EFCVs once per 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

This change will not alter the physical design of the plant. The proposed Amendment would modify the testing of excess flow check valves (EFCV) from each valve being tested once per refueling interval to testing a representative sample of EFCVs once per 24 months (the length of a refueling interval). The EFCVs installed at Oyster Creek are extremely reliable. Oyster Creek records demonstrate that there has never been a failure of an EFCV to isolate in the thirty-year history of Oyster Creek.

A GE [General Electric] Topical Report evaluated the reliability of EFCVs installed at Oyster Creek and other plants. Oyster Creek and three other facilities have installed Chemquip excess flow check valves. Chemquip EFCVs were shown in the Topical Report to have a failure rate of 1.78E–7, which was the lowest of the valve manufacturers included in the evaluation. The current Oyster Creek accident analysis does not take credit for any flow restriction provided by EFCVs although the valve design does restrict flow. Therefore, changing the surveillance requirements for the EFCVs does not involve a significant increase in the probability of an accident.

EFCVs limit the reactor coolant release following the failure of an instrument line, valve or component on an instrument line. The valves isolate at a given flow and are periodically functionally tested to ensure proper isolation with resulting minimal flow. The radiological consequences of an instrument line break have been evaluated at Oyster Creek. That evaluation does not take credit for the excess flow check valve when assessing the radiological consequences of the accident. The analysis was submitted to the NRC and was approved in NUREG 1382 ''Safety Evaluation Report related to the full term operating license for Oyster Creek Nuclear Generating Station.''

This change will not increase the consequences of an instrument line break or any postulated accident.

2. Will operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Operation of the facility in accordance with the proposed amendment would modify the testing frequency of EFCVs. This change does not add components or make any other physical change to the plant. The valves will be tested in the same manner as they are now although less frequently. EFCVs are located exclusively in instrument lines and the failure of an instrument line is currently analyzed in the FSAR [final safety analysis report]. The plant is not being physically changed, and the consequences of a valve failing to isolate are within the FSAR analyzed event. Therefore, this change does not create the possibility of a new or different accident not previously analyzed.

3. Will operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

The proposed Amendment would modify the testing frequency of excess flow check valves (EFCVs) which are located in instrument lines. The only function of EFCVs is to limit the reactor coolant release following the failure of an instrument line, valve or component on an instrument line. The current Oyster Creek accident analysis does not take credit for any flow restriction provided by EFCVs, although the valve design does restrict flow. The proposed change does not alter the plant design in any manner. Furthermore, the instrument line break analysis assumptions also remain unchanged. Therefore, there is no impact on the current procedures or accident analysis. As a result, operating the plant in accordance with the proposed Amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Marsha Gamberoni.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: April 6, 2000

Description of amendment requests: The proposed amendments would approve an unreviewed safety question allowing a change to the Updated Final Safety Analysis to allow a change to the analysis methodology used in the High Energy Line Break (HELB) program to incorporate the recommendations of NUREG/CR–2913.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes do not impact the design of these high-energy lines such that previously analyzed [structures, systems and components] SSCs would now be more likely to fail. The changes will not modify high-energy lines to reduce their design capability of maintaining pressure boundary integrity during normal operating and accident conditions. The use of the NUREG/CR–2913 methodology to more accurately define the dynamic effects from high-energy line breaks and cracks does not affect the probability of any analyzed piping break or critical crack events. The use of the NUREG/CR–2913 methodology does not affect high-energy line break or crack initiators or precursors. The [steam generator blowdown] SGBD and [chemical, volume and control system] CVCS letdown piping will be modified and analyzed, as required, to ensure that the piping stresses remain below the threshold for postulation of a critical crack or break. Also, the effects of breaks or critical cracks outside of the break exclusion zones have been reviewed and determined to not have an adverse impact on the piping within the exclusion zone. The modified SGBD piping in the normal flash tank room will be analyzed to ensure that the application of the [Standard Review Plan] SRP for postulating cracks based on piping stresses is acceptable. Therefore, incorporating these new methodologies does not affect equipment malfunction probability, nor does it affect or create new accident initiators or precursors. Additionally, the NRC expected the results of revisions to SRP Section 3.6.2 requirements to yield more efficient regulatory practices, improve plant piping systems design, increase plant reliability, and decrease occupational radiation exposure associated with inspections and repairs.

The proposed changes permit relaxation of protective requirements that may represent a potential increase in the consequences of an accident. However, the proposed changes are consistent with the current regulatory guidelines for HELB evaluations and continue to ensure that protection of SSCs required for accident mitigation is maintained. The NUREG/CR–2913 methodology for determining the effects of jet flow from HELB events shows that SSCs outside the distance of ten piping diameters

from the break or critical crack are undamaged. The SRP allowances for break and crack exclusions embody the understanding that the probability of breaks or critical cracks in piping systems that satisfy the stress criteria is extremely low. For those areas addressed by the methodology changes, protection is not required while still providing reasonable assurance that there is no undue risk to the health and safety of the public. Therefore, protection of SSCs required for accident mitigation is assured by use of these well-defined design methodologies. Thus, there will be no reduction in the capability of those SSCs in limiting the consequences of previously evaluated accidents. Malfunctions caused by HELBs and critical cracks have been previously analyzed in the Updated Final Safety Analysis Report (UFSAR). Thus, no additional radiological source terms are generated, and the consequences of an accident previously evaluated in the UFSAR will not be increased.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not impact the design of these high-energy lines such that previously unanalyzed breaks would now occur. The change to incorporate the NUREG/CR–2913 methodology does not introduce any new malfunctions; it more accurately defines the effects from the high-energy line breaks and cracks for use in the HELB program.

Regarding the incorporation of the SRP break exclusion zones, the break exclusion stress thresholds provide assurance that the piping is capable of withstanding the design loadings without the possibility of developing a through wall crack or break. The piping will be modified and completely analyzed to ensure that the piping stresses are below the threshold for break exclusion. The effects of breaks outside of the break exclusion zones have been reviewed and determined to not have an adverse impact on the piping within the exclusion zone. The modified SGBD piping in the normal flash tank room will be analyzed to ensure that the application of the SRP for postulating cracks based on piping stresses is acceptable. The proposed changes do not result in modification to high-energy lines that would reduce their design capabilities to maintain pressure boundary integrity during normal operating and accident conditions. Therefore, use of the new design methodologies does not affect or create new accident initiators or precursors or create the possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The approval of the license amendment will not result in any modifications to high-energy lines that would reduce their design capabilities to maintain pressure boundary integrity during normal operating and accident conditions. By using these new design methodologies, protection of SSCs required for accident mitigation is assured.

The NUREG/CR–2913 methodology better defines the extent of impingement loads from the postulated high-energy line breaks and cracks. Use of the NUREG/CR–2913 methodology establishes that unprotected components located more than ten diameters from a pipe break or crack in piping containing fluids within the assumptions of NUREG/CR–2913 are without further analysis assumed undamaged by a jet. This conclusion has been reviewed and accepted by the NRC as providing adequate safety margin for high-energy piping. Protection of SSCs required for accident mitigation will continue to be assured by use of the NUREG/CR–2913 methodology if modifications to those SSCs are implemented in the future.

The use of the SRP break exclusion zones incorporates industry lessons learned and ensures that an adequate safety margin is maintained. The SGBD and CVCS letdown piping will be analyzed after modifications are performed in accordance with the original piping design code to ensure that the piping stresses are below the SRP threshold for break exclusion. Also, the effects of breaks outside of the break exclusion zones have been reviewed and determined to not have an adverse impact on the piping within the exclusion zone. The modified SGBD piping in the normal flash tank room will be analyzed to ensure that the application of the SRP for postulating cracks based on piping stresses is acceptable. Therefore, the capability of those SSCs to limit the offsite dose consequences of previously evaluated accidents to levels below the approved acceptance limits will continue to be assured.

The SRP presents the most definitive basis available for specifying the NRC's design criteria and design guidelines for an acceptable level of safety. The SRP guidelines resulted from many years of experience gained by the NRC in establishing and using regulatory requirements in the safety evaluation of nuclear facilities. The implementation of the design guidelines contained in MEB 3–1 assures that adequate protection is provided and a consistent level of safety is maintained. In addition, some regulatory requirements developed over the years as part of the licensing process have resulted in additional safety margins that overlap the safety margins provided by the criteria of MEB 3–1. Consequently, use of these new design methodologies instead of the previous licensing basis requirements cannot significantly reduce the existing margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

In summary, based upon the above evaluation, I&M has concluded that the proposed changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107

NRC Section Chief: Claudia M. Craig

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: June 12, 2000

Description of amendment requests: The proposed amendments would allow the licensee to use the methodology and the alternative source term (AST) contained in 10 CFR 50.67 as described in NUREG–1465, ''Accident Source Terms for Light-water Nuclear Power Plants'' to show compliance with 10 CFR Part 50, Appendix A, Criteria 19.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change to implement the AST involves changes to the methodologies and acceptance criterion associated with the control room dose analysis. The actual sequence and progression of accidents are not changed. However, the regulatory assumptions regarding the analytical treatment of the accidents are affected by the change. The use of an AST alone cannot increase the probability of an accident or the core damage frequency. The proposed change to use the AST does not make any changes to equipment, procedures, or processes that increase the likelihood of an accident. It does not affect any accident initiators or precursors. The methodology is used to determine consequences of an accident and has no impact on their likelihood of occurrence. Therefore, this proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The current acceptance criterion specify the dose to personnel in terms of ''rem whole body'' or equivalent for the duration of the accident, where the dose derived using the AST is given in rem [total effective dose equivalent] TEDE, as described in 10 CFR 50.67. TEDE includes internal and external exposure; whole body includes external exposure only. The current acceptance criterion focuses on doses to the thyroid and the whole body. It is based on the assumption that the major contributor to dose will be radioiodine. Although this may be appropriate with the Technical Information Document (TID)–14844, ''Calculation of Distance Factors for Power and Test Reactor Sites'', source term implemented by RGs 1.4, it may not be true for a source term based on

a more complete understanding of accident sequences and phenomenology. The AST includes a larger number of radionuclides than did the TID–14844 source term as implemented in regulatory guidance. The whole body and thyroid dose criteria considered the noble gases and iodine contributors as the limiting factors. The acceptance criteria of 5 rem TEDE and 5 rem whole body are not equivalent, so they cannot be compared directly. I&M has reanalyzed the loss of coolant accident (LOCA) and non-LOCA events to determine the limiting condition for control room dose using the AST. The calculated dose for all the analyzed events meets the acceptance criterion for GDC–19 as described in 10 CFR 50.67. Therefore, the consequences are not significantly increased.

The [control room emergency ventilation system] CREVS is designed to mitigate the consequences of an accident. It is not assumed to operate in the pressurization mode until after an accident has occurred. The system itself has no impact on the initiation of any evaluated accidents. Therefore, the changes to the CREVS requirements do not increase the probability of an accident previously evaluated.

The proposed changes to the CREVS requirements do not affect the ability to maintain a control room pressure boundary. The changes ensure that the control room will be pressurized following an accident where the CREVS is required to operate to minimize unfiltered inleakage. The proposed 24-hour allowed outage time and subsequent shutdown action are consistent with the requirements for an inoperable filter unit and are reasonable due to the low probability of the initiation of an accident requiring actuation of the CREVS occurring when the pressure boundary is inoperable. Control room dose is significantly increased with increased unfiltered inleakage. Specifying the test condition in the surveillance allows increases in unfiltered inleakage to be identified and evaluated. Preserving the control room pressure boundary provides assurance that the consequences of an accident previously evaluated are not significantly increased.

The proposed applicability and action requirements during the movement of irradiated fuel assemblies ensure the CREVS is operable for the protection of control room personnel in the event of a fuel handling accident.

The proposed changes to the Limiting Conditions for Operation (LCO) address redundant dampers that are being installed. Adding the new equipment to the LCO and action requirements ensures all components associated with the CREVS are operable or action is taken to restore them. The proposed changes do not affect equipment design or operation. Therefore, the consequences of accidents previously evaluated are not increased.

The proposed changes for the charcoal testing method affect activities in the laboratory only and have no impact on plant operation. Sampling and testing charcoal will not initiate an accident. The charcoal adsorbers are used to mitigate the consequences of an accident and are not operated until after an accident has occurred. Therefore, the probability of an accident previously evaluated is not affected. Charcoal testing verifies the ability of the charcoal adsorbers to function as assumed following an accident. The new method for testing the CREVS samples provides more accurate and reproducible laboratory results. These results provide assurance that the charcoal adsorbers will meet the assumed radioiodine removal efficiency following an accident. Therefore, the consequences of accidents previously evaluated are not increased.

The [high-efficiency particular air] HEPA filter/charcoal adsorber units in the CREVS, [engineered safety features ventilation system] ESFVS, and [storage pool ventilation system] SPVS are designed to mitigate the consequences of an accident. They are not assumed to operate until after an accident has occurred. The adsorber units have no impact on the initiation of any evaluated accidents. Therefore, the proposed change to reduce the differential pressure does not increase the probability of an accident previously evaluated. The proposed change to surveillance requirements to reduce the allowable pressure drop across the HEPA filter/charcoal adsorber unit ensures the system flow rates can be maintained so that the system performs as designed. The change ensures that filter units are replaced before airflow is restricted. This allows the required area to be pressurized so that unfiltered inleakage remains within the amount assumed in the accident analysis. Therefore, the proposed revision to reduce the allowable pressure drop requirement does not significantly increase the consequences of an accident previously evaluated.

The remaining changes are administrative in nature. The proposed editorial changes involve reformatting of the individual T/S pages to standardize page appearance and readability and do not alter any requirements. The proposed change to separate the CREVS functions into individual specifications does not affect the system operability requirements or make any changes in how the equipment is operated. The separation of the two functions does not affect the ability of the CREVS to cool or pressurize the control room envelope. The proposed change to incorporate the new laboratory testing standard for charcoal adsorbers in the ESFVS and SPVS is administrative because the test conditions are consistent with the standard referenced in the T/S. These changes are administrative in nature and do not affect the probability or consequences of accidents previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The use of an AST alone cannot create the possibility of a new or different kind of accident. The proposed change to use the AST does not make any changes to equipment, procedures, or processes. The AST does not create any new accident initiators or precursors. It is merely a method used to predict radionuclides released following an accident. Therefore, this proposed change does not increase the possibility of a new or different kind of accident than previously evaluated.

The CREVS is designed to mitigate the consequences of an accident. It is not assumed to operate until after an accident has occurred. The proposed LCO requirement to maintain the control room envelope/pressure boundary operable and expand the area to include the control room heating ventilation and air conditioning equipment room and plant process computer room does not affect system design or operation. The area defined as the control room envelope includes all of the areas that communicate with the control room. A tracer gas test confirmed that the defined control room envelope can be pressurized to greater than or equal to 1/16 inch of water gauge, as assumed in the accident analysis. The proposed surveillance requirement to specify a makeup airflow rate of less than or equal to 1000 cubic feet per minute (cfm) allows periodic verification that the assumed unfiltered inleakage is within the assumptions of the accident analysis. The new requirement provides added assurance that the pressure boundary is maintained operable. The proposed changes to the CREVS requirements do not introduce any new plant equipment or new methods of operating the equipment. No new failure mechanisms are introduced.

The proposed change to incorporate the new testing requirements of ASTM D3803–1989 is administrative in nature. It affects activities in the laboratory only and has no impact on plant operation. The change does not affect the method for obtaining the charcoal sample. It does not cause any of the ventilation equipment to be operated in a new or different manner.

The change to reduce the allowable pressure drop across the pressurization filter train to 4 inches water gauge ensures system performance is consistent with design. The revised value is more restrictive and provides assurance that the affected components of the filter unit are replaced before airflow is reduced to the extent that it affects the pressurization capability of the CREVS, ESFVS, and SPVS. No new failure mechanism is created.

The remaining changes are administrative in nature. The proposed editorial changes involve reformatting of the individual T/S pages to standardize page appearance and readability and do not alter any requirements. The proposed change to separate the CREVS functions into individual specifications does not affect the system operability requirements or make any changes in how the equipment is operated. The separation of the two functions does not affect the ability of the CREVS to cool or pressurize the control room envelope. The proposed change to incorporate the new laboratory testing standard for charcoal adsorbers in the ESFVS and SPVS is administrative because the test conditions are consistent with the standard referenced in the T/S. These changes are administrative in nature and do not create the possibility of a new or different kind of accident from any previously evaluated.

Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change to implement the AST for the revised analysis incorporates the guidance for application of the AST provided in NUREG–1465 and draft RG–1081. The change involves the use of new terminology for the acceptance criterion expressed as 5 rem TEDE. The term TEDE is defined in 10 CFR 20 as the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). The acceptance criteria of 5 rem TEDE and 5 rem whole body are not equivalent. The NRC has revised the current GDC–19 whole body dose criterion with a criterion in terms of rem TEDE for the duration of the accident in 10 CFR 50.67 for the licensee that seeks to revise its current radiological source term with an AST.

The NRC recognizes that an analysis using the AST may represent a reduction in the margin of safety for some applications. The margin of safety is typically defined as the difference between the calculated parameters (offsite and control room dose) and the associated regulatory or safety limit. Implementing the AST in accordance with draft RG–1081 and 10 CFR 50.67 revises the acceptance criterion (regulatory limit) contained in GDC–19 to 5 rem TEDE. The calculated control room dose is below the new acceptance criterion. In 10 CFR 50.67, the rule considers the 5 rem whole body, or its equivalent to any part of the body is accounted for in the definition of TEDE and by the 5 rem TEDE annual limit. Therefore, revising the control room dose analysis using the new terminology for the AST does not involve a significant reduction in a margin of safety.

The margin of safety associated with the CREVS T/S is to maintain control room dose within the limits of GDC–19. The proposed changes to the CREVS requirements ensure that accident analysis assumptions are preserved so that the dose limit is met. The proposed change for control room envelope/pressure boundary provides assurance that positive pressure is maintained in the envelope and that unfiltered inleakage is bounded by the accident assumption. Adding a test requirement for filtered makeup airflow also supports this requirement. The proposed change to expand the applicability requirements and actions provides assurance that the CREVS is operable during times when an accident could occur that may affect the control room environment. The proposed changes that reflect addition of the dampers provides assurance that the control room pressure boundary will be isolated and the envelope will be pressurized when CREVS is actuated following an accident. The proposed change to reduce the allowable pressure drop across the HEPA filter/charcoal adsorber units provides assurance that the CREVS, ESFVS, and SPVS provide the required airflow. This allows areas to be pressurized as required.

The proposed change to incorporate the testing standards recommended for the charcoal adsorbers in GL 99–02 provides assurance that the charcoal adsorbers will remove radioiodine as assumed in the accident analysis. Additional margin is gained by applying a safety factor to the iodine removal efficiency assumed in the accident analysis. This safety factor applies to CREVS , ESFVS, and SPVS. The T/S have also been revised to reflect the iodine removal efficiency assumed in the accident analysis. The acceptance criterion reflects the analysis assumption and the safety factor.

The remaining changes are administrative in nature. The proposed editorial changes involve reformatting of the individual T/S pages to standardize page appearance and readability and do not alter any requirements. The proposed change to separate the CREVS functions into individual specifications does not affect the system operability requirements or make any changes in how the equipment is operated. The separation of the two functions does not affect the ability of the CREVS to cool or pressurize the control room envelope. The proposed change to incorporate the new laboratory testing standard for charcoal adsorbers in the ESFVS and SPVS is administrative because the test conditions are consistent with the standard referenced in the T/S. These changes are administrative in nature and do not involve a significant reduction in the margin of safety.

The proposed changes support the control room dose calculations that demonstrate that the GDC–19 requirement will be met. Therefore, these changes do not involve a significant reduction in the margin of safety.

In summary, based upon the above evaluation, I&M has concluded that these changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107

NRC Section Chief: Claudia M. Craig

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: November 30, 1999, as supplemented June 28, 2000

Description of amendment request: The licensee proposed to amend the unit's Technical Specifications (TS), Section 3.7.2, ''Control Room Envelope Filtration (CREF) System'' and Section 5.5.7, ''Ventilation Filter Testing Program (VFTP),'' to require testing consistent with American Society for Testing and Materials (ASTM) Standard D3803–1989, in lieu of the current D3803–1979. This application for amendment is a response to the NRC's Generic Letter (GL) 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.'' The licensee's November 30, 1999, application proposed to amend only the TS that was then in effect; the TS was fully overhauled in style and format by Amendment No. 91. In anticipation of such overhaul of the TS, the staff declined to proceed with review of the November 30, 1999, application. The licensee's June 28, 2000, application proposes to amend the TS in its current form (i.e., as revised by Amendment No. 91 to the Improved Technical Specification format). The licensee's two submittals differ only in form and style; the proposed TS requirements and supporting analyses in these submittals are identical.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in its November 30, 1999, application. The NRC staff has reviewed the licensee's analysis against the standard of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The operation of the unit in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change will require testing the Standby Gas Treatment (SGT) System and CREF System charcoal filters in accordance with ASTM D3803–1989 versus the current ASTM D3803–1979. Neither the SGT nor CREF system is an initiator or precursor to an accident previously evaluated; both systems perform mitigative functions in response to an accident. Failure of either system would result in the inability to perform its mitigative function but no failure would increase the probability of an accident. Accordingly, changing the test methodology of the charcoal filters will not affect any accident precursors. Therefore, the probability of an accident previously evaluated is not increased.

The SGT system is designed to limit the release of radioactive gases to the environment within the guidelines of 10 CFR 100 for analyzed accidents. The CREF system is designed to limit doses to control room operators to less than the values allowed by General Design Criterion 19. Both systems contain charcoal filters which require laboratory carbon sample analysis be performed in accordance with RG 1.52 as required by TS. Charcoal filter samples are tested to determine whether the filter adsorber efficiency is greater than that assumed in the design basis accident analysis. The proposed TS changes to test the charcoal material in accordance with

ASTM D3803–1989 (versus ASTM D3803–1979) will assure the ability of the subject systems to perform their intended function. As long as these systems perform their intended functions, there will not be any increase in the consequences of an accident previously evaluated.

2. The operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change will require testing the SGT and CREF charcoal filters in accordance with ASTM D3803–1989 versus ASTM D3802–1979. This change will not involve placing these systems in new configurations or operating the systems in a different manner that could result in a new or different kind of accident. Testing in accordance with the ASTM D3803–1989 standard will assure the ability of the subject systems to perform their intended function by providing a more realistic prediction of the capability of the charcoal filters. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed TS changes will not adversely affect the performance characteristics of the SGT or CREF System nor will it affect the ability of these systems to perform their intended functions. Charcoal filter samples are tested to determine whether the filter adsorber efficiency is greater than that assumed in the design basis accident analysis. The proposed TS changes to test the charcoal material in accordance with ASTM D3803–1989 (versus ASTM D3803–1979) will assure the ability of the subject systems to perform their intended function by providing a more realistic prediction of the capability of the charcoal filters. Also, the proposed changes are consistent with the changes recommended in NRC GL 99–02. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Marsha Gamberoni

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 19, 2000

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) Definition 1.7, ''CONTAINMENT INTEGRITY''; Sections 3/4.6.1.1, ''Containment Systems, Primary Containment, CONTAINMENT INTEGRITY''; 3/4.6.1.2, ''Containment Systems, Primary Containment, Containment Leakage''; 3/4.6.1.3, ''Containment Systems, Primary Containment, Containment Air Locks''; 3/4.6.1.6, ''Containment Systems, Primary Containment, Containment Structural Integrity''; 3/4.6.6.3, ''Containment Systems, Secondary Containment Structural Integrity''; and 6.8, ''Procedures and Programs.'' The use of this option requires the implementation of a program based on Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program,'' and modification of the Technical Specifications to reflect this program. The proposed Technical Specifications changes will implement a performance-based Containment Leakage Testing Program in accordance with 10 CFR Part 50, Appendix J, Option B as a substitute for the requirements of 10 CFR Part 50, Appendix J, Option A. The Bases for these Technical Specifications will be modified to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes involved in this license amendment request revise the testing criteria for the containment penetrations. The revised criteria will be based on the guidance in Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.'' This guidance allows for the use of relaxed testing frequencies for containment penetrations that have performed satisfactorily on a historical basis.

The Containment Leakage Rate Testing Program considers the type of service, the design of the penetration, and the safety impact of the penetration in determining the testing interval of each penetration. The [Nuclear Regulatory Commission] Staff has reviewed the potential impact of performance-based testing frequencies for containment penetrations during the development of the Option B regulation. The NRC Staff review is documented in NUREG–1493 ''Performance-Based Containment Leak-Test Program.'' The review concluded that reducing the frequency of Type A tests (Integrated Leak Rate Tests) from three per ten years to one per ten years leads to an imperceptible increase in risk. EPRI Research Project Report TR–104285, ''Risk Impact Assessment of Revised Containment Leak Rate Testing Intervals,'' also concluded that a relaxation of the test intervals for Type B and C penetrations results in a negligible increase in total plant risk.

The use of Option B will allow the extension of testing intervals with a minimal impact on the radiological release rates since most penetration leakage is continually well below the specified limits. In the accident risk evaluation, the NRC Staff noted that the accident risk is relatively insensitive to the containment leakage rate because the accident risk is dominated by accident sequences that result in failure of or bypass of the containment. The containment leak rate and component performance history at Millstone Unit No. 3 are consistent with the conclusions reached in NUREG–1493.

Therefore, the proposed license amendment adopting a performance-based approach for verification of leakage rates for isolation valves, containment penetrations, and the containment overall will continue to meet the regulatory goal of providing an essentially leak-tight containment boundary, and will provide an equivalent level of safety as the current requirements.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

Changes to the Administrative section describe the containment testing program only and cannot increase the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed license amendment does not change the operation of the plant. The proposed changes do not involve any physical or operational changes to structures, systems or components. No new failure mechanisms beyond those already considered in the current plant safety analyses are introduced. Since there is no change to the equipment or the operation of the plant, there is no possibility of creating a new or different kind of accident than previously analyzed. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

Changes to the Administrative section describe the containment testing program only and cannot create a different accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

During the development of 10 CFR Part 50, Appendix J, Option B, the NRC Staff determined the reduction in safety associated with the implementation of the performance-

based testing program. The results of this review are documented in NUREG–1493. The review concluded that reducing the frequency of Type A tests (Integrated Leak Rate Tests) from three per ten years to one per ten years leads to an imperceptible increase in risk. The use of Option B will allow the extension of testing intervals with a minimal impact on the radiological release rates since most penetration leakage is continually well below the specified limits. In the accident risk evaluation, the NRC Staff noted that the accident risk is relatively insensitive to the containment leakage rate because the accident risk is dominated by accident sequences that result in failure of or bypass of the containment. The use of a performance-based testing program will continue to provide assurance that the accident analysis assumptions remain bounding. Therefore, these changes do not involve a significant reduction in the margin of safety.

Changes to the Administrative section describe the containment testing program only and cannot reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut

NRC Section Chief: James W. Clifford

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 19, 2000

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3.7.1.5, ''Plant Systems—Main Steam Line Isolation Valves.'' Specifically, the change will remove the requirement to perform partial stroke testing of the main steam line isolation valves during power operation, modify the TS wording for clarity, combine two surveillance requirements into one, and modify the associated Bases for consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specification 3.7.1.5 will not affect the operability requirements for the MSIVs [Main Steam Isolation Valves] during plant operation in Modes 1 through 4. If a MSIV is not operable, restoration of operability is still required, or the valve will be closed. Once closed, the MSIV is performing the accident mitigation function.

The addition of a footnote to allow performance of the full valve stroke surveillance requirement when the MSIVs are closed to comply with action requirements will allow testing to be performed that may be necessary to demonstrate MSIV operability. Since proper operation of the MSIVs would be expected when utilizing this provision, and this test is used to confirm valve operability, the MSIVs should function properly to mitigate an accident.

The proposed change to remove the requirement to perform partial stroke testing of the MSIVs when the plant is in Modes 1 or 2 will eliminate a high risk activity that is not necessary to ensure the ability of the MSIVs to perform their safety function. Recent valve design changes and improvements to the MSIV solenoid valves have increased reliability in proper main valve operation. Additionally, redundant solenoid valve design precludes a single failure from affecting the ability of the main valve to close within the required time. Thus, the full stroke test is sufficient to ensure operability.

The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The changes do not alter the way any structure, system, or component functions and do not adversely alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. The proposed changes will reduce the likelihood of a transient by eliminating a high risk surveillance. Also, the response of the plant and the operators following these accidents is unaffected by the change. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed changes modify the LCO [Limiting Condition for Operation], applicability, action requirements, and surveillance requirements of Technical Specification 3.7.1.5. These changes have no adverse effect on equipment important to safety. This equipment will continue to function as assumed in the design basis accident analyses. The proposed changes will not result in any plant configuration changes. There will be no adverse effect on plant operation or accident mitigation equipment. The plant response to design basis accidents will not change. Therefore, there will be no significant reduction in a margin of safety[.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut.

Date of amendment request: April 19, 2000.

Description of amendment request: The proposed amendment would modify Technical Specification Sections 3.8.4.1, ''Electrical Power Systems—Containment Penetration Conductor Overcurrent Protective Devices''; 3.8.4.2.1, ''Electrical Power Systems—Motor-Operated Valves Thermal Overload Protection''; and 3.8.4.2.2, ''Electrical Power Systems—Motor-Operated Valves Thermal Overload Protection Not Bypassed. The proposed changes will relocate the requirements for containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices from the Technical Specifications to the Technical Requirements Manual (TRM). The Bases for these Technical Specifications will be modified to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to relocate the requirements for containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices from Technical Specifications to the TRM will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. Operation of the containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices are not accident initiators and cannot cause an

accident. Whether the requirements for the containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices are located in Technical Specifications or the TRM will have no effect on the probability or consequences of any accident previously evaluated. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to relocate the requirements from Technical Specifications to the TRM will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed changes will not introduce any new failure modes that could result in a new accident. Also, the response of the plant and the operators following the design basis accidents is unaffected by the changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed changes will relocate the requirements for containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices from Technical Specifications to the TRM. Any future changes to the relocated requirements will be in accordance with 10 CFR 50.59 and approved station procedures. The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the relocated requirements do not meet any of the 10 CFR 50.36c(2)(ii) criteria on items for which Technical Specifications must be established. Therefore, there will be no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota.

Date of amendment request: July 18, 2000.

Description of amendment request: The proposed amendment would change the Technical Specifications to add operability requirements for the No. 12 residual heat removal service water (RHRSW) pump.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The 12 RHRSW Pump is not an accident (fire) initiator. During a fire in the Control Room or Cable Spreading Room, the ASDS [alternate shutdown system] panel provides alternate shutdown capability. The proposed amendment provides operability requirements to ensure 12 RHRSW Pump is available when alternate shutdown is required so that safe shutdown can be achieved and maintained in accordance with existing procedures. The proposed operability requirements are consistent with previous ASDS requirements for 12 RHRSW Pump and other equipment required for alternate shutdown. Dose to the public and the Control Room operators are not affected by the proposed change.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, the proposed amendment will not significantly increase the probability or the consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment is within current Technical Specification requirements for other equipment required for alternate shutdown and ensures that 12 RHRSW Pump will be available for alternate shutdown when required. The allowed ASDS outage time for 12 RHRSW Pump is consistent with that allowed for other alternate shutdown equipment. The proposed amendment maintains margins of safety. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota.

Date of amendment request: July 20, 2000.

Description of amendment request: The proposed amendment would (1) revise the Technical Specifications (TSs) to include the automatic reactor water cleanup (RWCU) system isolation feature, (2) restore the dose equivalent iodine-131 (DEI) limit to 2 microcuries per gram, (3) change the RWCU reactor water level automatic isolation signal from Low to Low-Low reactor water level, add TSs for the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) low steam line pressure isolation instrumentation, (4) delete the HPCI 150,000 lb/hr low range high flow isolation instrumentation and add a time delay to the 300,000 lb/hr upper range high flow isolation instrumentation, and (5) change the suppression chamber water allowable water level from volume units to level units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed new limiting conditions for operation and surveillance requirements for the RWCU high system flow and room temperature signals and the increase in the allowable reactor coolant DEI are administrative in nature and do not involve an increase in the probability or consequences of a previously evaluated accident. The RWCU automatic isolation instrumentation will reduce the consequences of a break in the RWCU System allowing the reactor coolant DEI to be increased, consistent with the value assumed in the Monticello USAR [updated safety analysis report] for the design basis MSLB [main steam line break] safety analysis.

Changing the reactor water level RWCU automatic isolation setpoint to Low Low Reactor Water Level will not increase the probability or consequences of a break in the RWCU system because new high flow and high area temperature instrumentation provides an improved capability for isolating

a RWCU break independent of changes in reactor water level.

Changes to the HPCI steam supply line automatic isolation instrumentation will not increase the probability or consequences of a break in the HPCI steam line. Elimination of the 150,000 lb/hr isolation signal will improve the reliability of the HPCI system. The remaining 300,000 lb/hr delay high flow isolation signal provides more than adequate protection for a steam line break in this system. The consequences of a break in the HPCI remain bounded by the MSLB safety analysis.

Adding a description of the Group 3 logic and recirc [recirculation] sample valves isolation in the Bases; adding LCOs [limiting conditions for operation] and Surveillance Requirements for the HPCI and RCIC low steam line pressure isolation logic; and changing the method of describing the allowable suppression pool water inventory from volume to level are all administrative changes than [sic] cannot adversely affect the consequences of any evaluated accident.

The proposed changes do not present the opportunity for a new release path for radioactive material.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

No system, structure, or component (SSC) described in the USAR as important to safety is adversely affected by these changes. No new type of credible event could be identified which would be created by the proposed Technical Specification changes. Nothing was identified in these changes which could create the possibility for a new or different kind of accident.

The RWCU line break accident was previously analyzed. However, non-conservative values for mass and energy release were used. New, more conservative, calculations prompted the prudent installation of an automatic RWCU break isolation system at Monticello. The RWCU line break outside of containment is once again bounded by previously analyzed design basis MSLB accident.

Changes to the HPCI steam line high flow instrumentation will improve the reliability of the HPCI system, while continuing to provide a high degree of protection for a break in the HPCI steam supply line.

Addition of LCOs and Surveillance Requirements for the HPCI and RCIC low steam line pressure isolation and changing the way in which suppression pool level is specified in the Technical Specifications are administrative changes that cannot result in a new or different kind of accident than any previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The margin of safety for the RWCU line break can be expressed in terms of the offsite and control room doses which could result from this event. The previous RWCU line break analysis relied on operator action to isolate the line break after an assumed delay of 10 minutes. The new RWCU automatic isolation instrumentation initiates isolation of a RWCU line break in less than 27 seconds. The new isolation logic limits the potential offsite radiological consequences from a RWCU line break to a fraction of the bounding MSLB accident. The proposed Technical Specification would incorporate LCOs and Surveillance Requirements for the new isolation logic and change the reactor water level setpoint to a value which helps prevent unnecessary isolation of the system following reactor scrams. Margins of safety are improved by these changes.

Proposed changes to the HPCI steam line high flow instrumentation will improve the reliability of the HPCI system and increase existing margins of safety for accidents in which HPCI operation is credited. The margin of safety for a HPCI steam line break can also be expressed in terms of the offsite and control room doses which could result from this event. The modified HPCI isolation logic limits the potential offsite radiological consequences from a HPCI steam line break to a fraction of the bounding MSLB accident.

Adding a description of the Group 3 recirc sample isolation to the Bases, adding LCOs and Surveillance Requirements for the HPCI and RCIC low steam line pressure isolation, and changing the method of describing the allowable suppression pool water inventory are administrative changes. No significant changes in plant equipment or plant operation will occur and no equipment important to safety is affected as a result of these changes. No margin of safety is therefore affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Section Chief: Claudia M. Craig

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 27, 2000

Description of amendment request: The amendment would delete a note to Technical Specification Section 12.1.A to allow the Safety Limit Minimum Critical Power Ratio (SLMCPR) to be applicable beyond cycle 14. The amendment would also revise the reference to the General Electric Standard Application for Reactor Fuel (GESTAR) document in Section 6.9.a.4 to incorporate the latest revision.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

Deletion of a note stating that the SLMCPR remains applicable through Cycle 14 does not affect the initiation of any accident. Operation in accordance with the current SLMCPR ensures the consequences of previously analyzed accidents are not changed. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR establishes a performance limit for the fuel. This limit remains unchanged. Deleting a note to reflect this is an administrative change and will not initiate any accident. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. involve a significant reduction in a margin of safety.

GE [General Electric] has performed an evaluation of the SLMCPR for Cycle 15 and found that the cycle specific value, based on current reload plans, is bounded by the generic value calculated for GE 12 fuel. The existing SLMCPR remains unchanged for Cycle 15 and the margin of safety for the prevention of onset of transition boiling is unchanged. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Marsha K. Gamberoni

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: July 20, 2000 (PCN–488, Supplement 1). This application supersedes the licensee's application of August 11, 1999.

Description of amendment requests: The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern California Edison Company to withdraw

its August 11, 1999, application for proposed amendments. The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on September 8, 1999 (64 FR 48866). However, by letter dated July 20, 2000, the licensee withdrew the proposed change. TAC Nos. MA6282 and MA6283 used for the review of the August 11, 1999, application have been closed.

As submitted by the licensee on July 20, 2000, the proposed amendments would modify the Technical Specifications for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 to revise Surveillance Requirement (SR) 3.3.7.3 by providing allowable values in place of analytical limits for certain degraded voltage parameters, and by deleting unnecessary parameter limits in cases where plant safety is not affected. The proposed change would also delete redundant SR 3.3.7.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Proposed Change Number (PCN)–488, Supplement 1, revises the Technical Specification (TS) Surveillance Requirement (SR) acceptance criteria of the Loss of Voltage Signal (LOVS), Degraded Grid Voltage with Safety Injection Actuation Signal (DGVSS), and Sustained Degraded Voltage Signal (SDVS) relay circuits. These circuits are not accident initiators.

PCN–488 Supplement 1 revises the TS SR acceptance requirements to make them more limiting than the present requirements. Because the revised acceptance criteria are more limiting than the present requirements, the consequences of accidents analyzed in the Updated Final Safety Analysis Report (UFSAR) are not increased. PCN–488 Supplement 1 also revises the TS SR acceptance requirements to delete or revise upper and lower bounds in cases where the deleted bound provides no safety benefit. Deleting or revising bounds having no safety significance does not involve a significant increase in the probability or consequences of an accident previously evaluated.

PCN–488 Supplement 1 deletes redundant SR 3.3.7.4, which is not in NUREG–1432, Standard Technical Specifications, Combustion Engineering Plants. Deleting a redundant requirement does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Consequently, the proposed amendment does not result in an increase in the probability or consequences of accidents evaluated in the UFSAR.

(2) Does this amendment request create the possibility of a new or different kind of accident from any accident previously evaluated?

No. PCN–488 Supplement 1 revises the TS SR acceptance criteria of the LOVS, DGVSS, and SDVS relay circuits, which are not accident initiators, and deletes a redundant SR. PCN–488 Supplement 1 does not introduce any revision in the hardware configuration of the protective circuitry for LOVS, DGVSS or SDVS. The measurement required by the deleted, redundant surveillance is required elsewhere in the TS. For these reasons, PCN–488 Supplement 1 does not create the possibility of any new or different kind of accident from any previously evaluated.

(3) Does this amendment request involve a significant reduction in a margin of safety?

No. PCN–488 Supplement 1 provides allowable values for the acceptance criteria for the TS SR for LOVS, DGVSS and SDVS. As such, the revised values are more limiting than the current values, which represent design limits. Therefore, PCN–488 Supplement 1 does not involve a significant reduction in a margin of safety.

PCN–488 Supplement 1 also revises the TS SR acceptance requirements to delete or revise upper and lower bounds in cases where the deleted bound provides no safety benefit. Deleting or revising bounds having no safety significance does not involve a significant reduction in a margin of safety.

PCN–488 Supplement 1 additionally deletes a redundant SR. Because the deleted surveillance is required elsewhere in the TS, this action does not involve a significant reduction in a margin of safety.

For these reasons, PCN–488 Supplement 1 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770

NRC Section Chief: Stephen Dembek

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: August 10, 2000.

Brief description of amendments: The proposed change would revise Technical Specification 5.6.5 entitled CORE OPERATING LIMITS REPORT. TXU Electric proposes to revise the Large Break Loss of Coolant Accident methodology used at Comanche Peak Steam Electric Station, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change involves an administrative change only. Designation of the Revised Large Break Loss of Coolant Accident analysis methodology, described in ERX–2000–002–P, as the approved Large Break Loss of Coolant Accident analysis methodology is required to maintain the accuracy of the Technical Specification 5.6.5 (Core Operating Limits Report) and to maintain consistency with the resolution of issues as prescribed in 10 CFR 50.46.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change involves an administrative change only. Technical Specification 5.6.5, Item 15, is being changed to reference the revised Large Break Loss of Coolant Accident analysis methodology currently under NRC review. No actual plant equipment will be affected by the proposed change. An analysis for Unit 1, Cycle 8, is imbedded in the referenced Topical Report, from which it is concluded that no failure modes, not bounded by previously evaluated accidents, will be created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No

Margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves an administrative change (subject to NRC approval of the revised Large Break Loss of Coolant Accident Analysis methodology) only to incorporate the revised Large Break Loss of Coolant Accident analysis methodology into the allowable analysis methodologies specified in Technical Specification 5.6.5.

No actual plant equipment will be affected by the proposed change. The compliance of the revised methodology with the requirements of 10 CFR 50.46 and Appendix K will be addressed through the NRC staff's review of the topical report. Therefore, it is concluded that the use of the proposed methodology will not degrade the confidence in the ability of the fission product barriers to limit the level of radiation dose to the public.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Section Chief: Robert A. Gramm

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: July 21, 2000 (ULNRC–04285)

Description of amendment request: The proposed amendment would revise Limiting Condition for Operation (LCO) 3.9.4, ''Containment Penetrations,'' of the Callaway Technical Specifications (TS) to allow containment penetrations with direct access to the outside atmosphere to be open under administrative controls during refueling operations, by adding a note to the LCO that states ''containment penetration flow path(s) providing direct access from the containment atmosphere to the outside atmosphere may be unisolated under administrative controls.'' In addition, there would be a format and editorial correction to TS 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Start Air,'' to correct an error in the conversion to the improved TS issued May 28, 1999, in Amendment No. 133. There are also revisions to the TS Bases for the proposed changes to LCO 3.9.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The status of the penetration flow paths during refueling operations has no [effect] on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a FHA [fuel handling accident] inside containment with open penetration flow paths are bounded by the current analysis described in the FSAR [Callaway Final Safety Analysis Report] and the probability of an accident is not affected by the status of the penetration flow paths, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the Improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements in the technical specifications.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The open containment penetration flow paths are not accident initiators and do not represent a significant change in the configuration of the plant. The proposed allowance to open the containment penetrations during refueling operations will not adversely affect plant safety functions or equipment operating practices such that a new or different accident could be created.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements [in] the technical specifications.

Therefore, the proposed revision will not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Technical Specification LCO 3.9.4 closure requirements for containment penetrations ensure that the consequences of a postulated FHA inside containment during core alterations or irradiated fuel handling activities are minimized. The LCO establishes containment closure requirements, which limit the potential escape paths for fission products by ensuring that there is at least one integral barrier to the release of radioactive material. The proposed change to allow the containment penetration flow paths to be open during refueling operations under administrative controls does not significantly affect the expected dose consequences of a FHA because the limiting FHA is not changed. The proposed administrative controls provide assurance that prompt closure of the penetration flow paths will be accomplished in the event of a FHA inside containment thus minimizing the transmission of radioactive material from the containment to the outside environment. Under the proposed TS change, the provisions to promptly isolate open penetration flow paths provide assurance that the offsite dose consequences of a FHA inside containment will be minimized.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the Improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements in the technical specifications.

Therefore, the proposed changes to the Technical Specifications do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Section Chief: Stephen Dembek

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 10, 2000

Description of amendment request: The proposed amendments would implement a Pressure and Temperature Limits Report (PTLR) concurrent with the implementation of the Improved Standard Technical Specifications. NRC Generic Letter 96–03 provides guidance for licensees allowing relocation of the reactor coolant system pressure temperature limit curves and low temperature overpressure protection system limits from the Technical Specifications to a PTLR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes relocate the pressure-temperature limits and low temperature overpressure protection limits from the Technical Specifications to a Pressure Temperature Limits Report (PTLR). The proposed changes also provide revised pressure-temperature limits and revised low temperature overpressure protection limits. Appropriate design and safety limits are retained in the Specifications, thereby meeting the requirements of 10 CFR 50.36. Specific, approved methodologies used to determine and evaluate the parameter requirements are added to the Specifications and a reporting requirement is added to

ensure the NRC is apprised of all changes. Operation of the PBNP will continue to meet all design and safety analysis requirements because approved methodologies are required to be used to evaluate and change parameters, and appropriate safety and design limits maintained in the Technical Changes.

Therefore, neither the probability nor consequences of an accident previously evaluated can be increased.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not create a new or different kind of accident from any accident previously evaluated.

Operation of PBNP, in accordance with the proposed changes, will continue to meet all design and safety limits. Appropriate design and safety limits continue to be controlled within the Technical Specifications as they are presently. These changes will not result in a change to the design and safety limits under which PBNP operation has been determined to be acceptable. These changes cannot result in a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not result in a significant reduction in a margin of safety.

Appropriate safety limits continue to be controlled by the Specifications. Changes to the relocated pressure-temperature and low temperature overpressure protection limits will be accomplished using NRC approved methodologies, thereby ensuring operation will continue within the bounds of the existing safety analyses including all applicable margins of safety. Therefore, operation in accordance with the proposed changes cannot result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Section Chief: Claudia M. Craig

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: February 1, 2000, as supplemented on June 1 and July 13, 2000

Description of amendment request: The proposed amendment would change the Technical Specification and Bases Sections associated with the requirements for the Reactor Coolant System (RCS) loops and Shutdown Cooling (SDC) System trains during all modes of plant operation. Many of the proposed changes are associated with the format and structure of the affected Technical Specifications and will not result in any technical changes to the current requirements. The proposed format changes will result in Technical Specifications that will be clear, concise, and easier for the control room operators to use. Some of the changes are proposed to achieve consistency with the Standard Technical Specifications for Combustion Engineering Plants in NUREG–1432, Rev. 1. The Bases for the Technical Specifications would also be revised to reflect the proposed changes.

Date of publication of individual notice in ***Federal Register:*** July 31, 2000 (65 FR 46748)

Expiration date of individual notice: August 31, 2000

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: June 19, 2000 (U–603378)

Brief description of amendment: The amendment changes the leak rate test frequency for the primary containment feedwater penetrations sealed by the Feedwater Leakage Control System.

Date of issuance: August 11, 2000

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 131

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: July 3, 2000 (65 FR 41103)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: August 20, 1999, as supplemented February 18, April 19, and May 22, 2000.

Brief description of amendment: The amendment revised the calibration frequency of the 4kV (kilovolt)

Engineered Safeguards Bus Undervoltage Relays (Diesel Start) (item 43.a of Table 4.1–1 of the Technical Specifications (TSs)) from a refueling interval to annually. The TS Bases have also been changed to reflect that the degraded voltage relay setpoint tolerance is being changed from an ''as left'' to an ''as found'' reading. Additionally, the amendment approves a revision to the Updated Final Safety Analysis Report (UFSAR) to allow for manual operator action for voltage protection rather than full automatic voltage protection. These changes are reflected in the revised UFSAR pages 8.2–3 and 8.2–5.

The amendment also adds new TSs 3.7.2.a(ii) and 3.7.2.h to address voltage on the 230 kV grid as a precondition of criticality and to provide a time limit for when the 230 kV grid voltage is found to be insufficient to support loss-of-coolant accident electrical loading during power operation. Various minor editorial changes have also been made. The Bases have also been changed to reflect the addition of the two new TSs and to provide clarification of the components to which surveillance is applicable.

Date of issuance: August 3, 2000

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 224

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 1, 1999 (64 FR 67334) and June 2, 2000 (65 FR 35404).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam

Electric Plant, Unit No. 2, Darlington County, South Carolina.

Date of application for amendment: June 14, 2000, as supplemented July 14, 2000.

Brief description of amendment: The amendment revises Technical Specification 5.6.5 to incorporate analytical methodologies that are used for the Core Operating Limits Report that have been accepted by the Nuclear Regulatory Commission for referencing in licensing in cycle-specific applications.

Date of issuance: August 3, 2000.

Effective date: August 3, 2000.

Amendment No.: 188.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 28, 2000 (65 FR 39957).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois.

Date of application for amendments: January 11, 2000.

Brief description of amendments: The amendments revised the Technical Specifications (TS) to increase allowable out-of-service times (AOTs) and surveillance test intervals (STIs) for selected actuation instrumentation. The amendments implement AOT/STI changes based on Topical Reports by General Electric Company and the Boiling Water Reactor Owners' Group which have previously been reviewed and approved by NRC.

Date of issuance: August 2, 2000.

Effective date: Immediately, to be implemented within 120 days.

Amendment Nos.: 177 and 173.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 8, 2000 (65 FR 12290).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 2000.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York.

Date of application for amendment: November 18, 1999, incorporating supporting analyses provided by letter dated October 8, 1999, as supplemented by letters dated February 14, March 21, April 6, April 13, and May 11, 2000.

Brief description of amendment: The proposed amendment would remove the requirement for charcoal filters and high efficiency particulate filters in the containment fan cooler system, revise the time requirement for subcriticality prior to core alterations from 174 hours to 100 hours, revise flow rate requirements for containment fan coolers and control room ventilation units to be consistent with the design basis, state that the control room ventilation system, in the post-accident mode, will be operated with filtered intake of outside air, allow containment personnel access doors to be open during refueling operations, and allow an administrative substitution of ''monthly'' in place of ''every 31 days'' in various surveillance requirements.

Date of issuance: July 27, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 211.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 20, 2000 (65 FR 3256).

The February 14, March 21, April 6, April 13, and May 11, 2000, submittals contained supplemental information that did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania.

Date of application for amendment: November 29, 1999, as supplemented December 20, 1999.

Brief description of amendment: The amendment added a license condition authorizing a one-time extension of the steam generator inspection interval to permit the next inspection to coincide with the next scheduled refueling outage.

Date of issuance: August 4, 2000.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No: 112.

Facility Operating License No. NPF–73. Amendment revised the License.

Date of initial notice in ***Federal Register:*** April 5, 2000 (65 FR 17915). The December 20, 1999, letter provided additional information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2000.

No significant hazards consideration comments received: No.

GPU Nuclear Corporation and Saxton Nuclear Experimental Corporation, Docket No. 50–146, Saxton Nuclear Experimental Facility (SNEF), Bedford County, Pennsylvania.

Brief description of amendment: The amendment changes the Technical Specification organizational and administrative controls for the SNEF to reflect changes in GPU Nuclear following the sale of the Oyster Creek Nuclear Generating Station.

Date of Issuance: August 10, 2000.

Effective date: The license amendment is effective as of its date of issuance.

Amendment No.: 16.

Amended Facility License No. DPR–4: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 28, 2000 (65 FR 39956). The Commission's related evaluation of the amendment is contained in a safety evaluation dated August 10, 2000.

No significant hazards consideration comments received: No.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

Date of application for amendment: November 5, 1999, as supplemented by two letters dated April 6, 2000, and April 13, 2000.

Brief description of amendment: These amendments conform the license to reflect the transfer of Operating License No. DPR–16 for the Oyster Creek Nuclear Generating Station.

Date of Issuance: August 8, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 213.

Facility Operating License No. DPR–16: Amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 16, 1999 (64 FR 70292).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 6, 2000.

The April 6 and April 13, 2000, supplements did not change the initial proposed no significant hazards consideration determination and were within the scope of the initial application as originally noticed.

No significant hazards consideration comments received: No.

GPU Nuclear, Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania.

Date of application for amendment: April 6, 2000, as supplemented by letters dated May 25, 2000, July 18, 2000, and August 8, 2000.

Brief description of amendment: The amendment reflects an administrative name change from GPU Nuclear Corporation to GPU Nuclear, Inc. Furthermore, the license amendment makes an editorial change to better describe TMI–2's use of site physical security, guard training and qualification, and safeguard contingency plans that are maintained by the Three Mile Island Nuclear Station, Unit 1, licensee, AmerGen Energy Company, LLC. In addition, the licensee requested that minor changes (mainly in titles) be made in Section 6.0 of the Technical Specifications to reflect the TMI–2 organizational and administrative controls that will exist following the sale of the Oyster Creek Nuclear Generating Station, which occurred August 8, 2000. The May supplement provided a response to a staff request for additional information, and the July and August supplements related to the requested effective date of the amendment. The supplements did not expand the scope of the application, as noticed in the ***Federal Register*** (65 FR 21484, dated April 21, 2000), or change the proposed no significant hazards consideration determination.

Date of issuance: August 9, 2000.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 54.

Facility Operating License No. DPR–73: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** April 21, 2000 (65 FR 21484).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 2000.

No significant hazards consideration comments received: No.

IES Utilities, Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa.

Date of application for amendment: November 24, 1999, as supplemented February 4 and March 17, 2000.

Brief description of amendment: The amendment conforms the license to reflect the transfer of operating authority under Operating License No. DPR–49 to Nuclear Management Company, LLC, as approved by order of the Commission dated May 15, 2000.

Date of issuance: August 7, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 232.

Facility Operating License No. DPR–49: The amendment revised the Operating License.

Date of initial notice in Federal Register: February 4, 2000 (65 FR 5703).

The February 4 and March 17, 2000, supplements were within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: December 7, 1999

Brief description of amendment: This amendment removes the action requirement to suspend all operations involving positive reactivity additions from Technical Specification (TS) 3.4.2.1, ''Reactor Coolant System—Safety Valves,'' TS 3.4.2.2, ''Reactor Coolant System—Safety Valves,'' and TS 3.7.6.1, ''Plant Systems—Control Room Emergency Ventilation System.'' The associated Bases have also been revised.

Date of issuance: August 7, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 248.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 26, 2000 (65 FR 4285).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 2000.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: November 24, 1999, as supplemented February 2, 2000.

Brief description of amendment: The amendment conforms the license to reflect the transfer of operating authority under Operating License No. DPR–22 to Nuclear Management Company, LLC, as approved by order of the Commission dated May 15, 2000.

Date of issuance: August 7, 2000

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 110.

Facility Operating License No. DPR–22. Amendment revised the Operating License.

Date of initial notice in ***Federal Register:*** February 15, 2000 (65 FR 7574)

The February 2, 2000, supplement was within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, and Docket No. 72–10, Prairie Island Independent Spent Fuel Storage Installation, Goodhue County, Minnesota

Date of application for amendments: November 24, 1999, as supplemented February 2, 2000.

Brief description of amendment: The amendments conform the licenses to reflect the transfer of operating authority under Operating License Nos. DPR–42 and DPR–60 and Materials License No. SNM–2506 to Nuclear Management Company, LLC, as approved by order of the Commission dated May 15, 2000.

Date of issuance: August 7, 2000

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 153 and 144

Facility Operating License Nos. DPR–42 and DPR–60 and Materials License No. SNM–2506: Amendments revised the Operating Licenses and Materials License.

Date of initial notice in ***Federal Register:*** February 15, 2000 (65 FR 7574).

The February 2, 2000, supplement was within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: March 1, 1999, as supplemented October 1, and October 6, 1999, and June 6, 2000.

Brief description of amendment: The amendment supports the installation of a digital Power Range Neutron Monitoring system and the incorporation of the long-term thermal-hydraulic stability solution hardware.

Date of issuance: August 1, 2000

Effective date: Effective as of date of issuance and shall be implemented prior to restart from the Peach Bottom Atomic Power Station, Unit 2, Fall 2000 refueling outage.

Amendment No.: 232

Facility Operating License No. DPR–44: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 2, 1999 (64 FR 29711). The October 1, and October 6, 1999, and June 6, 2000 submittals provided clarifying information that did not expand the scope of the original ***Federal Register*** notice or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia.

Date of application for amendments: October 1, 1999.

Brief description of amendments: The amendments revise the minimum fuel oil level for the diesel generator day tanks in Surveillance Requirement 3.8.1.3 and revise the acceptable fuel oil level storage band in Required Action Statement B of Limiting Condition for Operation 3.8.3.

Date of issuance: July 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 221 and 162.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 17, 1999 (64 FR 62715).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia.

Date of application for amendments: August 30, 1999.

Brief description of amendments: The amendments revised the Technical Specifications 5.2.2, ''Unit Staff'', to raise the level of the approval authority for deviations above the guidelines provided to minimize unit staff overtime. Specifically, the amendments change the level of overtime approval authority from ''department superintend'' to ''department manager.''

Date of issuance: August 10, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 113 and 91.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 9, 2000 (65 FR 6410).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: February 18, 2000.

Brief description of amendments: These amendments revise Technical Specification (TS) Section 5.3, ''Design Features—Reactor Core,'' and TS Section 6.9, ''Administrative Controls—Reporting Requirements'' to identify M5 alloy as a material used in the construction of fuel assemblies and to cite the topical report that describes the fuel.

Date of issuance: July 31, 2000.

Effective date: July 31, 2000.

Amendment Nos.: 258 and 249.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TSs.

Date of initial notice in ***Federal Register:*** April 5, 2000 (65 FR 17920).

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated April 10, 2000, and in a Safety Evaluation dated July 31, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: June 30, 1999, as supplemented June 16 and August 3, 2000.

Brief description of amendments: Updates Technical Specification (TS) requirements, and appropriate TS Bases sections for reactor coolant system (RCS) leakage detection and RCS operational leakage specifications to be consistent with the Improved Westinghouse Standard TS (NUREG–1431).

Date of issuance: August 4, 2000.

Effective date: August 4, 2000.

Amendment Nos.: 259 and 250.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TS.

Date of initial notice in ***Federal Register:*** October 20, 1999 (64 FR 56533).

The June 16 and August 3, 2000, letter provided clarifying information and changes that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2000.

No significant hazards consideration comments received: No.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin.

Date of application for amendments: November 24, 1999, as supplemented January 31, 2000.

Brief description of amendments: The amendments conform the licenses to reflect the transfer of operating authority under Operating License Nos. DPR–24 and DPR–27 to Nuclear Management Company, LLC, as approved by order of the Commission dated May 15, 2000.

Date of issuance: August 7, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 197 and 202.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Operating Licenses.

Date of initial notice in ***Federal Register:*** February 4, 2000 (65 FR 5705).

The January 31, 2000, supplement was within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin.

Date of application for amendment: November 24, 1999, as supplemented December 7, 1999, and February 8, 2000.

Brief description of amendment: The amendment conforms the license to reflect the transfer of operating authority under Operating License No. DPR–43 to Nuclear Management Company, LLC, as approved by order of the Commission dated May 15, 2000.

Date of issuance: August 7, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 149.

Facility Operating License No. DPR–43: Amendment revised the Operating License.

Date of initial notice in ***Federal Register:*** February 4, 2000 (65 FR 5706).

The February 8, 2000, supplement was within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 16th day of August 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–21340 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG—1718]

Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued NUREG–1718 entitled Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility in final.

ADDRESSES: NUREG–1718 is available for inspection and copying for a fee at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

A free single copy of NUREG–1718, to the extent of supply, may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001 or submitting an e-mail to distribution@nrc.gov. NUREG–1718 is available on the World Wide Web at *http://www.nrc.gov/NRC/NUREGS/indexnum.html.*

FOR FURTHER INFORMATION CONTACT: For further information regarding NUREG–1718 contact Andrew Persinko, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6522.

SUPPLEMENTARY INFORMATION:

Background

The NRC expects to receive a license application from Duke Cogema Stone and Webster, commonly referred to as DCS, to license a Mixed Oxide (MOX) Fuel Fabrication Facility under 10 CFR Part 70. Under Part 70, the MOX facility is classified as a plutonium processing and fuel fabrication plant. As an applicant for a license to possess and use special nuclear material (SNM) at a plutonium processing and fuel fabrication plant, DCS must obtain the NRC's approval prior to starting to construct the facility. DCS has indicated its intent to submit the license application in two parts, information for a construction permit and information for a possession and use license for SNM. The NRC will first determine if it can grant DCS construction approval. The NRC makes this determination based on contents of the license application that are specifically required by Part 70 for construction approval. The required material is described in detail in 10 CFR 70.22(f).

Following the applicant's second submittal, the NRC will determine if it can grant DCS a possession and use license for SNM. The NRC makes this determination based on the full content of the license application as described in 10 CFR 70.22 and Subpart H to the revised 10 CFR Part 70.

The NRC developed NUREG–1718 to provide guidance to the NRC staff reviewers in the Office of Nuclear Material Safety and Safeguards who will perform safety, safeguards, and environmental reviews of the anticipated application for a license to

possess and use special nuclear material for the MOX facility (including the construction approval review). The NRC developed NUREG–1718 in parallel with NUREG–1520, Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility, which the NRC staff developed to support uranium fuel fabrication facilities licensed under 10 CFR Part 70. The NRC indicated its intent to issue a revision to 10 CFR Part 70. The NRC staff has ensured that NUREG–1718 remained consistent with the requirements of the new rule as proposed and has also attempted to ensure that, where applicable for a MOX facility, NUREG–1718 is consistent with NUREG–1520. However, reviewers and other readers should be aware that NUREG–1718 contains specific guidance for a license application from DCS for a MOX facility. The NRC does not intend to apply this guidance to any other facility under its regulatory authority.

NUREG–1718 is intended to ensure the quality, uniformity, stability, and predictability of the staff reviews. It presents a defined basis from which to evaluate proposed changes in the scope and requirements of the staff reviews. NUREG–1718 makes information about NRC acceptance criteria widely available to interested members of the public and the regulated industry. Each section of NUREG–1718 addresses the responsibilities of persons performing the review, the review areas, the Commission's regulations pertinent to specific technical matters, the acceptance criteria used by the staff, the method used to accomplish the review, and the conclusions that are appropriate for the Safety Evaluation Report (SER) for both the construction approval review and the license review.

Analysis of Public Comments

On February 1, 2000, the NRC issued a Notice of Availability that it was accepting public comments on the first draft of NUREG–1718 (65 FRN 4856). The public comment period closed on March 27, 2000, including a two-week extension at the request of the U.S. Department of Energy (DOE–65 FRN 13063).

The NRC received about 311 written comments from 12 commenters. On May 9, 2000, the NRC conducted a public meeting to discuss the public comments. In addition to NRC staff and other meeting participants, 6 of the commenters were represented. The NRC did not receive any significantly new comments at the public meeting. The NRC was able to consider all the comments it received in making revisions to NUREG–1718. A summary of the public comments and staff responses is available on the World Wide Web at *http://www.nrc.gov/NMSS/FCSS/fcssindex.html.*

Dated at Rockville, Maryland, this 17th day of August 2000.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–21512 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of Information Collection, OPM Form 805 Series

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that OPM will submit a request to the Office of Management and Budget for reclearance of the OPM Form 805 Series that collects information from the public. OPM Form 805, Application to be Listed Under the Voting Rights Act of 1965, is used to elicit information from persons applying for voter registration under the authority of the Voting Rights Act of 1965. The requirements for voter eligibility vary from State to State; therefore, OPM Form 805 is a blanket number covering a number of forms that conform to the individual State's requirements. For a number of years, there were forms for 10 States: Alabama, Arizona, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, Texas (English and Spanish language versions), and Utah. Because OPM has never been asked to list voters in Arizona, New Mexico, North Carolina, and Utah, we allowed the approval of those forms to lapse in 1997 at the request of the Voting Rights Section in the Civil Rights Division of the Department of Justice. The form requires 20 minutes to complete. Approximately 10 individuals complete the form annually for a total public burden of 4 hours.

For copies of this proposal, call Ms. Mary Beth Smith-Toomey on (202) 606–8358 or email mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before October 23, 2000.

ADDRESSES: Send or deliver comments to Anna Marie Schuh, Assistant Director for Merit Systems Oversight, Office of Personnel Management, 1900 E Street, NW., Room 7677, Washington, DC 20415–6000.

FOR FURTHER INFORMATION, CONTACT: P. Kaziah Clayton on (202) 606–2531 or email to pkclayto@opm.gov.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–21475 Filed 8–22–00; 8:45 am]

BILLING CODE 6325–01–U

POSTAL SERVICE

Notice of Meeting

AGENCY: Postal Service.

ACTION: Notice of meeting.

SUMMARY: The Postal Service will hold further meetings of a Consensus Committee to develop recommendations for revision of USPS STD 7A, which governs the design of curbside mailboxes. The committee will develop and adopt its recommendations through a consensus process. The committee will consist of persons who represent the interests affected by the proposed rule, including mailbox manufacturers, mailbox accessory manufacturers, and postal customers.

Meeting Date: The next committee meeting is tentatively scheduled for September 19, 2000.

Meeting Place: U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Annamarie Gildea, (202) 268–3558.

SUPPLEMENTARY INFORMATION: Mail comments and all other communications regarding the committee to Annamarie Gildea, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Room 7142, Washington, DC 20260. Committee documents will be available for public inspection and copying between 9 a.m. and 4 p.m. weekdays at the address above. Entry into U.S. Postal Service Headquarters is controlled. Persons wishing to attend the next meeting must send a fax to Annamarie Gildea at 202–268–5293 no later than September 12, 2000 with the person's name and organizational affiliation, if any. For additional information regarding the USPS STD 7A Consensus Committee,

see **Federal Register** Vol 64, No. 158, p. 44681 (August 17, 1999).

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–21542 Filed 8–22–00; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c2–12; SEC File No. 270–330; OMB Control No. 3235–0372.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 15c2–12 Disclosure requirements for municipal securities

Rule 15c2–12 under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*A) requires underwriters of municipal securities: (1) To obtain and review a copy of an official statement deemed final by an issuer of the securities, except for the omission of specified information; (2) in non-competitively bid offerings, to make available, upon request, the most recent preliminary official statement, if any; (3) to contract with the issuer of the securities, or its agent, to receive, within specified time periods, sufficient copies of the issuer's final official statement to comply both with this rule and any rules of the MSRB; (4) to provide, for a specified period of time, copies of the final official statement to any potential customer upon request; (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or other specified person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information about the issue or issuer on a continuing basis to a nationally recognized municipal securities information repository; and (6) to review the information the issuer of the municipal security has undertaken to provide prior to recommending a transaction in the municipal security.

These disclosure and recordkeeping requirements will ensure that investors have adequate access to official disclosure documents that contain details about the value and risks of particular municipal securities at the time of issuance while the existence of compulsory repositors will ensure that investors have continued access to terms and provisions relating to certain static features of those municipal securities. The provisions of Rule 15c2–12 regarding an issuer's continuing disclosure requirements assist investors by ensuring that information about an issue or issuer remains available after the issuance.

Municipal offerings of less than $1 million are exempt from the rule, as are offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors, have short-term maturities, or have short-term tender or put features. It is estimated that approximately 12,000 brokers, dealers, municipal securities dealers, issuers of municipal securities, and nationally recognized municipal securities information repositories will spend a total of 123,850 hours per year complying with Rule 15c2–12. Based on average cost per hour of $50, the total cost of compliance with Rule 15c2–12 is $6,192,500.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 15, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21429 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Datalink.net, Inc., Common Stock, $.01 Par Value) File No. 1–15569

August 16, 2000.

Datalink.net, Inc., a Nevada corporation (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq''). On August 11, 2000, the Company filed a Registration Statement on Form 8–A with the Commission in conjunction with the new Nasdaq listing. Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on August 14, 2000. The Company is seeking to withdraw its Security from listing and registration on the Amex because it believes that it is in its best interest to have the Security trade on the Nasdaq rather than on the Amex.

On May 16, 2000, the Company's board of directors approved a resolution authorizing the Security's new Nasdaq listing and withdrawal from listing and registration on the Amex. The Amex has in turn advised the Company that its application for such withdrawal has been made in accordance with the rules of the Amex and that the Amex has no objection to such withdrawal, pending approval of the Company's application by the Commission, In the light of its new listing on the Nasdaq, the Amex has not required the Company to notify its shareholders of its intention to withdraw the Security from listing and registration on the Amex.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing on the Nasdaq and registration under Section 12(g) of the Act.[3]

Any interested person may, on or before September 7, 2000, submit by letter to the Secretary of the Securities

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–21518 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (White Electronic Designs Corporation, Common Stock, $.10 Par Value) File No. 1–04817

August 17, 2000.

White Electronic Designs Corporation, an Indiana corporation (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq''). On June 7, 2000, the Company filed a Registration Statement on Form 8–A with the Commission in conjunction with the new Nasdaq listing. Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on June 7, 2000. The Company believes that the Nasdaq is the preferred marketplace for the securities of technology companies and that the Company's Security will enjoy better exposure on the Nasdaq than it has on the Amex.

On May 18, 2000, the Company's board of directors approved resolutions authorizing the Security's new Nasdaq listing and withdrawal from listing and registration on the Amex. The Amex has in turn advised the Company that its application for such withdrawal has been made in accordance with the rules of the Amex and that the Amex has no objection to such withdrawal, pending approval of the Company's application by the Commission. In the light of its new listing on the Nasdaq, the Amex has not required the Company to notify its shareholders of its intention to withdraw the Security from listing and registration on the Amex.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing on the Nasdaq and registration under section 12(g) of the Act.[3]

Any interested person may, on or before September 8, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–21519 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24600; 812–12152]

Nations Fund, Inc., et al.; Notice of application

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit a series of Nations Reserves (''NR'') to acquire all of the assets and liabilities of a series of Nations Fund, Inc. (''NFI'') (the ''Reorganization''). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: NFI, NR and Banc of America Advisors, Inc. (''BAAI'').

FILING DATE: The application was filed on June 29, 2000. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 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 by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, One Bank of America Plaza, 101 South Tryon Street, Charlotte, NC 28255.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, (202) 942–0634, or Michael W. Mundt, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NFI, a Maryland corporation, is an open-end management investment company registered under the Act. NFI currently offers 7 series, including Nations International Growth Fund (the ''Acquired Fund''). NR, a Massachusetts business trust, is an open-end management investment company registered under the Act. NR currently offers 16 series, including Nations International Equity Fund (the ''Acquiring Fund,'' together with the Acquired Fund, the ''Funds''). The Acquiring Fund is a feeder fund which invests all of its assets in a corresponding master portfolio of Nations Master Investment Trust, an open-end management investment

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 200.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

company registered under the Act (''Master Portfolio'').

2. BAAI is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is the investment adviser for the Acquired Fund and the Master Portfolio. BAAI is a wholly-owned subsidiary of Bank of America Corporation. The Acquired Fund is currently subadvised by Gartmore Global Partners (''Gartmore''), an investment adviser registered under the Advisers Act. The Master Portfolio is subadvised by Gartmore and by INVESCO Global Asset Management (N.A.) Inc. (''INVESCO'') and Putnam Investment Management, Inc. (''Putnam''), which are also investment advisers registered under the Advisers Act. Gartmore, INVESCO, and Putnam are not affiliated persons of BAAI.

3. Bank of America Corporation, Bank of America, N.A., and/or certain of their affiliates that are under common control with BAAI (the ''Bank of America Group''), hold of record, in their name and in the names of their nominees, more than 25% of the outstanding voting securities of each of the Funds. All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity. None of the companies of the Bank of America Group owns an economic interest in either of the Funds.

4. On April 26, 2000, the board of trustees of NR (the ''Acquiring Fund's Board'') and the board of directors of NFI (the ''Acquired Fund's Board,'' together with the Acquiring Fund's Board, the ''Boards''), including a majority of the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Members'') of the respective Funds, approved a plan of reorganization (''Plan'') between the Acquiring Fund and the Acquired Fund. Under the Plan, on the date following the closing date (''Closing Date''), which is currently anticipated to be September 8, 2000, the Acquiring Fund will acquire all of the assets and liabilities of the Acquired Fund in exchange for shares of designated classes of the Acquiring Fund that have an aggregate net asset value equal to the value of the Acquired Fund's net assets, determined as of the Closing Date unless mutually agreed otherwise (''Valuation Time''). The value of the assets will be determined in accordance with NFI's and NR's then current valuation procedures. On the date following the Closing Date, the Acquired Fund will make a pro rata distribution of share of the Acquiring Fund to its shareholders and liquidate.

5. Applicants state that the Acquiring Fund will pursue investment objectives and follow principal investment strategies that are substantially similar to those of the Acquired Fund. Each of the Funds has four classes of shares. Applicants state that the distribution and shareholder servicing arrangements for the respective classes of the Acquired Fund. For purposes of calculating any deferred sales charge, the Acquired Fund's shareholders will be deemed to have held shares of the Acquiring Fund since the date the shareholder initially purchased shares of the Acquired Fund. No sales charge will be imposed in connection with the Reorganization.

6. The Boards, including all of their Disinterested Members, found that participation in the Reorganization is in the best interest of each Fund and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. In approving the Reorganization, the Boards considered, among other things: (a) The potential effect of the Reorganization; (b) the respective expense ratios of the Funds; (c) the compatibility of the investment objectives and investment strategies of the Funds; (d) the tax-free nature of the Reorganization; and (e) the advantages of the master-feeder structure. The Boards also noted that BAAI and Gartmore or their affiliates (other than the Funds), will bear the expenses associated with the Reorganization.

7. The Plan may be terminated at any time by mutual written consent of the Acquiring Fund and the Acquired Fund at any time prior to the Closing Date. In addition, either Board may terminate the Plan under certain circumstances specified in the Plan. The consummation of the Reorganization is subject to the following conditions: (a) A registration statement under the Securities Act of 1933 for the Acquired Fund will have become effective; (b) the Acquired Fund's shareholders will have approved the Plan; (c) applicants will have received exemptive relief from the SEC with respect to the issues in the application; (d) the Funds will have received an opinion of counsel concerning the tax-free nature of the Reorganization; and (e) the Acquired Fund will have declared a dividend to distribute substantially all of its investment company taxable income and net capital gain, if any, to its shareholders. Applicants agree not to make any material changes to the Plan that affect the application without prior SEC staff approval.

8. Definitive proxy solicitation materials have been filed with the SEC and were mailed to the Acquired Fund's shareholders on or about June 15, 2000. A special meeting of the Acquired Fund's shareholders was held on August 1, 2000, and the Acquired Fund's shareholders approved the Plan.

Applicant's Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that 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 that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; (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.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, conditions, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common director/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that the Bank of America Group holds of record more than 25% of the outstanding voting securities of the Acquired Fund and the Acquiring Fund. Because of this ownership, applicants state that the Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a–8 and therefore unable to rely on the rule. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization.

4. Section 17(b) of the Act provides that the SEC 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, 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.

5. Applicants submit that the terms of the Reorganization satisfy the standards

set forth in section 17(b). Applicants note that the Boards, including a majority of the Disinterested Members, found that participation in the Reorganization is in the best interests of each Fund and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also that 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. 00–21629 Filed 8–21–00; 12:48 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43162; File No. SR–Amex 00–37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange LLC Relating to Trading of Convertible Bond Linked Medium Term Notes

August 16, 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 July 17, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 14, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade convertible bond linked notes (''Notes'') and revise Section 107B of the Amex Company Guide (''Company Guide'') concerning the listing standards for the listing of equity linked notes. The revision permits the Exchange to list and trade Notes linked to securities that are convertible into common stock satisfying the criteria set forth in Section 107B of the Company Guide. Additions to the rule are in italics. Bracketing indicates text to be deleted.

* * * * *

Other Securities

Section 107

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading. Such issues will be evaluated for listing against the following criteria:

A. General Criteria

(a)-(c) No change.

B. Equity Linked Term Notes

Income instruments which are linked, in whole or in part, to the market performance of one or more common stock*,* [or] non-convertible preferred stocks*, or other equity security(ies), as defined by Section 3(a)(11) of the Securities Exchange Act of 1934 (''equity security''),* will be considered for listing provided:

(a)-(d) No change.

(e) Each underlying linked stock to which the instrument relates*, or stock into which an equity security(ies) is convertible, (each hereinafter referred to as an ''underlying linked security''),* may not exceed 5% of the total outstanding common shares of such entity, provided however, if any underlying linked [stock] *security* is a non-U.S. *underlying linked* security represented by ADSs, common shares, or otherwise, then for each such *underlying* linked security the instrument may not exceed (i) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. *underlying linked* security and related non-U.S. *underlying linked* security during the six month period preceding the date of listing occurs in the U.S. market; (ii) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. *underlying linked* security and related non-U.S. *underlying linked* securities during the six month period preceding the date of listing occurs in the U.S. market; and (iii) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. *underlying linked* security and related non-U.S. securities during the six month period preceding the date of listing occurs in the U.S. market. If any non-U.S. *underlying linked* security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six month period preceding the date of listing, then the instrument may not be linked to that non-U.S. *underlying linked* security.

If an issuer proposes to list an Equity Linked Term Note that relates to more than the allowable percentages set forth above, the Exchange, with the concurrence of the staff of the Division of Market Regulation of the Securities and Exchange Commission, will evaluate the maximum percentage of Equity Linked Term Notes that may be issued on a case-by-case basis.

(f) Equity Linked Term Notes will be treated as equity instruments.

(g) If any underlying *linked* security [to which the instrument is to be linked] is [the stock] *an equity security* of a non-U.S. company which is traded in the U.S. market as a sponsored ADS, ordinary shares or otherwise, then the minimum number of holders of such underlying linked *equity* security shall be 2,000.

* * * * *

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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade Notes linked to securities that are convertible not common stock satisfying the criteria set forth in Section 107B of the Company Guide. Under Section 107 of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures and warrants. The Amex now proposes to list for trading under Section 107B of the Company Guide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] In Amendment No. 1, the Exchange modified its proposed change to Section 107B of the Amex Company Guide. The modification clarified certain matters relating to the application of the listing standards in Section 107B to underlying linked securities.

convertible bond linked medium term Notes. The proposed issue will meet the size and distribution requirements of Section 107A. The issuer of such securities also will be qualified under Section 107A.

Holders of the Notes generally will receive interest on the face value of their Notes in an amount to be determined at the time of issuance of the Notes. The amount of interest will be disclosed to investors and reflective of prevailing interest rates and other factors. It is anticipated that the Notes will make coupon payments on a quarterly or semi-annual basis. At maturity, each Note will automatically exchange for a number of underlying convertible linked bonds based on an Exchange Factor set forth in the prospectus to investors. The Notes are not principal protected; accordingly, the value of the linked convertible bonds at maturity of the Notes may be more or less than the original principal amount of the Notes.

Values for the purpose of determining the payment to holders at maturity will be determined by an Exchange Factor with reference to prices for the linked convertible bonds and/or the common stock underlying the linked convertible bonds on a business day shortly prior to maturity. The Notes will have a term of not less than one year and will be subject to the equity margin and trading rules of the Exchange except that, where the Notes are traded in thousand dollar denominations as debt, they will be traded subject to the Exchange's debt trading rules.

In structure, the proposed bond indexed debt securities are in part similar to previously approved commodity preferred securities,[4] stock index linked term notes,[5] as well as ordinary equity linked notes [6] and basket linked notes,[7] however, the proposed Notes are linked to convertible bonds as opposed to commodity futures, equity securities indices, an individual stock or a basket of stocks. Accordingly, the Exchange proposes to provide for the listing and trading of the convertible bond linked term Notes provided the linked convertible bonds convert into common stock satisfying the criteria set forth in Section 107B of the Company Guide.

Section 107B of the Company Guide details the Exchange's listing standards for equity linked notes (''ELNs''). Specifically, Section 107B requires, among other things, that securities linked to ELNs (i) have a minimum market capitalization of $3 billion and during the 12 months preceding listing are shown to have traded at least 2.5 million shares; (ii) have a minimum market capitalization of $1.5 billion and during the 12 months preceding listing are shown to have traded at least 10 million shares; or (iii) have a minimum market capitalization of $500 million and during the 12 months preceding listing are shown to have traded at least 15 million shares.

The Exchange believes that linking to securities which are convertible into shares of common stock is appropriate provided that the common stock into which the security is convertible meets the standards for linked securities set forth in Section 107B. The Exchange represents that the common stock into which the securities linked to the Notes is convertible exceeds all of the ELN listing standards set forth in Section 107B. Accordingly, the Exchange also proposes to amend the text of Section 107B to clarify that ELNs may be linked to equity securities, which includes convertible securities, as defined by Section 3(a)(11) of the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [8] of the Act in general and furthers the objectives of Section 6(b)(5) [9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex requests that the proposed rule change be given expedited review and accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.[10] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act [11] because it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In this regard, the Commission notes that the Amex has represented that the common stock into which the convertible bonds may be converted will satisfy the listing criteria set forth in Section 107B of the Company Guide. The Commission believes that this requirement will strengthen the integrity of both the Notes and the underlying convertible bonds, and will decrease the possibility of market manipulation, thereby protecting investors and the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register** as the proposal raises no new regulatory issues, is substantially similar to proposals to list and trade equity linked notes and basket linked notes previously reviewed and approved by the Commission, and will permit the timely issuance of the proposed Notes. Because of the safeguards built into this proposal (noted above), the Commission believes that investors should be permitted to trade this new product as expeditiously as possible. Accordingly,

[4] *See* Securities Exchange Act Release No. 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (granting immediate effectiveness to an Exchange proposal to list and trade commodity preferred securities (ComPS)).

[5] *See* Securities Exchange Act Release No. 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving an Exchange proposal to list and trade indexed term notes linked to the Major 11 International Index).

[6] *See* Securities and Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (approving an Exchange proposal to list and trade notes linked to a single equity security).

[7] *See* Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (granting accelerated approval of an Exchange proposal to list and trade notes linked to a basket of equity securities). The Commission's approval order capped at 20 the number of equity securities that may be contained in a basket.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

the Commission finds that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposal on an accelerated basis.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act [12] that the proposed rule change (SR–Amex 00–37) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21431 Filed 8–22–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43152; File No. SR–Amex–00–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, LLC in Option Transaction Fees for Options on Nasdaq-100 Index Shares

August 14, 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 July 28, 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 Amex. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. 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 American Stock Exchange LLC proposes to revise specialist and Registered Options Trader Fees for transactions in Nasdaq-100 Index Share options. The text of the proposed rule change is available upon request at the Exchange or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex currently imposes a transaction charge on options trades executed on the Exchange. Transaction charges vary, depending on whether they involve an equity or index option. They also vary depending upon whether a charged transaction is executed for a specialist or market maker account; a member firm's proprietary account; a non-member broker-dealer account; or a customer account. In addition, the Amex imposes a charge for clearance of options trades as well as an options floor brokerage charge. These charges also depend upon the type of account for which a trade is executed. All three types of charges—transaction, options clearance and options floor brokerage—are subject to caps [4] based on the number of options contracts traded on a given day. Currently, no transaction, comparison or floor brokerage fees are charged for customer equity option transactions.

To offset the costs of providing for the trading of, and to enhance the marketing of options on, Nasdaq-100 Index Shares, the Exchange proposes to raise fees charged to specialists and Registered Options Traders (''ROTs'') for transactions in which a public customer [5] is a party to the trade. Specifically, the transaction fee charged the specialist and ROTs, currently $0.17 per contract side, would increase by $0.30 per contract side to $0.47, but only for transactions in which a public customer is a party. Options comparison and floor brokerage fees for the specialist and ROTs will remain unchanged at $0.04 and $0.03 per contract side, respectively. The Exchange represents that the proposed increases are necessary to allow the Exchange to better provide for the costs associated with trading and enhancing the marketing of options on Nasdaq-100 Index Shares.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act [6] and subparagraph (f)(2) of Rule 19b–4 thereunder,[7] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

B. Self-Regulatory Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

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) of the Securities Exchange Act of 1934 and Rule 19b–4(f)(2) thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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

[12] 15 U.S.C. 78f(b)(2)

[13] 17 CFR 200.30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] Current caps are set at 2000 contracts for customer trades and 3000 contracts for member firm proprietary, non-member broker-dealer, specialist, and market maker trades.

[5] Under the proposed rule change, ''public customer'' would mean a non-broker-dealer. This is the same meaning the term has under Amex rule 958a.

[6] 15 U.S.C. 78f(b)(4).

[7] 17 CFR 240.19b–4.

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. 522, 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–0039 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21433 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43157; File No. SR–NASD–99–67]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by NASD Regulation, Inc. Relating to its Membership Rules

August 15, 2000.

On November 2, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and rule 19b–4 [2] thereunder, a proposed rule change amending NASD Rule 1010 Series, which contains the provisions relating to the admission to membership. On May 1, 2000, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on June 12, 2000.[4] The Commission received no comments on the proposal. On August 11, 2000, NASD Regulation submitted Amendment No. 2 to the proposed rule change.[5] This order approves the proposal.

II. Description of the Proposal

NASD Regulation proposes to amend its Rule 1010 Series, which governs admission to NASD membership.

A. Proposed Rule 1010—Definitions

In addition to clarifying and conforming changes to certain current definitions, NASD Regulation has proposed the following new definitions.

1. ''Material Change in Business Operations''

NASD Regulation has proposed to define of the phrase ''material change in business operations'' in proposed Rule 1011(i). As proposed, a ''material change in business operations'' shall include, but not be limited to, removing or modifying a membership agreement restriction; market making, underwriting, or acting as a dealer for the first time; or adding business activities that require a higher minimum net capital. This proposed definition is significant because it will require a member to apply to its district office for approval of a material change in business operations pursuant to proposed Rule 1017.

In conjunction with the proposed definition, NASD Regulation has proposed Interpretative Material 1011–1 (IM–1011–1) to create a safe harbor for certain business expansions that will not be presumed to be material, and therefore will not require a member to submit an application for approval of the proposed expansion pursuant to proposed Rule 1017. The safe harbor would not be available to members that have a disciplinary history, which is proposed to be defined as a finding of a violation by the member or a principal of the member in the past five years by the SEC, a self-regulatory organization, or a foreign regulatory authority of one or more of the following provisions (or comparable foreign provisions) or rules or regulations thereunder: Sections 15(b)(4)(E) [6] and 15(c) [7] of the Act (failure to supervise; fraud and manipulation); section 17(a) [8] of the Securities Act of 1933 (fraudulent interstate transactions); Exchange Act Rule 10b–5 [9] (fraud and manipulation); Exchange Act Rules 15g–1 through 15g–9 [10] (penny stock rules); NASD Rules 2110 (just and equitable principles of trade), 2120 (fraud and manipulation), 2310 (suitability), 2330 (protection of customer securities and funds), 2440 (fair prices and commissions), 3010 (failure to supervise), 3310 (manipulative and deceptive quotations), 3330 (payments to influence market prices); and MSRB Rules G–19 (suitability), G–30 (prices and commissions), and G–37 (b) and (c) (political contributions).

Further, because NASD Regulation cannot predict and draft an exhaustive definition of all changes that may in fact be material, if a change in a member's business falls outside of the definition, or the safe harbor (*e.g.*, because the change exceeds the safe harbor limits or because the member has a disciplinary history), members may contact their NASD district office to inquire as to whether the district would deem the change to be material. A member is not required, however, to contact the district office if the member believes that a change would not be considered material. If the staff later determines that a change is indeed material, then the member could potentially be subject to disciplinary action for failure to file an application under proposed Rule 1017.

2. ''Principal Place of Business''

NASD Regulation has proposed to define the phrase ''principal place of business'' for purposes of clarifying where an Applicant's [11] application will be processed, in proposed Rule 1011(l). As proposed, an Applicant's principal place of business shall be the location where the officers, partners, or managers direct and control the activities of the Applicant, unless NASD Regulation staff designates a different location, which may be where the largest number of associated persons are located or

[8] 17 CFR 200.30–3(a)(12).

[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 England, Assistant Director, Division of Market Regulation, SEC, dated April 28, 2000 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 42885 (June 1, 2000), 65 FR 36860.

[5] *See* letter from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated August 9, 2000 (''Amendment No. 2''). In Amendment No. 2, NASD Regulation corrected a typographical error and deleted proposed Rule 1018 in its entirety.

[6] 15 U.S.C. 78o(b)(4)(E).

[7] 15 U.S.C. 78o(c).

[8] 15 U.S.C. 78q(a).

[9] 17 CFR 240.10b–5.

[10] 17 CFR 240.15g–1 through 15g–9.

[11] The term Applicant is defined as a person that applies for membership in the Association under Rule 1013 or a member that files an application for approval of a change in ownership, control, or business operations under Rule 1017. *See* Rule 1011(a).

where the books and records of the member are kept.

3. ''Sales Practice Event''

NASD Regulation has proposed to change the phrase ''sales practice violations'' to ''sales practice event'' and to amend the current definition in proposed rule 1011(m). As amended, the phrase sales practice event will include not only proven violations, but also unproven allegations.[12] The proposed definition will include any customer complaint, arbitration, or civil litigation that has been or is required to be reported to the Central Registration Depository (''CRD'') or otherwise required to be reported to the Association (*e.g.*, NASD Rule 3070).

B. Proposed Rule 1012—Filing by Applicant or Service by the Association

NASD Regulation has proposed to amend the service and filing requirements to permit additional methods of delivery and to standardize how deadlines will be calculated. Specifically, the term ''commercial courier'' has been replaced with the term ''overnight courier'' to clarify that Applicants and NASD Regulation may use the overnight delivery service offered by the United States Post Office, as well as any entity that regularly provides overnight delivery services, such as Federal Express or DHL. The use of the term overnight courier, however, does not imply that only actual overnight delivery may be used under the rule. Overnight delivery should be used if it is available, but if it is not available for a particular location, and Applicant or staff of the Department of Member Regulation of NASD Regulation (''Department'') may use the most rapid delivery option available from the overnight courier to comply with the rule.

NASD Regulation has proposed to standardize the use of the terms ''file'' and ''serve'' to clarify their definitions. Specifically, the term ''file'' will refer to submissions by an Applicant, while the term ''serve'' will refer to delivery of requests, decisions, and the like by the Association.

Proposed Rule 1012(b) contains the lapse of application provisions, which NASD Regulation has proposed to consolidate from current Rules 1013(b), 1017(c), and 1018(d). The lapse provisions permit the Department staff to discontinue processing an application if an Applicant does not provide requested documents or information in a timely manner. In addition to consolidating the lapse provisions, NASD Regulation also has proposed to permit the Department staff and the Applicant to agree on a submission date for the membership agreement, rather than requiring all agreements to be submitted within 25 days. Finally, NASD Regulation has proposed to clarify that fees are not refunded for applications that are lapsed.

C. Proposed Rule 1013—New Member Application and Interview

NASD Regulation has proposed to amend the procedures for filing a new member application so that the entire application will be filed in one location—the district office in the district where an Applicant intends to have its principal place of business.[13] Once filed, the Department staff will review the entire application to determine if it is substantially complete and if so, the Department staff will forward the appropriate documents to the CRD.

In addition, NASD Regulation has proposed a new rule, proposed Rule 1013(a)(4), setting forth procedures for applications that are not substantially complete at the time of submission. As proposed, if an application is so deficient upon submission that the Department staff cannot begin processing (*e.g.,* it is missing major components of the application, such as written supervisory procedures or a business plan), the Department staff may reject the application. The Department staff must reject the application within 30 days of the submission of the application and must provide reasons for the rejection in writing. If an application is rejected, NASD Regulation will assess a $350 processing fee, which shall be deducted from the application fee.

To eliminate duplicative submissions, NASD Regulation has proposed to eliminate the requirement for Applicants to submit information that has already been submitted to CRD in proposed Rule 1013(a)(2)(L). Further, an Applicant will continue to submit only its initial Forms BD and U–4 in paper form along with the rest of the application. Thereafter, upon approval of an Applicant's Web CRD entitlement request form, pursuant to proposed Rule 1013(a)(3), an Applicant will be required to make all subsequent form filings and amendments electronically via Web CRD.[14] In addition, the initial Member Contact Questionnaire and user access request form also will be submitted in paper form, which thereafter may be updated electronically.

As part of its application, an Applicant will be required to provide a description of the communications and operational systems that it will employ to ensure business continuity, including information about its systems' capacity, contingency plans, disaster recovery plans, and the like, pursuant to proposed Rule 1013(a)(2)(F)(xii). In addition, an Applicant will be required to provide NASD Regulation with its disclosures that will be provided to customers who use its systems as well as supervisory or customer protection measures that may apply to customer use of or access to its systems. Pursuant to proposed Rule 1014(a)(6), an Applicant's communications and operational systems must be adequate and provide reasonably for business continuity before an application for membership may be granted. NASD Regulation will not be required to investigate the adequacy of an Applicant's systems, rather the Applicant will be required to certify that its systems, plans, and procedures are adequate for the Applicant's business. The Applicant may either self-certify or may rely on a third party (*e.g.,* a vendor of such a system) to provide the certification.

NASD Regulation has clarified that the Applicant and the Department staff may agree to hold the membership interview that is required pursuant to Rule 1013(b)(4) at the Applicant's place of business. Finally, NASD Regulation has proposed to amend Rule 1013(b)(5) to require an Applicant to provide updated financial information at the time of its membership interview.

D. Proposed Rule 1014—Department Decision [15]

Proposed Rule 1014 sets forth the standards for admission to membership. In addition to the proposed new business continuity standard, as

[12] NASD Regulation noted that it was not proposing any change to the definition of ''sales practice violation'' as that phrase is used on the Form U–4.

[13] *See* proposed Rule 1011(1).

[14] *See* Securities Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586 (July 12, 1999) (regarding SEC requirements for submitting BD and amendments thereto). In addition, NASD Regulation has proposed conforming changes to Rule 1140.

[15] The Commission notes that the **Federal Register** notice contained an incorrect subsection reference. Subsection (a)(4) should read as follows: ''The Applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others necessary to: (A) Initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with federal securities laws, the rules and regulations thereunder, and the Rules of the Association,'' In addition, subsection (5) should have its further subsections labeled as (A) and (B).

discussed above, NASD Regulation has proposed that an Applicant's supervisory procedures specifically include procedures to ensure that the firm obtains proper registrations for its associated persons.

Proposed Rule 1014(d), which concerns the submission of membership agreements, has been amended so that the requirement that any member with a membership agreement obtain approval from NASD Regulation of any change in its business that would be outside of the terms of agreement has been deleted.[16] In addition, upon approval of this proposed rule change, NASD Regulation will permit members that are eligible for the safe harbor, IM–1011–01, to use it even if their membership agreement includes a general requirement to obtain approval from NASD Regulation of any change in business outside the terms of the agreement.

E. Proposed Rule 1015—Review by National Adjudicatory Council

NASD Regulation has proposed to delete the provision whereby the National Adjudicatory Council (''NAC'') or a Review Subcommittee may call for the review of a decision on a membership application made by the Department staff, even if the Applicant does not appeal the decision. In addition, new paragraph (h) regarding dismissing appeals that have been abandoned by an Applicant has been proposed. Pursuant to proposed Rule 1015(h), if an Applicant fails to specify the grounds for its request for review, appear at a hearing, or file information or briefs as directed, the NAC or Review Subcommittee may dismiss the request for review as abandoned.

F. Proposed Rule 1017—Application for Approval of Change in Ownership, Control, or Business Operations

Proposed Rule 1017 will contain provisions regarding applications for removal or modification of a business restriction, as well as, provisions regarding applications for approval of changes in ownership, control, or operations.

Pursuant to proposed Rule 1011(i), a material change in business operations includes the removal or modification of a business restriction. In addition, all material changes in business operations will trigger the requirement for a review under proposed Rule 1017. NASD Regulation noted that a restriction contained in a membership agreement is specifically labeled as such and is accompanied by a decision issued by NASD Regulation setting forth the rationale for the restriction. A restriction is distinct from other limitations that may be set forth in a member's business plan and may be recited in the ''Business Activities'' section of the membership agreement. These limitations are not considered ''restrictions'' under the rules because NASD Regulation does not impose them. Therefore, a member may expand beyond those limitations to the extent permitted in the safe harbor set forth in IM–1011–1 without having to apply to NASD Regulation for approval.

In contrast, NASD Regulation may impose specific restrictions in a membership agreement. If a member wishes to modify such restrictions, it must seek NASD Regulation approval pursuant to proposed Rule 1017, and thus will not be able to utilize the safe harbor found in IM–1011–1.

In addition, NASD Regulation has proposed to discontinue its review of certain changes, such as mergers and acquisitions by members that are reviewed by the New York Stock Exchange (''NYSE''). Proposed Rule 1017 also sets forth the type of information to be included in an application and the content of the Department staff's decision regarding an application. Further, proposed Rule 1017 clarifies when an application should be filed and what changes can be effected prior to obtaining NASD Regulation's approval.

Proposed Rule 1017(k) clarifies the procedures to be followed in the event that a change in ownership application lapses or is denied. In such instances, an Applicant has a fixed period of time to submit a new application;[17] unwind the transaction, or file a Form BDW. The Department may shorten the 60-day period for the protection of investors or lengthen it upon good cause shown by the Applicant. During the 60-day period, the Department may continue to place interim restrictions on the member.

III. Discussion

Upon careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[18] Specifically, the Commission finds that the proposed ruel change is consistent with Section 15A(b)(6),[19] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.

The Commission believes that the changes proposed by NASD Regulation relating to the admission of members to be consistent with the Act because they clarify the process by which persons may apply for membership and the process by which current members may change the terms of their membership. For example, NASD Regulation has proposed to specifically define the phrase material change in business operations to enable members to determine when changes to their business structure require the prior approval of NASD Regulation, pursuant to proposed Rule 1017. As defined, a material change in business operations includes removing or modifying a membership agreement restriction; market marking, underwriting or acting as a dealer for the first time; or adding business activities that require a higher minimum net capital. Each of these examples of material changes in business operations has significant investor protection considerations. For example, in granting membership, NASD Regulation may determine to limit the activities of a member, which is set forth as a restriction in the membership agreement. These restrictions are based upon findings made by NASD Regulation that it believes are necessary for the member to engage in business consistent with the Act. Thus, the Commission believes that it is reasonable for NASD Regulation to review any change to the restriction.

Further, engaging in market making, underwriting, or acting as a dealer involves many complex regulatory issues, including ensuring that the public interest is protected. Moreover, activities that would lead to an increase in a member's net capital requirements would also raise investor protection concerns. The Commission believes that it is in the public interest for NASD Regulation to review these changes in its members' business structure. NASD Regulation has regulatory

[16] NASD Regulation noted that many members have been admitted without executing a membership agreement because NASD Regulation only began requiring all members to execute membership agreements in 1997. *See* Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997). Therefore, according to NASD Regulation, members with a membership agreement may be at a disadvantage when seeking to change their business compared to members that have been admitted without a membership agreement.

[17] A lapsed Applicant may propose the same owners; a denied Applicant must propose new owners.

[18] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78o–3(b)(6).

responsibilities over its members and it must ensure that its members' businesses operate in a manner that is consistent with the requirements of the Act. Further, the Commission believes that NASD Regulation should review its members with respect to these issues to prevent members from expanding beyond their capabilities to the detriment of the markets and investors.

In conjunction with the new definition of material change in business operations, NASD Regulation has also proposed a safe harbor for certain types of changes in business operations. Specifically, a member can increase the number of associated persons involved in sales or increase the number of offices it operates or increase the number of markets made by the member without having to submit an application pursuant to proposed Rule 1017 so long as the increases fall within the specified limits. The Commission believes that the safe harbor should increase NASD Regulation's, as well as its members', operational efficiency without sacrificing regulatory interests.

NASD Regulation has also proposed changes to Rule 1017 regarding applications for approval of changes in ownership, control or business operations. In its proposal, NASD Regulation clarified the difference between a restriction, which is subject to NASD Regulations' review and approval, and a limitation, which may be set forth in the Business Activities section of a membership agreement and thus not required to be reviewed by NASD Regulation if the safe harbor applies. The Commission finds that this clarifies NASD Regulation's oversight responsibilities with respect to restrictions and limitations and should enhance the ability of its members to operate efficiently within the requirements of NASD Regulation's rules. Further, this clarification should assist members in determining whether they are eligible to utilize the safe harbor for their planned business changes.

In addition, proposed Rule 1017 makes the application process for changes in a member's structure more efficient by discontinuing NASD Regulation's review of certain changes that are already reviewed by the NYSE. This change eliminates duplicative oversight. The Commission believes that the NYSE, as part of its self-regulatory responsibilities, should be able to sufficiently review such transactions to ensure that they comply with the requirements of the Act.

In proposed rule 1014, NASD Regulation proposed to require as a condition for membership that an Applicant provide supervisory procedures that include procedures that ensure that proper registrations are obtained by the firm. This new requirement should ensure that associated persons are adequately trained and supervised, which should enhance investor protections.

In addition, NASD Regulation has proposed as a condition of admission that firms certify that their systems, plans, and procedures are adequate for the firm's business. Thus, as part of its application, an Applicant will be required to provide a description of its communications and operational systems that will be employed to ensure business continuity, including information about systems' capacity, contingency plans and disaster recovery plans. NASD Regulation will use this information to determine, pursuant to proposed Rule 1014(a)(6), whether an Applicant's communications and operational systems are adequate and provide reasonably for business continuity such that the applicant has met the standard for admission to membership. The Commission finds that this new requirement is consistent with the Act and furthers just and equitable principles of trade and should enhance protections for investors. Today, technology is a driving force in the markets. As never before, many firms utilize and rely on technology to perform many roles, such as accepting and routing of customer orders for execution. Thus, it is more important than ever that the technology used by firms be able to operate and have sufficient capacity to carry out its stated functions. Today, a technology failure can have significant consequences both for the customer and the firm. Thus, the Commission believes that it is imperative that NASD Regulation seek to ensure that its members have the systems capabilities to operate in a fashion that is consistent with the requirements of the Act.

Finally, in proposed Rule 1014(d), NASD Regulation has proposed to delete the requirement that members with membership agreements obtain NASD Regulation's approval of any change outside of the membership agreement. The Commission believes that this provision may have given an unfair advantage to those members that do not have a membership agreement.[20] The Commission believes that the proposed definition of material change in business operations along with the safe harbor should provide members with the ability to expand their business without raising investor protection concerns. Further, these provisions provide NASD Regulation with sufficient tools to oversee its members' business operations.

In conclusion, the Commission finds that the proposal is consistent with the requirements of the Act. The proposal, in general, clarifies and organizes the rules in a manner that should be beneficial to members and potential members. Further, the proposed changes should enhance the ability of NASD Regulation to implement its regulatory objectives in a fair and efficient manner.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. In Amendment No. 2, the NASD Regulation deleted proposed Rule 1018. Therefore, this portion of the proposed rule change is no longer subject to Commission review. In addition, NASD Regulation corrected a typographical error. Therefore, because Amendment No. 2 does not raise any regulatory concerns, the Commission finds good cause for accelerating approval of Amendment No. 2 to the proposed rule change.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2)[21] of the Act, that the proposed rule change (SR–NASD–99–67) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21430 Filed 8–22–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43156; File No. SR–NASD–00–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Eliminate CAES Transactions Charges for Member Firms that Receive and Execute Orders

August 15, 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 August

[20] *See supra* note 16.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

11, 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. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Association under section 19(b)(3)(A)(ii) of the Act, [3] which renders the proposal effective upon filing with the Commission. 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 7010 to eliminate Computer Assisted Execution Service (''CAES'') charges for member firms that receive and execute orders. Below is the text of the proposed rule change. Proposed new language is in italic; deleted language is bracketed.

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(c) No change.

(d) Computer Assisted Execution Services.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) Service Charges

No change.

(2) Transaction Charges

[(A) As of November 1, 1997, $0.50 per execution shall be paid by an CAES market maker that receives and executes a CAES order or any part of a CAES order.]

(A) [(B)] As of January 1, 1998, $0.50 per execution shall be paid by any order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part.*

(B)[(C)] As of November 1, 1997, $1.00 per commitment shall be paid by any member *that* [which] sends [or receives] a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in whole or in part.* *

* As of September 1, 2000, a CAES market maker that receives and executes a CAES order or any part of a CAES order will not be required to pay a CAES transaction charge.

* * As of September 1, 2000, a member that receives a commitment through the ITS/CAES linkage to buy or sell a security that is executed in whole or in part will not be required to pay a CAES transaction charge.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to eliminate CAES transaction charges for members receiving and executing orders in listed securities effective September 1, 2000. CAES transaction charges for members sending orders that are executed will remain the same. In particular, Nasdaq proposes to reduce the transaction charge to zero for a member that receives a commitment through the CAES and ITS/CAES linkages to buy or sell a listed security that is executed in whole or in part.

CAES allows NASD member firms to direct agency orders in both Nasdaq and exchange-listed securities to market makers for automatic execution. Intermarket Trading System (''ITS'')/CAES allows members to transmit and receive buy and sell commitments in exchange-listed securities. The difference between the two is that CAES allows trades among Nasdaq market makers in any CAES-eligible Consolidated Quotation System security, while ITS only permits trades between a Nasdaq market maker and an exchange in listed securities. [4]

Nasdaq believes this proposal potentially will lower the costs investors must pay to trade exchange-listed securities in Nasdaq InterMarket, thereby supporting the competitiveness of Nasdaq market makers and Electronic Communications Networks in attracting additional retail order flow. The proposal also is intended to provide an incentive (in the form of a no transaction fee execution) to any member providing liquidity in a Nasdaq InterMarket transaction.

The Nasdaq InterMarket operates in a competitive price environment with regional exchanges like the Chicago Stock Exchange (''CHX'') and the Cincinnati Stock Exchange (''CSE''). Currently, the CHX does not charge a transaction fee to the receiving party for market orders in listed securities sent to the exchange via MAX, the CHX's automated order routing system. Similarly, the CSE does not impose a fee for transactions in Consolidated Tape B (American Stock Exchange) securities. Nasdaq believes it is important for the Nasdaq InterMarket to be able to compete without artificial impediments. For this reason, the ability to meet the competitive price opportunities being provided by the regional stock exchanges by similarly eliminating transaction charges is fundamental to attracting and retaining market participants during this pivotal period of industry growth. It is essential to structure transaction fees in a manner that will encourage a broker/dealer making a first time decision on where to trade listed securities to be able to evaluate the substantial benefits of the Nasdaq InterMarket without pricing disincentives.

2. Statutory Basis

Nasdaq believes that the proposal to eliminate CAES transaction charges for firms that receive and execute orders is consistent with Section 15A(b)(5) of the Act, [5] which states that NASD rules must provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* CAES/ITS User Guide, p. 5, at <http://intermarket.nasdaqtrader.com>.

[5] 15 U.S.C. 78o–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [6] and subparagraph (f)(2) of Rule 19b–4 thereunder,[7] because it establishes or changes a due, fee, or other charge imposed by the Association. 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 number SR–NASD–00–49 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21437 Filed 8–22–00; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43155; File No. SR–NYSE–00–32]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Pilot Relating to Shareholder Approval of Stock Option Plans

August 15, 2000.

On July 13, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), a proposed rule change, pursuant to section 19(b)(1) [1] of the Securiites Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] to extend the effectiveness of amendments to Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual with respect to the definition of what constitutes a ''broadly-based'' stock options plan. The Commission approved the amendments on a pilot basis on June 4, 1999 (''Pilot'').[3] The Pilot is scheduled to expire on September 30, 2000. The Exchange has proposed to extend the effectiveness of the Pilot until September 30, 2003. A complete description of the proposed rule change is found in the notice of filing, which was published in the **Federal Register** on August 10, 2000.[4]

In response to the solicitation of comments, the Commission received a request to extend the comment period. Given the public's interest in the proposed rule change and the Commission's desire to give the public sufficient time to consider the proposal, the Commission has decided to extend the comment period pursuant to section 19(b)(2) of the Act.[5] Further, the Commission notes that the Exchange has consented to the extension of the comment period.[6] Accordingly, the comment period shall be extended until September 20, 2000.

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 NYSE. All submissions should refer to File No. SR–NYSE–00–32 and should be submitted by September 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21436 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999).

[4] *See* Securities Exchange Act Release No. 43111, (August 2, 2000), 65 FR 49046.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* letter from Elena L. Daly, Assistant General Counsel, NYSE to Kelly Riley, Division of Market Regulation, SEC, dated August 11, 2000.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43151; File No. SR–NYSE–00–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

August 14, 2000.

Pursuant to section 19(b)(1) of the Securities Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on August 11, 2000, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[7] 17 CFR 200.30–(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to extend the effectiveness of the pilot fee structure (''Pilot Fee Structure'') currently set forth in the Exchange Rule 451, ''Transmission of Proxy Material,'' and Exchange Rule 465, ''Transmission of Interim Reports and Other Material'' (''Rules'').[3] Among other things, the Rules establish guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing of proxy materials and other issuer communications (collectively, ''Materials'') with respect to security holders whose securities are held in street name. The current pilot period regarding the Rules is scheduled to expire on September 1, 2000. NYSE proposes extending the Pilot Fee Structure through October 10, 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 Exchange included statements concerning the purpose of and basis for 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 signficiant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Among other things, the Pilot Fee Structure lowers certain guidelines concerning the reimbursement of fees for the distribution of Materials, creates incentive fee to eliminate duplicative mailings, and establishes a supplemental fee for intermediaries that coordinate multiple nominees. [4] The Pilot Fee Structure has been modified and extended several times,[5] most recently by Commission order dated February 16, 2000.[6]. The present proposed rule change would extend the Pilot Fee Structure to October 10, 2000.

The Exchange believes that an extension of the Pilot Fee Structure will give the Commission additional time to consider the pilot program without a lapse in the current rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the pilot program would return to effectiveness after September 1, 2000, creating confusion in the market.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) [7] of the Act, which requires an exchange's rules to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In addition, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) [8] of the Act, which requires an exchange's rules to 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not 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

NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. NYSE has not received any unsolicited comments from members of other interested parties.

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 the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) [9] of the Act and Rule 19b–[10] thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE seeks to have the proposed rule change become operative on or before September 1, 2000 to allow the Pilot Fee Structure to continue in effect on an uninterrupted basis.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately through October 10, 2000. This extension of the Pilot Fee Structure will provide the Commission with additional time to review and evaluate the Pilot Fee Structure.

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the reimbursement rate for proxy material distributed after September 1, 2000, will revert to those in effect prior to March 14, 1997. The Commission believes that such a result could be confusing and counterproductive.

In addition, the Commission notes that the NYSE has filed a proposal to

[3] The text of NYSE Rule 451 also is included at Para 402.10(A) of the Exchange's *Listed Company Manual* and the Exchange will make conforming changes to that paragraph.

[4] *See* Securities Exchange Act Release No. 38406 (March 14, 1997), 62 FR 13922 (March 24, 1997). The Commission initially approved the Pilot Fee Structure as a one-year pilot, and designated May 13, 1998, as the date of expiration.

[5] *See* Securities Exchange Act Release Nos. 39672 (February 17, 1998) 63 FR 9034 (February 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50); 40289 (July 31, 1998), 63 FR 42652 (August 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (October 30, 1998), 63 FR 60036 (November 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (February 11, 1999), 64 FR 8422 (February 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999) (order extending Pilot Fee Structure through August 31, 1999); 41669 (July 29, 1999), 64 FR 43007 (August 6, 1999) (order extending Pilot Fee Structure through November 1, 1999); 42086 (November 1, 1999), 64 FR 60870 (November 8, 1999) (order extending Pilot Fee Structure through January 3, 2000); and 42304 (December 30, 1999), 65 FR 1212 (January 7, 2000) (order extending Pilot Fee Structure through February 15, 2000).

[6] *See* Securities Exchange Act Release No. 42433, 65 FR 10133, 65 FR 10137 (February 25, 2000).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

amend the current Pilot Fee Structure.[12] By extending the current Pilot Fee Structure, the Commission will be able to fully consider, and solicit comment from interested persons regarding, the proposed amended Pilot Fee Structure.

Based on these reason, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative on immediately through October 10, 2000. 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 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 pay 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 NYSE. All submissions should refer to file No. SR–NSYE–00–35 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21438 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–10–M

[12] *See* File No. SR–NYSE–00–36.

[13] 17 CFT 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43159: File No. SR–NYSE–00–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials and Amending the Components of Coordination Activities

August 16, 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 August 11, 2000, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to extend the effectiveness of the pilot fee structure (''Pilot Fee Structure'') currently set forth in Exchange Rules 451, ''Transmission of Proxy Material,'' and 465, ''Transmission of Interim Reports and other Material'' (''Rules'').[3] Among other things, the Rules establish guidelines for the reimbursement of expenses by NTSE issuers to NYSE member organizations for the processing of proxy materials and other issuer communications (collectively, ''Materials'') with respect to security holders whose securities are held in street name. The current pilot period regarding the rules is scheduled to expire on October 10, 2000.[4] NYSE proposes to extend the Pilot Fee Structure through September 1, 2001.

In addition, NYSE proposes to amend the functions that an intermediary is expected to perform, at a minimum, to recover the suggested intermediary-coordination fee set forth in the Rules. The text of the proposed rule change follows; additions are *italicized;* deletions are [bracketed].

Transmission of Proxy Material

Rule 451.—No change.

* * * Supplementary Material:

.10 through .80—No change.

.90 Schedule of approved charges by member organizations in connection with proxy solicitations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to rule 451 and in mailing interim reports or other material pursuant to Rule 465. In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

Charges for Initial Proxy and/or Annual Report Mailings

Effective February 12, 1998, 50¢ for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to security holders, with a minimum of $5.00 for all sets mailed;

Effective March 14, 1997, $1.00 for each set of proxy materials, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of $5.00 for all sets mailed;

Effective March 14, 1997, 15¢ for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum of $3.00 for all sets mailed;

Effective March 14, 1997, the Exchange has approved as fair and reasonable, a supplemental proxy fee per nominee of $20.00 for any intermediary that coordinates multiple nominees, provided that such intermediary, *at a minimum:*

(1) coordinates the search for nominees and beneficial owners, including:

(a) searching for all nominees that are clients of the intermediary;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The text of rule 451 also is included at Para. 402.10(A) of the Exchange's *Listed Company Manual* and the Exchange proposes to make conforming changes to that paragraph.

[4] *See* Securities Exchange Act Release No. 43151 (August 14, 2000).

(b) obtaining beneficial ownership lists from nominees;

(c) consolidating nominee responses to the issuer's beneficial owner requests; and

(d) [(1)] *providing* [provides] to an issuer the names and addresses of the nominee[s] in response to the issuer's request pursuant to rule 14a–13(a)(1)(D) under Securities Exchange Act of 1934, as amended (the ''Exchange Act'');

(2) *prepares issuer materials across multiple nominees for distribution, including:*

(a) ordering appropriate quantities of the materials from the issuer on behalf of multiple nominees within no more than seven business days of the issuer's request; and

(b) packaging and labeling issuer materials;

(3) transmits the issuer's proxy materials to the beneficial owners of the shares *by making effective use of bulk mailing opportunities by combining nominees for bulk mailings as the issuer may request;*

(4) provides vote reports, including:

(a) receiving and tabulating vote responses;

(b) providing a vote report that is consolidated across multiple nominees no less than 10 days before a shareholder meeting;

(c) thereafter providing daily vote updates that are consolidated across multiple nominees until the day before the meeting;

(d) providing two vote reports on the day before the meeting; and

(e) providing a final vote report, consolidated across multiple nominees, on the day of the meeting; and

(5) consolidates invoices payable by the issuer for the processing of multiple nominees.

For the purposes of this Supplementary Material .90, the term ''nominee'' means an entity that:

(1) is either:

(a) ''record holder'' as defined in Rule 14a–1(i) under the Exchange Act;

(b) a ''respondent bank'' as defined in Rule 14a–1(k) under the Exchange Act; or

(c) a ''respondent broker or dealer'' as defined below; and

(2) has the legal right to vote the shares it holds as record holder under state law or through contractual arrangement, or as respondent bank or respondent broker or dealer, on behalf of one or more beneficial owners, which right to vote is capable of verification and reconciliation to the issuer's records.

A ''respondent broker or dealer'' means a broker or dealer that holds securities on behalf of beneficial owners and that deposits such securities for safekeeping with another broker or dealer.

Charges for Proxy Follow-Up Mailings—No change.

Charges for Interim Report Mailings—No change.

Incentive Fees—No change.

.91 through .95—No change.

Transmission of Interim Reports and Other Material

Rule 465.—No change.

* * * Supplementary Material:

.10 Application of Rule—No change.

.20 Mailing charges by member organizations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 451 and in mailing interim reports or other material pursuant to Rule 465. In addition to the charges specified in this schedule, member organizations are also entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

Charges for Initial Proxy and/or Annual Report Mailings

Effective February 12, 1998, 50¢ for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to security holders, with a minimum of $5.00 for all sets mailed;

Effective March 14, 1997, $1.00 for each set of proxy materials, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of $5.00 for all sets mailed;

Effective March 14, 1997, 15¢ for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum of $3.00 for all sets so mailed;

Effective March 14, 1997, the Exchange has approved as fair and reasonable, a supplemental proxy fee per nominee of $20.00 for any intermediary that coordinates multiple nominees, provided that such intermediary, *at a minimum;*

(1) coordinates the search for nominees and beneficial owners, including:

(a) searching for all nominees that are clients of the intermediary;

(b) obtaining beneficial ownerships lists from nominees;

(c) consolidating nominee responses to the issuer's beneficial owner requests; and

(d) [(1)] *providing* [provides] to an issuer the names and addresses of the nominee[s] in response to the issuer's request pursuant to Rules 14a–13(a)(1)(D) under Securities Exchange Act of 1934, as amended (the ''Exchange Act'');

(2) *prepares issuer materials across multiple nominees for distribution, including:*

(a) ordering appropriate quantities of the materials from the issuer on behalf of multiple nominees within no more than seven business days of the issuer's request; and

(b) packaging and labeling issuer materials;

(3) transmits the issuer's proxy materials to the beneficial owners of the shares *by making effective use of bulk mailing opportunities by combining nominees for bulk mailings as the issuer may request;*

(4) provides vote reports, including:

(a) receiving and tabulating vote responses;

(b) providing a vote report that is consolidated across multiple nominees no less than 10 days before a shareholder meeting;

(c) thereafter providing daily vote updates that are consolidated across multiple nominees until the day before the meeting;

(d) providing two vote reports on the day before the meeting; and

(e) providing a final vote report, consolidated across multiple nominees, on the day of the meeting; and

(5) consolidates invoices payable by the issuer for the processing of multiple nominees.

For the purposes of this Supplementary Material .90, the term ''nominee'' means an entity that:

(1) is either:

(a) a ''record holder'' as defined in Rule 14a–1(i) under the Exchange Act;

(b) a ''respondent bank'' as defined in Rule 14a–1(k) under the Exchange Act; or

(c) a ''respondent broker or dealer'' as defined below; and

(2) has the legal right to vote the shares it holds as record holder under state law or through contractual arrangement, or respondent bank or

respondent broker or dealer, on behalf of one or more beneficial owners, which right to vote is capable of verification and reconciliation to the issuer's records.

A ''respondent broker or dealer'' means a broker or dealer that holds securities on behalf of beneficial owners and that deposits such securities for safekeeping with another broker or dealer.

Charges for Proxy Follow-Up Mailings—No change.

Charges for Interim Report Mailings—No change.

Incentive Fees—No change.

.21 through .25—No change.

* * * * *

Text of Changes to the Listed Company Manual

402.10 Charges by Member Organizations for Distributing Material:

* * * * *

(A) Charges for Initial Proxy and/or Annual Report Mailings

* * * * *

A supplemental proxy fee per nominee of $20.00 for any intermediary that coordinates multiple nominees, provided that such intermediary, *at a minimum*:

(1) *coordinates that search for nominees and beneficial owners, including:*

(a) *searching for all nominees that are clients of the intermediary;*

(b) *obtaining beneficial ownership lists from nominees;*

(c) *consolidating nominee responses to the issuer's beneficial owner requests; and*

(*d*) **[**(1)**]** *providing* **[**provides**]** to an issuer the names and addresses of the nominee**[**s**]** in response to the issuer's request pursuant to Rule 14a-13(a)(1)(D) under Securities Exchange Act of 1934, as amended (the ''Exchange Act'');

(*2*) *prepared issuer materials across multiple nominees for distribution, including:*

(a) *ordering appropriate quantities of the materials from the issuer on behalf of multiple nominees within no more than seven business days of the issuer's request; and*

(*b*) *packing and labeling issuer materials;*

(*3*) transmits the issuer's proxy materials to the beneficial owners of the shares *by making effective use of bulk mailing opportunities by combining nominees for bulk mailings as the issuer may request;*

(4) *provides vote reports, including:*

(a) *receiving and tabulating vote responses;*

(b) *providing a vote report that is consolidated across multiple nominees no less than 10 days before a shareholder meeting;*

(c) *thereafter providing daily vote updates that are consolidated across multiple nominees until the day before the meeting;*

(d) *providing two vote reports on the day before the meeting; and*

(e) *providing a final vote report, consolidated across multiple nominees, on the day of the meeting; and*

(5) *consolidates invoices payable by the issuer for the processing of multiple nominees.*

For the purposes of this Supplementary Material .90, the term ''nominee'' means an entity that:

(1) is either:

(a) a ''record holder'' as defined in Rule 14a-1(i) under the Exchange Act;

(b) a ''record bank'' as defined in Rule 14a-1(k) under the Exchange Act; or

(c) a ''respondent broker or dealer'' as defined below; and

(2) has the legal right to vote the shares it holds as record holder under state law or through contractual arrangement, or as respondent bank or respondent broker or dealer, on behalf of one or more beneficial owners, which right to vote is capable of verification and reconciliation to the issuer's records.

A ''respondent broker or dealer'' means a broker or dealer that holds securities on behalf of beneficial owners and that deposits such securities for safekeeping with another broker or dealer.

INCENTIVE FEES—No change.

(B) through (D)—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 section 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*

Among other things, the Pilot Free Structure lowers certain guidelines concerning the reimbursement of fees for the distribution of Materials, creates incentive fees to eliminate duplicative mailings, and establishes a supplemental fee for intermediaries that coordinate multiple nominees. The proposed rule change would extend the Pilot Fee Structure's termination date from October 10, 2000, to September 1, 2001.

The Exchange believes that an extension of the Pilot Fee Structure's termination date will give the Commission additional time to consider the pilot program, without a lapse in the current rules. Absent an extension of the Pilot Fee Structure's termination date, the fees in effect prior to the Pilot Fee Structure would return to effectiveness after October 10, 2000, creating confusion in the market.

In addition, NYSE proposes to amend the functions that an intermediary is expected to perform, at a minimum, in order to recover the suggested intermediary-coordination fee set forth in the Rules. Currently, the only such functions that the Rules explicitly enumerate are (1) providing the issuer with the names and addresses of nominees pursuant to an issuer request, and (2) transmitting the issuer's proxy materials to the beneficial owners of the shares.

The Exchange proposes to include the first of those two functions within a broader category of functions: Intermediary coordination of the search for nominees and beneficial owners. This broader function includes (in addition to providing nominee names and addresses) searching for all nominees that are clients of the intermediary, obtaining beneficial ownership lists from nominees, and consolidating nominee responses to the issuer's beneficial owner requests.

The Exchange proposes to clarify the latter of those two currently specified functions by specifying that those transmissions should make efficient use of bulk mailing opportunities by combining nominees for bulk mailing as the issuer may request.

In addition, the Exchange proposes to cause the Rules to explicitly list three additional functions that an intermediary would be expected to perform in order to earn its coordination fee in respect of a nominee. First, the intermediary would be expected to prepare issuer materials for distribution, including ordering adequate supplies of materials, packaging and labeling. Second, the intermediary would be expected to provide reports of proxy votes. That function would include receiving and tabulating votes, consolidating vote tallies cast by

multiple nominees at least 10 days prior to a shareholder meeting, thereafter providing daily updates on a consolidated basis up through the day prior to the meeting, providing two vote reports on the day prior to the meeting, and providing a final, consolidated vote report on the date of the meeting. Finally, the intermediary would be expected to consolidate the invoices that it presents to an issuer for the processing of multiple nominees.

These additions of proposed specificity to the functions that are expected of the intermediary in return for the coordination fee are not meant to be exclusive. However, NYSE believes that adding this level of specificity in connection with the minimum performance to be expected of an intermediary will help to clarify the relationship between intermediary and issuer. Both issuers and intermediaries will be put on notice as to the minimum performance that is to be expected of an intermediary in its performance of coordination functions.

2. Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) [5] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In addition, the Exchange believes that an additional basis for the proposed rule change is the requirement under Section 6(b)(5) [6] that an exchange have rules that are 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

According to the Exchange, it has engaged in on-going dialogue regarding the proposed rule change as well as other aspects of its proxy reimbursement guidelines with Commission staff as well as the Proxy Fee Working Committee, a group that NYSE selected as representative of the parties interested in the proxy process, including representatives of the American Society of Corporate Secretaries (on behalf of issuers). NYSE believes that a majority of the committee's representatives approve of the proposed rule change. NYSE has not otherwise solicited, and does not intend to solicit, comments on the proposed rule change. NYSE has not received any unsolicited comments from members or other interested parties.

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. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–36 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21521 Filed 8–22–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43164; File No. SR–NYSE–00–15]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., To Amend Paragraph 902.02 of the Exchange's Listed Company Manual Regarding the Initial Listing Fee for Tracking Stocks

August 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission ''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 17, 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, as amended, from interested persons and to approve the proposal and Amendment No. 1 on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual by eliminating

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19B–4.

[3] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 13, 2000 (''Amendment No. 1''). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to clarify the purpose and application of the proposed rule change.

the per-share initial listing fee and imposing a flat fee of $5,000 for tracking stocks of listed companies, irrespective of the number of shares issued. Below is the text of the proposed rule change. New language is *italicized.*

* * * * *

902.2 Schedule of Current Listing Fees (in effect Jan. 1, 1989)

* * * * *

B. Initial Fee

The initial fee schedule applies to original listings and to the listing of additional shares, new issues of stock, warrants, or similar securities which are the subject of subsequent applications. *Tracking stocks of listed companies will be charged a fixed initial fee of $5,000 in lieu of the per share 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, the NYSE 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE seeks to eliminate the per-share initial listing fee for tracking stocks and instead impose a flat fee of $5,000, irrespective of the number of shares issued. The NYSE represents that the proposed flat fee for a tracking stock, *i.e.,* stocks of an issuer that are intended to track the value of a portion of the issuer's business, would apply to a listed company that is listing an additional class of stock on the Exchange. The NYSE states that a company that is originally listing a single class of common stock on the Exchange would pay the regular fee applicable to that type of listing. A listed company that is listing an additional class of tracking stock on the Exchange would pay the proposed $5,000 flat fee, regardless of the original listing criteria under which the company initially listed on the Exchange.[4]

The Exchange notes that its listed companies and those companies with whom the Exchange discusses possible listing indicate an increased desire to utilize tracking stocks to achieve strategic and financial goals. The NYSE believes that the proposed rule change is responsive to the views and needs of all segments of the issuer community.[5] The NYSE further believes that a reduction in the initial listing fee for tracking stocks will place it in a more competitive position vis-a-vis this increasingly popular capitalization structure.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4)[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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 receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–15 and should be submitted by September 13, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission has reviewed the NYSE's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(4) of the Act,[9] because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[10]

The Commission finds that the NYSE's proposed flat fee for tracking stocks is a reasonable response to the increased desire of companies to utilize this capitalization structure. The Commission further finds good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Exchange requested that the Commission accelerate the effective date of the proposed rule change so that the Exchange could institute the fee reduction as quickly as possible. The Commission agrees that approval of this request would enable issuers to promptly benefit from the proposed rule change. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[11] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–00–15), as amended, is hereby approved on an accelerated basis.

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[4] *Id.*

[5] *Id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–43163; File No. SR–NYSE–00–16)

Self Regulatory Organization; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., To Amend Paragraph 902.02 of the Exchange's Listed Company Manual Regarding Total Listing Fees Charged Per Issuer

August 16, 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 25, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Item I and II below, which Items have been prepared by the Exchange. On July 17, 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, as amended, from interested persons and to approve the proposal and Amendment No. 1 on an accelerated basis, as a pilot program through December 31, 2002.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual by implementing a $1 million fee cap per issuer in any given calendar year. Below is the text of the proposed rule change. New language is *italicized.*

* * * * *

902.02 Schedule of Current Listing Fees (in effect Jan. 1, 1989)

* * * * *

It is suggested that the calculation of the fees be checked in advance with the Exchange where there is any question as to the amount of the fee payable. All fees will be calculated to the nearest dollar.

There is a $1 million cap on listing fees per issuer in any given calendar year. This fee cap includes and encompasses all classes of securities except derivatives issued by listed companies as part of their capital structure. This cap will not apply to closed-end funds. The cap is in effect on a pilot basis for 3 years through 2002.

* * * * *

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 NYSE 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE proposes to amend its listed company fee schedule to implement a $1 million fee cap per issuer in any given calendar year. The fee cap would include all classes of securities except derivatives issued by listed companies as part of their capital structure. In addition, the fee cap would not apply to closed-end funds. The fee cap would be in effect on a pilot basis through December 31, 2002.

The Exchange notes that it has a variety of listing fees that are or can be applicable to an issuer in a particular year. In the year of initial listing, the company pays an initial listing fee and a pro rata continuing fee as well. In any typical subsequent year, the company will pay a continuing listing fee, but might also pay additional fees for supplemental listing if, for example, the company issues additional shares of its listed stock or creates and issues an additional class of stock. The Exchange represents that, depending on a company's number of shares outstanding and its additional listing activity in any particular year, listing fees can become substantial for an individual company. The Exchange therefore believes that the proposed rule change, which would be instituted on a pilot basis, is an appropriate response to the views of its listed companies.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4)[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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 receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 13, 2000 (''Amendment No. 1''). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to clarify the purpose and application of the proposed rule change.

[4] Telephone conversation between Daniel Odell, Assistant Secretary, NYSE, and Susie Cho, Attorney, Division, Commission, on August 15, 2000.

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–16 and should be submitted by September 13, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission has reviewed the NYSE's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(4) of the Act,[9] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.[10]

The Commission finds that the NYSE's proposed fee cap is a reasonable one that will be applicable to all its issuers. Further, the fee cap will be instituted on a pilot basis, which will permit the Exchange to evaluate its impact on issuers. The Commission further finds good cause for approving the proposed rule change (SR–NYSE–00–16) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Exchange requested that the Commission accelerate the effective date of the proposed rule change so that the Exchange could institute the fee cap as quickly as possible, to the benefit of its listed companies. The Commission agrees that approval of this request would enable these issuers to promptly take advantage of the change in fee structure. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the act,[11] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–00–16), as amended, is hereby approved on an accelerated basis, as a pilot program effective through December 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5) and 78s(b).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43167; File No. SR–ODD–00–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval to Proposed Supplement to Options Disclosure Document Regarding Risks of Options Positions

August 17, 2000.

On June 26, 2000, the Options Clearing Corporation (''OCC'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act''),[1] five definitive copies of a Supplement to its options disclosure document (''ODD''), which describes, among other things, the principal risks of options positions. In particular, the Supplement amends certain parts of Chapter 10 that describe the effect of unusual circumstances on the settlement procedures for standardized options.[2]

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. The Commission has approved OCC rule proposals that change or clarify the settlement procedures for options positions in unusual circumstances, such as when a primary market for component securities of an index option is not open on the last trading day before expiration.[3] The proposed Supplement incorporates descriptions of these changes or clarifications into the ODD.

The Commission has reviewed the ODD Supplement and finds that it complies with Rule 9b–1 under the Act.[4] The Supplement is intended to be read in conjunction with the ODD, which discusses the characteristics and risks of options generally. The ODD, along with the Supplement, provides information regarding the principal risks of options positions, including the effect of unusual circumstances on the settlement procedures for standardized options. Rule 9b–1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard for the adequacy of information disclosed and the protection of investors.[5] The Commission has reviewed the Supplement, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the Supplement as of the date of this order.

It Is Therefore Ordered, pursuant to Rule 9b–1 under the Act,[6] that the proposed Supplement regarding special settlement procedures (SR–ODD–00–03) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[1] 17 CFR 240.9b–1.

[2] *See* Letter from James C. Yong, First Vice President and Deputy General Counsel, OCC, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated June 26, 2000.

[3] *See* Securities Exchange Act Release No. 42769 (May 9, 2000), 65 FR 31036 (May 15, 2000) (order approving SR–OCC–00–01); Securities Exchange Act Release No. 42769 (June 1, 2000), 65 FR 36489 (June 8, 2000) (order approving SR–OCC–99–16).

[4] 17 CFR 240.9b–1.

[5] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[6] 17 CFR 240.9b–1.

[7] 17 CFR 200.30–3(a)(39).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43150; File No. SR–PCX–00–20)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Auto-Ex Log-On Requirements

August 14, 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 July 10, 2000, the Pacific Exchange, Inc. (''PCX'' 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 PCX. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 is proposing to adopt a new rule requiring options market makers who log on to the Exchange's automatic execution system for options (''Auto-Ex'') during an expiration month to remain on Auto-Ex, while in the trading crowd, until the close of business on the next expiration Friday. The text of the proposed rule change is set forth below. Additions are in italics; deletions are in brackets.

5231 Automatic Execution System

Rule 6.87

(a)–(d) No change

(e) Market Maker Requirements for Eligibility. Any Exchange Member who is registered as a Market Maker and who has obtained written authorization from a clearing member is eligible to participate on the Auto-Ex system, subject to the following conditions and requirements:

(1)–(3) No change.

(4) *Log-on Requirement. A Market Maker who has been logged on to Auto-Ex in an option issue at any time during an expiration month must continue to be logged on to Auto-Ex in that issue whenever present in that trading crowd, until the close of business on the next Expiration Friday. A Market Maker who is limited to ''closing only'' transactions pursuant to PCX Rules or the requirements of that Market Maker's clearing firm will be exempt from this provision upon approval of two Floor Officials.* [A Market Maker who has logged onto Auto-Ex at any time during a trading day must participate on the Auto-Ex system in that option issue whenever present in that trading crowd during that trading day.]

(f)–(j) 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, PCX 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

Currently, options market makers (other than lead market Makers) at the PCX may log on or off of the Auto-Ex System [3] at their discretion, with four exceptions. First, a market maker who has logged on to or off of Auto-Ex at any time during a trading day must participate on the Auto-Ex System in that option issue whenever present in the trading crowd during that trading day.[4] Second, a market maker may be required to log on to Auto-Ex in an issue if two floor officials determine that there is inadequate Auto-Ex participation in that issue.[5] Third, market makers may not log off of Auto-Ex during the first ten minutes of a fast market that has been declared pursuant to PCX Rule 6.28.[6] Finally, market makers may log on to Auto-Ex only when present in person and they must log off of Auto-Ex upon leaving the trading crowd (unless their departure is for a brief interval).[7] Lead Market Makers at the PCX are required to remain logged on to Auto-Ex throughout the trading day.[8]

The Exchange now proposes to amend rule 6.87(e)(4). As indicated above, the rule presently requires a market maker who has logged on to Auto-Ex for an option issue at any time during a trading day to participate in the Auto-Ex System in that option whenever present in the trading crowd during that day. The Exchange is now proposing to amend Rule 6.87(e)(4) to instead require a market maker who has logged on to Auto-Ex in an option issue at any time during an expiration month to remain logged on to Auto-Ex in that issue whenever present in that trading crowd, until the close of business on the next expiration Friday. It further provides that a market maker who is limited to ''closing only'' transactions pursuant to PCX Rules, or the requirements of the market maker's clearing firm, would be exempt from this provision upon approval of two floor officials.[9]

The purpose of the proposal is to assure that market makers who avail themselves of the benefits of Auto-Ex during favorable market conditions will also provide the necessary liquidity for inbound Auto-Ex orders when market conditions are unfavorable. The Exchange notes that the Commission has approved a similar rule on behalf of another options exchange.[10] The Exchange believes that implementation of this rule will help to further the important objective of assuring fair and orderly markets at the PCX.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) [11] of the Act, in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, by requiring market makers to remain on the floor if logged on to the Auto-Ex System, thereby providing adequate liquidity.

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.

[3] The Auto-Ex system, a feature of the PCX's Pacific Options Exchange Trading System (''POETS''), permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order. Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves public limit order book (''Book'') priority in all options. If Auto-Ex determines that the Book price is at or better than the market quote, the Auto-Ex order is executed against the Book. Automatic executions through Auto-Ex are currently available for public customer orders between 20 and 50 contracts or less in all series of options traded on PCX's options floor. See generally Securities Exchange Act Release Nos. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990); 32908 (September 15, 1993), 58 FR 49076 (September 21, 1993); and 40598 (October 23, 1998), 63 FR 58439 (October 30, 1998).

[4] PCX Rule 6.87(e)(4).

[5] PCX Rule 6.87(e)(6). The Exchange represents that the purpose of proposed rule 6.87 is to prevent circumvention of log-on requirements by market makers who voluntarily log on to the Auto-Ex System, not those required—under PCX Rule 6.87(e)(6) or otherwise—to log on to Auto-Ex. Telephone conversation between Hassan Abedi, Attorney, PCX, and Steven Johnston, Special Counsel, Division of Market Regulation, Commission (July 27, 2000).

[6] PCX Rule 6.87(e)(5).

[7] PCX Rule 6.87(e)(3).

[8] PCX Rule 6.82(c)(7).

[9] The Exchange notes that under the current rule, a market maker must obtain written authorization from a clearing member before being permitted to participate on Auto-Ex. PCX Rule 6.87(e).

[10] This requirement is currently codified in CBOE Rule 8.16(b). *See* Securities Exchange Act Release No. 25995 (August 15, 1988), 53 FR 31781 (August 19, 1988).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a non-controversial rule change pursuant to Section 19(b)(3)(A) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder,[14] and has become effective upon filing because it: (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 the date on which it was filed; and the Exchange provided the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the propose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 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 Phlx. All submissions should refer to File No. SR–PCX–00–20 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[13] 15 U.S.C. 78f(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43149; File No. SR–PCX–99–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes to Rule 6, Options Trading, Trading Practices and Procedures

August 11, 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 October 29, 1999, the Pacific Exchange, Inc. (''PCX'' 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 Exchange. On January 7, 2000, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On May 25, 2000, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, dated January 6, 2000 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposed to eliminate Options Floor Procedure Advices (''OFPA'') D–7 and D–8b because the provisions found in these OFPAs are already addressed in current PCX Rules 6.67 and 6.76 respectively.

[4] Letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Jack Drogin, Assistant Director, Division, SEC, dated May 24, 2000 (''Amendment No. 2''). In Amendment No. 2, the PCX clarified the purpose of the proposed changes to PCX Rule 6.64(7), PCX Rule 6.64(c), PCX Rule 6.67(c)(1), PCX Rule 6.69, PCX Rule 6.70, Commentary .01 to PCX Rule .673, and PCX Rule 6.75. In addition, the Exchange corrected typographical errors, clarified the proposed changes made to PCX Rule 6.64(b)(8) and explained why OFPA F–1 is proposed to be deleted.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposed to modify its rules relating to trading practices and procedures on the options floor by clarifying existing provisions, eliminating superfluous provisions, incorporating current policies and procedures, and merging certain OFPAs into the text of PCX Rule 6. The text of the proposed rule change is available at the Office of the Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With regard to options trading practices and procedures, the Exchange is proposing to make the following changes to the text of PCX Rule 6.

a. *OFPAs:* The Exchange proposes to delete the following OFPAs: OFPA A–1, Subject: Responsibility of Floor Brokers at the Opening; OFPA A–3, Subject: Procedure for Entering Orders in the Book Under Certain Circumstances; OFPA A–7, Subject: Floor Broker Giving Up a Name Other Than His Own as Executing Member; OFPA C–1, Subject: Procedures for Opening Rotations; OFPA D–7, Subject: Expressing Fractions in Writing; [5] OFPA D–8b, Subject: Priority on Split Price Transactions,[6] OFPA D–11, Subject: Record Retention Requirements; OFPA F–5, Subject: Means of Communication on the Options Floor; OFPA G–1, Subject: Options Transactions Based on Erroneous Prints of Underlying Security; OFPA G–2, Subject: Imbalance of Orders at Openings; OFPA G–5, Subject: Trading Procedures for Combination, Spread, or Straddle Orders Under Priority Rules; OFPA G–

[5] *See* Amendment No. 1.

[6] *Id.*

10, Subject: Public Outcry/OBO Awareness; and OFPA G–12, Subject: Reporting of Trade Information. The Exchange proposes to delete these OFPAs and to incorporate relevant language from them into the text of PCX Rule 6 to centralize rules and obligations pertaining to options trading practices and procedures.

b. *Proposed PCX Rule 6.64, Trading Rotations:* The PCX proposes to make several changes to PCX Rule 6.64 relating to trading rotations.[7] First, the Exchange proposes to allow two Floor Officials, rather than the OFTC, as currently required, to direct that a trading rotation be employed. The Exchange proposes this change to expedite the trading rotation process.

Second, the Exchange proposes to modify and renumber PCX Rule 6.64, Commentary .01(a) as PCX Rule 6.64(b),[8] OFPA C–1, Subject Procedures for Opening Rotations, as PCX Rule 6.64(b)(1) through (7), and OFPA G–2, Subject: Imbalance of Orders at Openings, as PCX Rule 6.64(b)(8). The Exchange proposes these changes to codify and centralize the responsibilities of the OBO at the opening rotation in the text of PCX Rule 6.

Third, the Exchange proposes to renumber PCX Rule 6.64, Commentary .01(b) as PCX Rule 6.64(c).[9] In addition, the Exchange proposes to modify procedures under proposed PCX Rule 6.64(c) whereby book staff should notify floor brokers by 12:50 p.m. that a closing rotation may be necessary, and a procedure whereby a closing rotation should commence at least ten minutes after the trading floor has been notified. The Exchange also proposes to codify an express requirement in proposed PCX Rule 6.64(c) which states that only orders that have been entered before 1:02 p.m. are eligible for execution during the closing rotation. The Exchange proposes these changes to simplify and centralize the rules regarding trading rotations, to give notice to floor broker of closing rotations, and to simplify the closing rotation process.

Fourth, the Exchange proposes to renumber PCX Rule 6.64, Commentary .01(c) as PCX Rule 6.64(d) and to renumber PCX Rule 6.64, Commentary .02 as PCX Rule 6.64(e).[10] The Exchange proposes these rule changes to reorganize the centralize the responsibilities pertaining to trading rotations.

Fifth, with respect to proposed changes to PCX Rule 6.64, the Exchange proposes to renumber OFPA A–1, Subject: Responsibility of Floor Brokers at the Opening, as PCX Rule 6.64(f). The Exchange proposes this rule change to centralize the responsibilities of floor brokers at the opening.

c. *Proposed PCX Rule 6.65, Trading Halts and Suspensions:* Currently, PCX Rule 6.65, Commentary .02 requires an Options Floor Official that authorizes a trading halt and the OBO assigned to the halted option to file a report with the Exchange Options Floor Committee and the Department of Member Firms. The Exchange proposes to amend where the trading halt report is filed. The Exchange proposes to have the report filed with Exchange Operations because it is responsible for keeping all trading activity records.[11]

d. *Proposed PCX Rule 6.66, Order Identification:* The Exchange proposes to renumber OFPA A–7, Subject; Floor Broker Giving Up a Name Other Than His Own as Executing Member, as proposed PCX Rule 6.66(d). The Exchange proposes this rule change to centralize rules relating to Floor Broker Identification.

e. *Proposed PCX Rule 6.67, Orders Required to be in Written Form:* First, with the regard to changes to PCX Rule 6.67, Orders Required to be in Written Form, the Exchange proposes to renumber PCX Rule 6.67, Commentary .02 as PCX Rule 6.67(a) to simplify and centralize rules pertaining to orders transmitted to the floor.[12] The Exchange also proposes to renumber OFPA F–5, Subject: Means of Communication on the Options Floor, as PCX Rule 6.67(d).

Second, the Exchange proposes to renumber PCX Rule 6.67, Commentary .01 as PCX Rule 6.67(e).[13] The Exchange proposes these changes to simplify and centralize rules relating to orders required to be in written form.

Finally, in Amendment No. 1, the Exchange proposes to eliminate OFPA D–7, which reiterates the requirement of PCX Rule 6.67 that all orders must be in written form and in a form approved by the Exchange.

f. *Proposed PCX Rule 6.68, Record of Orders:* The Exchange proposes to renumber OFPA D–11, Subject: Record Retention Requirements, as PCX Rule

[7] PCX Rule 6.64 currently states that a ''trading rotation'' is a series of very brief time periods during each of which bids, offers, and transactions in only a single, specified option contract can be made. The Options Floor Trading Committee (''OFTC'') may direct that one or more trading rotations be employed on any business day to aid in producing a fair and orderly market. For each rotation so employed, the OFTC shall specify the particular option contracts to be included and the sequence of such option contracts in the rotation. Two or more trading rotations may be employed simultaneously, if the OFTC so prescribes.

[8] Current PCX Rule 6.64, Commentary .01(a) states that the opening rotation, when used, shall be held promptly following the opening of the underlying security on the principal market where it is traded. As a rule, an Order Book Official (''OBO'') acting in more than one class of options should open them in the same order in which opening transactions are reported in the underlying securities. In conducting each such opening rotation, the OBO should first open the one or more series of options of a given class having the nearest expiration, then proceed to the series of options having the next most distant expiration, and so forth, until all series have been opened. Except as otherwise provided by the OFTC, if both puts and calls covering the same underlying security are traded, the OBO shall determine which type of option should open first, and may alternate the opening of put series and call series or may open all series of one type before opening any series of the other type, depending on current market conditions.

[9] Current PCX Rule 6.64, Commentary .01(b) states that ''(b) *Closing Rotations.* Transactions may be effected in a class of options after 1:02 p.m. (Pacific Time) if they occur during a trading rotation. Such a trading rotation may be employed in connection with the opening or reopening of trading in the underlying security after 12:30 p.m. (Pacific Time) or due to the declaration of a ''fast market'' pursuant to OFPA G–9. The decision to employ a trading rotation after 12:30 p.m. shall be publicly announced on the trading floor prior to the commencement of such rotation. No more than one trading rotation may be commenced after 1:02 p.m. If a trading rotation is in progress and Floor Officials determine that a final trading rotation is needed to ensure a fair and orderly close, the rotation in progress shall be halted and a final rotation begun as promptly as possible after 1:02 p.m. Any trading rotation conducted after 1:02 p.m. may not begin until ten minutes after news of such rotation is disseminated. [¶] (1) When a closing rotation is necessary, the Order Book Official shall use a single price closing procedure. In a closing rotation, customer orders will receive the same priority as they do during opening rotations. [¶] (2) Except as otherwise provided by the OFTC, if both puts and calls covering the same underlying security are traded, the Order Book Official shall determine the order of closing each series of such puts and calls in light of current market conditions, in the manner provided in paragraph (a) for opening rotations.''

[10] Current PCX Rule 6.64, Commentary .01(c) and Commentary .02 are as follows: Commentary .01(c) states that ''[a] closing trading rotation shall be employed for each series of individual stock options on the last business day prior to its expiration. The closing rotation shall commence at 1:02 p.m. Pacific Time, or after a closing price of the stock in its primary market is established, whichever is later. Open trading on expiring series of index options shall be permitted on the last business day prior to expiration until 1:15 p.m. Pacific Time, but a closing rotation for such expiring series of index options shall not be employed.'' Commentary .02 states that ''[f]or those option classes and within such time periods as the OFTC may designate, members may, prior to opening rotation, enter option market quote indications based upon the anticipated opening price of the securities underlying such designated option class.''

[11] *See* Amendment No. 2.

[12] Currently, PCX Rule 6.67, Commentary .02 states that ''[o]rders sent electronically through the Exchange's Member Firm Interface are deemed to be written orders for purposes of Rule 6.67.''

[13] Currently, PCX Rule 6.67, Commentary .01 states that any member desiring to use an order form in a format other than that provided by the Exchange must submit such form to the OFTC and obtain its approval prior to using such form on the floor.

6.68(b). In addition, the Exchange proposes to delete superfluous and repetitive language in proposed PCX Rule 6.68(b) that states that members are reminded that pursuant to PCX Rule 6.68, every member organization is required to maintain and preserve for the period of time required in Rule 17a-4 under the Act,[14] a written record of every order. The Exchange proposes this rule change to centralize PCX record retention rules.

g. *Proposed PCX Rule 6.69, Reporting Duties:* The Exchange proposes to renumber OFPA G–12, Subject: Reporting of Trade Information, as PCX Rule 6.69, Commentary .02. In addition, the Exchange proposes that market maker clearing firms are directed to instruct their respective trading desks to identify market maker orders that are entered from off the floor and not entitled to market maker margin treatment by placing a ''C'' after the market maker's number in the ''firm'' box on the ticket. Floor Brokers, when accepting an order by phone from a market maker, are similarly directed to identify that order in the same manner. The Exchange is proposing this change to enable it to better track how, and by whom, trades are being executed.[15]

Finally, with regard to changes to Rule 6.69, the Exchange proposes to add Commentary .04 which makes it clear that time stamping on the back of the hard card does not meet the Exchange's time stamp requirements because the hard card is not submitted or retained by the Exchange. The Exchange proposes these changes to centralize and organize requirements pertaining to reporting of trade information.

h. *Proposed Rule 6.70, Price Binding Despite Erroneous Report:* The Exchange proposes to renumber OFPA G–1, Subject: Options Transactions Based on Erroneous Prints of Underlying Security, as PCX Rule 6.70, Commentary .01. In addition, the Exchange has added language to account for differences in bids and offers as compared to previous bids and offers that give rise to the probability that a print or market may be erroneous. The Exchange proposes these changes to centralize rules regarding the binding of prices despite erroneous prints.

i. *Proposed PCX Rule 6.73, Manner of Bidding and Offering:* The Exchange proposes to renumber OFPC G–10, Subject: Public Outcry/OBO Awareness, as PCX Rule 6.73, Commentary .01. In addition, the Exchange proposes to eliminate the requirement that the OBO be fully aware of all quotes and transactions at his/her assigned post because it is impractical for the OBO to keep track of all bids and offers and transactions. The Exchange proposes these changes to centralize and simplify rules pertaining to the manner of bidding and offering on the options floor.

j. *Proposed PCX Rule 6.75, Priority of Bids and Offers:* The Exchange proposes to renumber PCX Rule 6.75, Commentary .03 as PCX Rule 6.75(c)(3).[16] The Exchange also proposes to renumber OFPA A–3, Subject: Procedure for Entering Orders in the Book Under Certain Circumstances, as PCX Rule 6.75, Commentary .03 and OFPA G–5, Subject: Trading Procedures for Combination, Spread or Straddle Orders Under Priority Rules, as PCXX Rule 6.75, Commentary .04. The Exchange proposes these changes to reorganize and centralize rules pertaining to priority of bids and offers.

k. *Proposed PCX Rule 6.76, Priority of Split Price Transactions:* The Exchange proposes to make technical changes to PCX Rule 6.76(a). Specifically, the Exchange proposes to change reference to ''he'' and ''his'' to ''the member.'' The Exchange proposes to change language in PCX Rule 6.76 to read as follows: ''[i]f a member purchases one or more option contracts of a particular series at a particular price or prices, the member must, at the next lower price at which another member bids, have priority in purchasing up to the equivalent number of option contracts of the same series that the member purchased at the higher price or prices, provided that the member's bid is made promptly and continuously and that the purchases effected represents the opposite side of a transaction with the same order or offer as the earlier purchase or purchases.''

In addition, the Exchange proposes to eliminate OFPA D–8b because it simply reiterates the requirements under PCX Rule 6.76 pertaining to priority on split price transactions.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[17] in general, and Section 6(b)(5),[18] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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

[14] 17 CFR 240.17a-4.

[15] *See* Amendment No. 2.

[16] Currently, PCX Rule 6,75, Commentary .03 states that, pursuant to PCX Rule 6.75(c), the OFTC has determined that firm orders and market maker orders held by floor brokers with limit prices better than the opening price are not entitled to participate in the opening rotation unless the OBO has called for market maker and firm participation in response to an imbalance of customer orders.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

submissions should refer to File No. SR–PCX–99–44 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21435 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43153; File No. SR-PCX-00–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Continuing Education Requirements

August 14, 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 August 1, 2000, the Pacific Exchange, Inc. (''PCX'' 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 Exchange. The PCX filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] On August 14, 2000, the Exchange amended the proposal.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The PCX provided written notice to the Commission on July 25, 2000 of its intent to file this proposal. *See* Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(ii).

[6] *See* August 14, 2000 letter from Cindy L. Sink, Senior Attorney, PCX to Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC, and related attachments (''Amendment No. 1''). In Amendment No. 1, the PCX requested waiver of the 30-day operative period, and made minor, technical changes to the original proposal. The Commission considers the proposal to have been filed as of August 14, 2000, the date the Commission received Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules pertaining to continuing education requirements for registered persons as recommended by the Securities Industry Association/ Regulatory Council on Continuing Education. The text of the proposed rule is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify PCX Rule 9.27(c) pertaining to continuing education requirements of registered persons to conform to recommendations made by the Securities Industry/Regulatory Council on Continuing Education (and rule changes adopted by other SROs).[7]

Currently, PCX Rule 9.27(c) requires all registered persons to complete the Regulatory Element training on three occasions: their second, fifth and tenth registration anniversaries (and also when they are the subject of significant disciplinary action). Once persons are registered for more than ten years, they are graduated from the Regulatory Element program.

The proposed rule change would require participation in the Regulatory Element throughout a registered person's career, specifically, on the second registration anniversary and every three years thereafter, with no graduation from the program. However, the proposed Rule will allow a one-time exemption for persons who have been registered for more than ten years as of the effective date of the proposed Rule. The proposed rule change would also require that persons registered in a supervisory capacity will have to have been registered in a supervisory capacity for more than ten years as of the effective date of the proposed Rule to be covered by this one-time exemption. Lastly, the proposed rule change would require members to focus on supervisory training needs and address such needs in the Firm Element training plan.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] in that it is designed to perfect the mechanism of a national market system, and to protect investors and the public interest. The Exchange also believes the proposed rule change furthers the objectives of sections 6(c)(3)(A) and (B) of the Act.[10] These provisions prescribe appropriate standards of training, experience and competence for broker-dealers and their associated persons.

The Exchange further believes that the proposed rule change is consistent with the purposes underlying section 15(b)(7) of the Act,[11] which generally prohibits a registered person from effecting any transaction in, or inducing the purchase or sale of, any security unless such registered person meets the standards of training, competence and other qualifications as the Commission finds necessary or appropriate in the public interest and for the protection of investors.

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.

[7] PCX's proposal was modeled in large part after CBOE Rule 9.3A. The proposed amendments on continuing education requirements have been uniformly adopted by other SROs. *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (SR–CBOE–97–68, SR–MSRB–98–02, SR–NASD–98–03, and SR–NYSE–97–33). *See also* Securities Exchange Act Release No. 39711 (March 3, 1998), 63 FR 12118 (March 12, 1998) (SR–AMEX–98–08) and Securities Exchange Act Release No. 39802 (March 25, 1998), 63 FR 15474 (March 31, 1998) (SR–Phlx–98–13). *See also* Securities Exchange Act Release No. 42404 (February 17, 2000), 65 FR 8220 (February 17, 2000) (SR–CHX–99–32).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(c)(3)(A) and (B).

[11] 15 U.S.C. 78o(b)(7).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b-4(f)(6) thereunder.[13] 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.

The Exchange has asked the Commission to waive the 30-day operative period. The Commission believes it is consistent with the protection of investors and the public interest and therefore finds good cause to allow the proposal to become operative today because the proposal conforms PCX's continuing education requirements for registered persons to those at other exchanges, and there is no benefit to investors and other market participants in requiring a 30-day operative delay. For these reasons, the Commission hereby agrees to waive the 30-day operative period, allowing the proposal to be both effective and operative as of the date the Exchange filed the proposal with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof 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 PCX. All submissions should refer to file number SR–PCX–00–22 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21439 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b-4(f)(6).

[14] The Commission considers the proposal to have been filed as of August 14, 2000, the date the Exchange filed Amendment No. 1.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–43161; File No. SR–Phlx–00–39)

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Disqualification of Governors

August 16, 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 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. On August 15, 2000, the Phlx filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] Letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2000 and received by fax (''Amendment No. 1''). Amendment No. 1 made a technical correction to the language of the proposed rule.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx By-Law Article IV, Section 4–8, *Disqualification of Governors*, to provide that members of the Board of Governors or of any standing or special committee or subcommittee (''Covered Persons'') shall not participate, directly or indirectly, in the discussion or determination of any matter affecting their interests, the interests of any member of their immediate family, or any matter in which their impartiality might reasonably be questioned. The proposed rule change provides an exception to allow participation in situations where the covered person's sole interest lies in their membership in the Exchange or in a sub class membership, unless their impartiality might reasonably be questioned. Proposed new language is *italized*, proposed deletions are in brackets.

* * * * *

ARTICLE IV

Board of Governors

Disqualification of Governors

SEC. 4–8. *(a)* No Governor shall be disqualified from participating in any meeting, action or proceeding of the Board of Governors by reason of being or having been a member of a Standing or Special Committee which has made prior inquiry, examination or investigation of the subject under consideration. Nor shall any member of any such Committee be disqualified by reason of such membership from acting as a Governor upon an appeal from a decision of any such Committee. [But no person shall] *Pursuant to the Exchange's Code of Conduct for Board Members and Committee Members, members of the Board of Governors or of any Standing or Special Committee or subcommittee shall not* participate*, directly or indirectly* in the [determination of any matter in which he is personally interested.] *discussion or determination of any matter affecting their interests, or the interests of any member of their immediate family, or any matter in which their impartiality might reasonably be questioned.*

(b) For purposes of this section, the term ''immediate family'' shall include a spouse, a parent, a mother-in-law, a father-in-law, a brother, a sister, a child, any other person living with the individual or any person for whom the individual provides at least 50 percent of that person's financial support per year.

(c) The last sentence of sub-section (a) of this section shall not apply when the interest of the relevant person is derived solely from being part of the general membership or of a class of members, unless their impartiality might reasonably be questioned.

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

Phlx By-Law, Article IV, Section 4–8 describes the discussions and decisions in which members of the Phlx Board of Governors (''Board Members'') must refrain from participation. The provision further specifies discussions and decisions that do not require Board Members to refrain from participation. The Exchange proposes to amend Phlx By-Law, Article IV, Section 4–8 to conform to the new Phlx 1999 Code of Conduct for Board Member and Committee Members (''1999 Code of Conduct''). The Phlx Code of Conduct, which was adopted in 1997 (''1997 Code of Conduct''), describes, among other things the discussions and decisions in which Covered Persons must refrain from participation.[4] The Phlx Board of Governors revised the 1997 Code of Conduct in July 1999, modifying the language regarding the disqualification of Covered Persons.

The Phlx's proposed rule change will amend its By-Law, Article IV, Section 4-8 to prohibit Covered Persons from participating in matters in which they or their immediate family have an interest.[5] The Exchange proposes to allow participation in matters where the Covered Person's interest arises solely from membership in the Exchange or a sub-class of membership, unless their impartiality might reasonably be questioned.[6] The Exchange believes that the proposed rule change will provide Phlx members fair representation in the administration of the Exchange's affairs.

The Exchange also represents that the proposed rule change will strengthen its present framework of conflict of interest provisions.[7] The 1999 Code of Conduct, for example, requires Covered persons to make prompt disclosure of any interest that could reasonably appear to violate the 1999 Code of Conduct. In addition, Phlx By-Law Article X, Section 10–9(b) and the 1999 Code of Conduct both authorize the Exchange's Audit Committee to conduct reviews of any alleged improper conduct and recommend appropriate action to the Board.

2. Statutory Basis

The Exchange represents that the proposed rule change would prohibit the discussion and determination of Exchange matters by Covered Persons or their immediate family who have an interest in the matter, unless that interest is impartial and arises solely from membership in the Exchange or a sub-class of membership. For this reason, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act[8] in general, and furthers the objectives of Section 6(b)(3)[9] in particular, in that it ensures Phlx members fair representation in the administration of the Exchange's affairs.

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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 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–00–39 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21432 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

[4] Following the adoption of the 1997 Code of Conduct, the Exchange conformed the language in Phlx By-Law, Article IV, Section 4–8 to the language in the 1997 Code of Conduct. *See* Securities Exchange Act Release No. 39722 (March 4, 1998), 63 FR 12569 (March 13, 1998).

[5] The 1999 Code of Conduct and the proposed amendment to Phlx By-Law Article IV, Section 4-8 define ''immediate family'' as a spouse, a parent, a mother-in-law, a father-in-law, a brother, a sister, a child, any other person living with the individual or any person for whom the individual provides at least 50 percent of that person's financial support per year.

[6] The phrase ''a sub-class of membership'' refers to the various categories of Phlx membership. Examples of sub-classes include: equity members and options members; on-floor and off-floor members; and specialists and floor brokers on each floor. The Exchange represents that many decisions in Board and committee meetings, such as fees on equity floor transactions or requirements for arbitration in customer contracts, apply to only one or more of these sub-classes and not to others. The Exchange represents that it does not intend to disqualify persons from making decisions solely because they are part of a sub-class, such as market makers or off-floor members, which will be affected by the outcome of the decision.

[7] Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Susie Cho, Attorney, Division of Market Regulation (''Division'', Commission (May 19, 2000).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(3).

[10] 17 CFR 200.30–3(a)(12)

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before October 23, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jihoon Kim, Financial Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, S.W., Suite 8300.

FOR FURTHER INFORMATION CONTACT: Jihoon Kim, Financial Analyst, 202–205–6024 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Secondary Participation Guaranty Certification Agreement''.

Form No: 1086.

Description of Respondents: SBA Participating Lenders.

Annual Responses: 12,500.

Annual Burden: 46,875.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joan Bready, Business Development Specialist, Office Small Business Development Centers, Small Business Administration, 409 3rd Street, S.W., Suite 8300.

FOR FURTHER INFORMATION CONTACT: Joan Bready, Business Development Specialist, 202–205–6024, or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''SBDC Counseling Record''.

Form No: 1062.

Description of Respondents: Small Business Development Center Counselors.

Annual Responses: 1,150,000.

Annual Burden: 115,000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to George Price, Director, Marketing Research, Small Business Administration, 409 3rd Street, SW Suite 7450.

FOR FURTHER INFORMATION CONTACT: George Price, Director, 202–205–7124, or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Voluntary Customer Surveys in Accordance with E.O. 12862''.

Form No: N/A.

Description of Respondents: Contractors.

Annual Responses: 28,538.

Annual Burden: 4,367.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–21479 Filed 8–22–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3269]

State of North Dakota; Amendment #4

In accordance with a notice from the Federal Emergency Management Agency, dated August 8, 2000, the above-numbered Declaration is hereby amended to include the Indian Reservation of the Three Affiliated Tribes (Ft. Berthold Indian Reservation) in the State of North Dakota as a disaster area due to damages caused by severe storms, flooding, and ground saturation beginning on April 5, 2000 and continuing through July 21, 2000.

All counties contiguous to the above-named Reservation have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 26, 2000 and for economic injury the deadline is March 27, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 11, 2000.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–21480 Filed 8–22–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3384]

Advisory Committee on International Communications and Information Policy Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

There will be a featured guest speaker at the meeting who will speak on an important topic involving international communications and information policy.

This meeting will be held on Thursday, September 14, 2000, from 9:30 a.m.–12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, NW., Washington, DC 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: August 17, 2000.

Timothy C. Finton,

Executive Secretary of the Advisory Committee on International Communications and Information Policy, Department of State.

[FR Doc. 00–21474 Filed 8–22–00; 8:45 am]

BILLING CODE 4710–45–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7788]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) and its Subcommittee on Deepwater Activities will meet to discuss various issues relating to offshore safety. Both meetings will be open to the public.

DATES: NOSAC will meet on Thursday, November 2, 2000, from 9:00 a.m. to 3:00 p.m. The Subcommittee on Deepwater Activities will meet on Wednesday, November 1, 2000, from 9:00 am to 11:30 am. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 19, 2000. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before October 19, 2000.

ADDRESSES: NOSAC will meet in the North Ballroom, of Brady's Landing, 8505 Cypress Street, Houston, Texas (located close to the Turning Basin of the Port of Houston). The Subcommittee on Deepwater Activities will meet in the Sam Houston Room at the same address. Send written material and requests to make oral presentations to Captain P. A. Richardson, Commandant (G–MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Captain P. A. Richardson, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202–267–0214, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

National Offshore Safety Advisory Committee. The agenda includes the following:

(1) Report on development and implementation of STCW Convention for OSVs.

(2) Report from the Prevention Through People Subcommittee on Adequacy of ''12-hour Rule.''

(3) Report on issues concerning the International Maritime Organization and the International Organization of Standardization.

(4) Status report from Incident Reporting Subcommittee.

(5) Progress report from the Subcommittee on Pipeline-Free Anchorages.

(6) Status reports on revision of 33 CFR chapter I, subchapter N, Outer Continental Shelf Regulations, and new regulations for large offshore supply vessels and crewboats, 46 CFR chapter I, subchapter L.

(7) Report on the USCG/MMS Memorandum of Understanding.

(8) Progress report from Subcommittee on Deepwater Activities.

Subcommittee on Deepwater Activities. The agenda includes the following:

(1) Review and discuss Task Statement.

(2) Proposed work for next 6 months.

Procedural

Both meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than October 19, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than October 19, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than October 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 meetings, contact the Executive Director as soon as possible.

Dated: August 14, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–21418 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Submission of Deadline for International Slots for the Summer 2001 Scheduling Season

AGENCY: Department of Transportation, FAA.

ACTION: Notice of submission deadline.

SUMMARY: On October 1, 1999, the FAA amended the regulations governing takeoff and landing slots and slot allocation procedures at certain High Density Traffic Airports as a result of the ''Open Transborder'' Agreement between the Government of the United States and the Government of Canada. One element of this final rule established that the deadline for submission of requests for international slots will be published in a **Federal Register** notice for each scheduling season. The purpose of the amendment is for the FAA deadline for international slots requests to coincide with the International Air Transport Association deadline for submission of international requests. In accordance with this amendment, the FAA announces in this notice that the deadline for submitting requests for international slots for allocation under 14 CFR 93.217 is October 15, 2000.

DATES: Requests for international slots must be submitted no later than October 15, 2000.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office, AGC–230, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile; 202–267–7668; ARINC: DCAYAXD; email address: 9-AWA-slotadmin@faa.gov.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Airspace and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–3073.

Issued in Washington, DC, on August 16, 2000.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 00–21495 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee on Tuesday, September 12, and Wednesday, September 13. The meeting will be held at the Holiday Inn Rosslyn Westpart Hotel, 1900 North Fort Myer Drive, Arlington, Virginia.

On Tuesday, September 12 the meeting will begin at 9:00 a.m. and end at 5:00 p.m. On Wednesday, September 13 the meeting will begin at 8:30 a.m. and end at 12:00 noon.

The meeting agenda will include receiving guidance from the Committee for FAA's fiscal year 2003 research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–7358. Please inform us if you are in need of assistance or require a reasonable accommodation for this meeting.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on August 16, 2000.

Hugh McLaurin,

Program Director, Office of Aviation Research.

[FR Doc. 00–21496 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Kalamazoo/Battle Creek International Airport, Kalamazoo, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kalamazoo/Battle Creek International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 22, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth Potts, Airport Director of the Kalamazoo/Battle Creek International Airport, 5235 Portage Road, Kalamazoo, Michigan 49002.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kalamazoo/Battle Creek International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gary J. Migut, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7278). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kalamazoo/Battle Creek International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 25, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Kalamazoo/Battle Creek International Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 25, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–03–C–00–AZO.

Level of the PFC: $3.00.

Proposed charge effective date: January 1, 2001.

Estimated charge expiration date: May 31, 2005.

Total approved net PFC revenue: $3,298,376.00

Brief description of proposed projects: Terminal Area Study, Acquire Land Paarcel 56, Acquire Land Parcel 55, Rehabilitate Taxiway B (North), PFC Consultant Fees, Replace Airport Wind Cone, Install PAPI on Runway 35, Commuter Walkways, Rehabilitate Runway 17/35, Rehabilitate Runway 9/27, Purchase Runway Snow Sweeper, Purchase Runway Snow Blower, Conduct Airfield Electrical Study, Rehabilitate Runway 5/23, Purchase Runway Snow Plow.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non scheduled Part 135 Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Kalamazoo/Battle Creek International Airport.

Issued in Des Plaines, Illinois, on August 7, 2000.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–21494 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Amador County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of withdrawal.

SUMMARY: The FHWA is issuing this notice to advise the public that (1) the Notice of Intent, issued on October 22, 1998, to prepare an Environmental Impact Statement (EIS) for the proposed highway project on State Route (SR) 49 in Amador County, California will be withdrawn; and (2) an Environmental Assessment (EA) in lieu of an EIS is being prepared for the proposed highway project.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Clinton, Team Leader, Project Delivery Team-North, Federal Highway Administration, California Division, 980 9th Street, Suite 400, Sacramento,

California 95814–2724, Telephone: (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), conducted studies of the potential environmental impacts associated with the proposed highway project to bypass Sutter Creek and Amador Cities on SR 49 in Amador County, California. During the course of conducting these studies and coordinating with regulatory and resource agencies, it was found that many of the potential environmental issues that led to issuing the Notice of Intent were not significant. In addition, changes to avoid to minimize potential impacts identified in early scoping have been made to the designs. The FHWA has determined that the proposed project is not likely to result in significant impacts to the environment; that an EA would be an appropriate environmental document for the project; and that the Notice of Intent (issued on October 22, 1998, and available on the **Federal Register** of November 2, 1998) should be withdrawn.

The EA will be available for public inspection prior to the public hearing. Comments or questions concerning this proposed action and the determination an EA is the proper environmental document should be directed to the FHWA at the address provided above.

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

Issued on; August 9, 2000.

Glenn Clinton,

Team Leader, Project Delivery Team—North Sacramento, California.

[FR Doc. 00–21537 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration (FHWA), and Federal Railroad Administration (FRA), DOT

Rescission of Notice of Intent

SUMMARY: This notice rescinds the previous notice of intent issued on January 19, 1996, to prepare an environmental impact statement for a proposed high speed rail improvement program between Portland, Oregon and Vancouver, British Columbia.

FOR FURTHER INFORMATION CONTACT: Gary S. Hughes, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington 98501, Telephone: (360) 753–9025; David Valenstein, Federal Railroad Administration, 1120 Vermont Avenue NW., MS 20, Wahsington, DC 20590, Telephone: (202) 493–6368; Mr. James Slakey, Washington State Department of Transportation, 310 Maple Park East Olympia, Washington 98504, Telephone: (360) 705–7920.

SUPPLEMENTARY INFORMATION: The notice of intent to prepare an environmental impact statement for the multi-phase program plan to develop high-speed intercity passenger service on the 366-mile segment of the rail corridor between Portland, Oregon and Vancouver, British Columbia, was published January 19, 1996. The purpose of that EIS was to provide background for the decision whether or not to implement a comprehensive high-speed passenger rail program in the corridor, and to analyze the impacts of proposed improvements needed to implement Phase 1 of the program.

Since that date, the decision whether or not to implement a comprehensive high-speed rail program in the corridor has been deferred. An Intercity Passenger Rail Plan was developed for Washington State 1998–2018, which included an overview and analysis of environmental resources and impacts. That plan was deferred while several of the improvements originally proposed as Phase 1 of the rail plan have been incorporated into the improvement programs of other entities providing rail service on the corridor. Further analysis of the remaining four improvements proposed as part of Phase 1 has demonstrated that they have both logical termini and independent utility as stand-alone projects to improve existing services. Therefore, each will be developed independently with appropriate environmental processes to comply with the National Environmental Policy Act (NEPA).

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

Issued on: July 27, 2000.

Gary S. Hughes,

Operations Team Leader, Federal Highway Administration, Washington Division.

Mark E. Yachmetz,

Associate Administrator for Railroad Development, Federal Railroad Administration.

[FR Doc. 00–21428 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2000–7646]

Implementation Guidance for the National Historic Covered Bridge Preservation Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments on selection criteria for fiscal year (FY) 2001 and beyond.

SUMMARY: This document describes the National Historic Covered Bridge Preservation program (NHCBP) for FY 2000, and seeks comments from all interested parties on the application and selection criteria to be used by the FHWA in future years in evaluating candidates for historic covered bridge preservation. A memorandum soliciting candidate projects for preservation work from State transportation agencies was issued to FHWA division offices on June 5, 2000, and is attached to the end of this notice.

DATES: Comments on the selection criteria for NHCBPP funding for FY 2001 and beyond must be received on or before October 10, 2000.

ADDRESSES: Your signed, written comments on the bridge project selection criteria for the NHCBP program funding for FY 2001 and beyond must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Seventh Street, SW., Washington D.C. 20590-0001 or submit electronically at *http://dmses.dot.gov/submit.* All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila Rimal Duwadi, Office of Bridge

Technology, HIBT–30, (202) 366–4619; or Mr. Bruce Eberle, Office of Human Environment, HEPH–10, (202) 366–2060; or Mr. Robert J. Black, Office of the Chief Counsel, HCC–30, (202) 366–1359; Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve online through the Document Management system (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web site at *http://www.access.gpo.gov/nara.* The solicitation memorandum will also be available on the FHWA web site at *http://www.fhwa.dot.gov/bridge.*

Background

The Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107, June 9, 1998), as amended by the TEA 21 Restoration Act (the Act) (Public Law 105–206, 112 Stat. 834 (1998)), established the National Historic Covered Bridge Preservation grants program. Section 1224 of the Act authorizes $10 million to be appropriated for each of the fiscal years 1999 through 2003. In FY 1999, no funds were provided for this program. In FY 2000, $8 million was authorized from the FHWA administrative expense. On June 5, 2000, the FHWA issued a memorandum to its division offices located in each State, the District of Columbia, and Puerto Rico soliciting from the transportation agencies candidate bridge projects for FY 2000 NHCBP program funding. The memorandum contains information on the program, program implementation, eligible activities, the application process, and the selection criteria for use by the FHWA in evaluating FY 2000 candidate bridge projects. The memorandum is published here for informational purposes. The FHWA has determined that the research projects under this program will be solicited through the FHWA's Office of Contract Management under a broad agency announcement, and will therefore be a separate program under the main NHCBP program. Any reference made to the Research Program is for informational purposes, and for completeness.

The FHWA plans to use the same process, and to continue to use the same selection criteria for FY 2001 and beyond for this grant program. However, before doing so, the FHWA is interested in the views of the States and other interested parties on the process, and on these bridge selection criteria. The purpose of this notice is to invite comments from the States and others on this process and on these selection criteria which will be used for soliciting and for evaluating candidate bridge projects for FY 2001 and beyond.

National Historic Covered Bridge Preservation Program Guidelines

The NHCBP program provides for two categories of projects: First, for grants to assist the States in their efforts to rehabilitate or repair and to preserve the Nations's historic covered bridges which are listed or are eligible for listing on the National Register of Historic Places [1]; and second, for the conduct of research to find improved means of restoring, and protecting covered bridges, and disseminating this information through technology transfer. Funding and specifics of the two categories of projects include:

1. Historic Covered Bridge Preservation, Rehabilitation, or Restoration. Of the funds provided for FY 2000, the FHWA will provide a minimum of $7 million for the following activities:

a. Preservation, rehabilitation or restoration of an historic covered bridge in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The standards should be consulted for the terms and definitions for the distinct approaches to the treatment of historic properties, i.e. preservation, rehabilitation, or restoration. Although the standards were developed for historic buildings, the terms, guidelines and suggested approaches are generally applicable to historic covered bridges.

b. Preservation of an historic covered bridge, including through: (i) installation of a fire protection system; (ii) installation of a system to prevent vandalism and arson; and (iii) relocation of a bridge to a preservation site.

2. Historic Covered Bridge Preservation Research. Of the funds provided for FY 2000, the FHWA will provide a maximum of $1 million for research projects including but not limited to:

a. Collection and dissemination of information concerning historic covered bridges;

b. Development of educational programs relating to the history and construction techniques of historic covered bridges; and

c. Basic research to find better means of protecting historic covered bridges from rot, fire, natural disasters, or weight-related damages.

The activities under category 1 are the subject of the attached memorandum and this notice. The bridge projects for this part of the program are being solicited through the State highway agencies. The activities under category 2 will be solicited separately by the FHWA under a broad agency announcement.

Federal Share

Federal share of the costs for any project eligible under this program is 80 percent.

Obligation Limitation

There is no obligation limitation on the NHCBP program funds.

Eligibility

To be considered, a covered bridge must be eligible for listing or listed in the National Register of Historic Places. Projects must be carried out in the most historically appropriate manner and preserve the existing structure. The project must also provide for replacement of wooden components with wooden components, unless the use of wood is impractical for safety reasons. The Secretary of the Interior's Standards for the Treatment of Historic Properties should be consulted in carrying out any preservation work. Although the standards were developed for historic buildings, the terms, guidelines and suggested approaches are generally applicable to historic covered bridges, and must be considered if one is to retain the historical characteristic of a structure.

The project may be on any public roadway, including Federal, State, and locally funded projects.

[1] The National Register of Historic Places is the official list of America's districts, sites, buildings, structures or objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the Department of the Interior.

Funds are available for costs of preliminary engineering, costs of rehabilitation, preservation, and arson and vandalism prevention activities. Funds are also available for evaluating any innovative portion of the restoration work not to exceed 2 years, and for preparation of a case study report.

Solicitation Procedures

Each year when funds are authorized for this program the FHWA will send a solicitation memorandum to the division offices for bridge preservation projects. The memorandum will contain the amount of available funding for that year, the selection criteria, and the program guidelines. This year's solicitation memorandum was sent on June 5. For FY 2000, eligible bridge candidates submitted to the FHWA that are not selected will be placed on file for the next year's solicitation. Prior to placement of an eligible bridge candidate on file for inclusion in the next year's selection pool, the FHWA will ask the originator if it wishes for us to continue to maintain the candidate for the next year. If the originator declines, the FHWA will remove the project from its file. Eligible bridge candidates placed on file and not selected for funding in the next fiscal year will be removed from the FHWA selection pool.

Responsibilities

State Transportation Agency Responsibilities

Coordinate with State, local, and Federal agencies within the State to develop viable candidate bridge projects.

Coordinate bridge projects with the State Historic Preservation Officer or his/her designee.

Ensure that the applications for candidate bridge projects meet the submission requirements outlined in the solicitation memorandum.

Establish priorities for their candidate bridge projects if desired.

Submit applications to the local FHWA division office to meet the submission deadline.

Monitor the selected project(s); and prepare and submit a report on the work at the completion of each project to the FHWA.

FHWA Division Office Responsibilities

Provide the solicitation memorandum and program information to the State transportation agency.

Request candidate projects be submitted by the State to the FHWA Division office to meet the submission deadline established in the solicitation.

Review all candidate applications submitted by the State for completeness prior to forwarding them to the FHWA Headquarters office.

Make recommendations as appropriate.

Monitor selected projects through completion. Ensure reports are submitted by the States on each project completed.

FHWA Headquarters Program Office Responsibilities.

Solicit candidates through the solicitation memorandum.

Form a Review Panel to review and select candidate projects.

Allocate funds for the selected projects.

Monitor the projects through completion.

Compile project report(s) submitted by the States through the division offices.

FHWA Headquarters Program Office Contact

For questions concerning the NHCBP program, please contact Ms. Sheila Rimal Duwadi, Office of Bridge Technology, HIBT–30, at (202) 366–4619, FAX (202) 366-3077, or e-mail *sheila.duwadi@fhwa.dot.gov;* and Mr. Bruce Eberle, Office of Human Environment, HEP–10, at (202) 366–2060, FAX (202) 366–3409, or e-mail bruce.eberle@fhwa.dot.gov.

Selection Criteria for Bridge Preservation Projects

Candidate projects will be selected utilizing input from a panel formed by the FHWA.

Candidate projects which best meet the intent of this program will receive the highest priority. Applicants may want to provide additional information to explain how the project meets the intent of the program.

Candidate projects ready for or near the construction phase will be given priority consideration.

Candidate projects that leverage Federal funds with other significant public or private resources will be given preference.

Candidate projects which further the aims of the Historic Bridge Management Plan and/or the State Historic Preservation Plan with the endorsement of the State Historic Preservation Officer will be given priority consideration.

Candidate projects that propose restoration, and rehabilitation will be prioritized by sufficiency rating, the lower the rating the higher the priority. Also, to be eligible for rehabilitation the bridge should be eligible for funding under the Highway Bridge Replacement and Rehabilitation Program.

Candidate projects proposing complete restoration and rehabilitation will be given priority over candidate projects proposing only the installation of fire/vandalism protection systems or those proposing moving the bridge to a preservation location.

Candidate projects that propose fire/vandalism protection system installation or moving the bridge to a preservation site will not be considered if the bridge is eligible for replacement.

Application Guidance

A copy of the application is available at the FHWA website at *http://www.fhwa.dot.gov/bridge* under the ''Covered Bridge Program, Program Implementation.'' The application asks for various information about a bridge and proposed preservation project so that FHWA can determine if it is a good candidate. The information requested includes the location of the bridge, its age, structural description and what are the qualities that make the bridge eligible for the National Register. The application also asks what repair work has previously been done and what the grant will be used for now. Plans and a narrative history of the bridge are also requested.

Priority Ranking

Each State, in cooperation with the FHWA division office, is requested to prioritize its candidate projects giving reasons for the priority.

High Cost Projects

The FHWA will attempt to equitably distribute funds to applicant States in accordance with the States' priorities. However, subject to special consideration, it is to be expected that high cost project requests may be funded at less than 100 percent of a State's requested amount. In FY 2000, the threshold amount will depend on the total number of eligible projects submitted, as well as on the total amount of funds requested. Candidates projects that cannot be obligated in FY 2000 will be kept on file until FY 2001 funds become available. At that time, we will ask the division office to verify whether or not the State wants the project application to be used for FY 2001 ranking.

Decision Process for Funding

All projects will be evaluated and recommended for funding by a selection panel formed by the FHWA.

Schedule

The following is the schedule for program activities:

June 2000: Call for FY 2000 projects.

August 1, 2000: FHWA request for submission of FY 2000 candidate projects.

September 2000: Selection of FY 2000 projects.

Early 2001 Call for FY 2001 projects (subject to available funding).

Solicitation Memorandum of June 5, 2000

Text of the solicitation memorandum of June 5, 2000, reads as follows:

Action: Request for Candidates National Historic Covered Bridge Preservation Program—Reply due: August 1, 2000

From: David H. Densmore, Director of Bridge Technology.

To: Resource Center Directors, Division Administrators, Federal Lands Highway Division Engineers.

The purpose of this memorandum is to solicit candidate bridge projects from the States for the National Historic Covered Bridge Preservation (NHCBP) program. This program was established by section 1224 of the Transportation Equity Act for the 21st Century, as amended by the TEA 21 Restoration Act (TEA–21). The program provides funding to assist the States in their efforts to preserve, rehabilitate, or restore the Nation's historic covered bridges. For the purposes of this program, the term ''historic covered bridge'' means a covered bridge that is listed or eligible for listing on the National Register for Historic Places.

This program provides for two categories of projects: First, for grants to assist the States in their efforts to rehabilitate or repair and to preserve the Nations's historic covered bridges; and second, for the conduct of research and technology transfer. The total available funding provided for this program in FY 2000 is $8 million. Funding and specifics for the two project categories include:

1. Historic Covered Bridge Preservation, Rehabilitation, or Restoration. Of the funds provided for FY 2000, the FHWA will provide a minimum of $7 million for this category. Grants will be awarded to States submitting applications that demonstrate a need for assistance in carrying out one or more eligible projects as outlined below:

a. to preserve, rehabilitate, or restore a historic covered bridge.

b. to preserve a historic covered bridge, including through: (i) installation of a fire protection system; (ii) installation of a system to prevent vandalism and arson; and (iii) relocation of a bridge to a preservation site.

2. Historic Covered Bridge Preservation Research. Of the funds provided for FY 2000, the FHWA will provide a maximum of $1 million for this category. This phase of the program will be carried out through a separate Broad Agency Announcement (BAA), and is included here for information purposes only. The research projects will include, but not be limited to the following:

a. collection and dissemination of information concerning historic covered bridges;

b. development of educational programs relating to the history and construction technique of historic covered bridges; and

c. conduct of basic research to find better means of protecting historic covered bridges from rot, fire, natural disasters, or weight-related damages.

To ensure the projects retain their historical significance, each project must be carried out in the most historically appropriate manner following the Department of Interior Standards, and the standards and guidelines approved by the State Historic Preservation Officer. The Secretary of the Interior's Standards for the Treatment of Historic Properties may be obtained at the following website, *http://www2.cr.nps.gov/tps/secstan1.htm* and should be consulted for terms and definitions for the distinct approaches to treatment of historic properties, i.e. preservation, rehabilitation, and restoration. Although the Standards were developed for historic buildings the terms, guidelines, and suggested approaches are generally applicable to historic covered bridges.

We are requesting that all applications be submitted on or before August 1, 2000.

Please refer to the attached program summary for additional guidance. Using the explanation of the criteria and associated selection considerations, please assist your State department of transportation in determining the projects to be submitted.

Attached is an application form which is to be used for candidate projects. The State's application should describe the project in enough detail to demonstrate that it meets one or more of the goals of this program. The application should be completed and submitted to the Office of Bridge Technology along with any other supporting documents that provide a further description of the project including the scope of work and bridge plans.

Questions concerning this program should be addressed to Ms. Sheila Rimal Duwadi, Office of Bridge Technology, at (202) 366–4619, or to Mr. Bruce Eberle, Office of Human Environment, at (202) 366–2060.

Authority: 23 U.S.C. 315; and 49 CFR 1.48)

Issued on: August 15, 2000.

Anthony R. Kane,

Federal Highway Executive Director.

[FR Doc. 00–21421 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 14, 1999 [64 FR 69814–69815].

DATES: Comments must be submitted on or before September 22, 2000.

FOR FURTHER INFORMATION CONTACT: Alan Block at the National Highway Traffic Safety Administration, Office of Research and Traffic Records (NTS–31), 202–366–6401. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 2000 Motor Vehicle Occupant Safety Survey

OMB Number: 2127—New.

Type of Request: New information collection requirement.

Abstract: Purpose of this survey is to provide NHTSA with critical information needed to develop and implement effective strategies that meet the agency's mandate to improve traffic safety. The data will be used to identify information deficits among the public, obstacles to public safety, and targets for intervention activities in areas of occupant protection.

Affected Public: randomly selected members of the general public aged sixteen and older in telephone households.

Estimated Total Annual Burden: 3,845.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on August 18, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–21497 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[RSPA–98–4470]

Pipeline Safety: Meeting of the Hazardous Liquid Pipeline Safety Advisory Committee

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Hazardous Liquid Advisory Committee Telephone Conference Meetings; Correction.

SUMMARY: This document corrects a notice published August 3, 2000 (65 FR 47821) announcing the September 11, 2000, Hazardous Liquid Pipeline Safety Advisory Committee meeting. The notice did not explain how the public could remotely participate in the meeting.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565.

Correction

The public may remotely participate by registering with Juan Carlos Martinez, (202) 366–1933, no later than September 1, 2000. The Office of Pipeline Safety will contact all registered individuals prior to the meeting to notify them of the conference call number.

Issued in Washington, DC on August 17, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–21476 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33862]

Public Service Company of Colorado—Construction Exemption—Pueblo County, CO

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Public Service Company of Colorado (PSCo) of a line of railroad, approximately 1,500 feet in length, in Pueblo County, CO.[1]

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental matters and making the exemption effective at that time, if appropriate, thereby allowing construction to begin. Petitions to reopen must be filed by September 12, 2000.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 33862, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Thomas W. Wilcox, 1920 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 466–5530. [TDD for the hearing impaired: 1–800–877–8339.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 16, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–21509 Filed 8–22–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33908]

Arkansas Midland Railroad Company—Lease and Operation Exemption—Union Pacific Railroad Company

Arkansas Midland Railroad Company (AKMD), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate pursuant to an agreement entered into with the Union Pacific Railroad Company (UP), approximately 7.42 miles of UP's rail lines in North Little Rock, AR, as follows: (1) A portion of the Carlisle Industrial Lead from UP's milepost 130.33 to the end of the line at UP's milepost 131.38, including side tracks appurtenant thereto, and (2) from UP's milepost 292.00 to UP's milepost 297.93, including side tracks appurtenant thereto, connecting with UP's mainline in North Little Rock Yard near milepost 343.40. AKMD certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

The transaction was scheduled to be consummated on or after August 11, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33908, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Joseph D. Anthofer, 8041 Manderson Circle, Omaha, NE 68134.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 15, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–21234 Filed 8–22–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–571 (Sub–No. 1X)]

Strouds Creek and Muddlety Railroad—Abandonment Exemption—in Webster and Nicholas Counties, WV

Strouds Creek and Muddlety Railroad (SC&M) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 12.4-mile line of railroad between milepost BUE–0.0 at Allingdale and milepost BUE–12.4 at Muddlety Falls, in Webster and Nicholas Counties,

[1] On May 19, 2000, PSCo filed a petition under 49 U.S.C. 10901(d) to require BNSF to allow PSCo's proposed construction to cross BNSF's track. The proceeding is docketed as STB Finance Docket No. 33862 (Sub-No. 1), *Public Service Company of Colorado—Petition For Crossing Authority Pursuant to 49 U.S.C. 10901(d).* The crossing proceeding remains pending.

WV.[1] The line traverses United States Postal Service Zip Codes 26205, 26208, 26691 and 26651.[2]

SC&M has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 22, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 5, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 12, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Francis G. McKenna, Anderson & Pendleton, C.A., Inc., 206 North Washington Street, Suite 330, Alexandria, VA 22314.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

SC&M has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 28, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SC&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SC&M's filing of a notice of consummation by August 23, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: August 16, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–21383 Filed 8–22–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Gauley River Railroad, LLC (Gauley River) subleased the line from CSX Transportation, Inc. (CSXT), which in turn leased the line from Strouds Creek and Muddlety Railroad. *See CSX Transportation, Inc.—Renewal of Lease Exemption— Strouds Creek and Muddlety Railroad Company*, Finance Docket No. 31373 (ICC served Dec. 21, 1988).

Gauley River and CSXT received discontinuance authority over the involved line segment in *Gauley River Railroad, LLC—Abandonment and Discontinuance of Service—in Webster and Nicholas Counties, WV* and *CSX Transportation, Inc.—Discontinuance of Service—Webster and Nicholas Counties, WV*, STB Docket No. AB–559 (Sub-No. 1X), et al. (STB served June 23, 2000).

[2] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. SC&M, in its verified notice tendered for filing on July 19, 2000, indicated a proposed consummation date of September 9, 2000. Because applicant had failed to publish notice in the newspaper as required, the verified notice was not complete until August 3, 2000, when proof of newspaper publication was received at the Board and hence the notice was not deemed filed until then. Thus, the earliest possible consummation date is September 22, 2000. Applicant's representative has confirmed that the correct consummation date is on or after September 22, 2000.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Senior Executive Service, Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Department PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

COMPOSITION OF DEPARTMENTAL PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Lisa G. Ross, Acting Assistant Secretary for Management and Chief Financial Officer—Chairperson
Kay Frances Dolan, Deputy Assistant Secretary for Human Resources
John P. Simpson, Deputy Assistant Secretary (Regulatory, Tariff & Enforcement)
James E. Johnson, Under Secretary (Enforcement)
David A. Lebryk, Deputy Assistant Secretary for Fiscal Operations and Policy
Margrethe Lundsager, Deputy Assistant Secretary (Trade & Investment Policy)
Mary E. Chaves, Director, Office of International Debt Policy
Jane L. Sullivan, Director, Office of Information Resources Management
Joan Affleck-Smith, Director, Office of Financial Institutions Policy
Bradley A. Buckles, Director, Bureau of Alcohol, Tobacco and Firearms
Mark Logan, Deputy Assistant Director (Criminal Enforcement Field Operations—Western), Bureau of Alcohol, Tobacco and Firearms
Douglas M. Browning, Assistant Commissioner (International Affairs), U.S. Customs Service
Marjorie L. Budd, Assistant Commissioner (Training and Development), U.S. Customs Service
William F. Riley, Director, Office of Planning, U.S. Customs Service

Brian L. Stafford, Director, U.S. Secret Service

Kevin T. Foley, Deputy Director, U.S. Secret Service

W. Ralph Basham, Director, Federal Law Enforcement Training Center

John P. Mitchell, Deputy Director, U.S. Mint

Jackquelyn E. Fletcher, Associate Director/CIO, U.S. Mint

Richard L. Gregg, Commissioner, Financial Management Service

Kenneth R. Papaj, Deputy Commissioner, Financial Management Service

Thomas A. Ferguson, Director, Bureau of Engraving and Printing

William H. Gillers, Assistant Director (Environmental and Safety), Bureau of Engraving and Printing

David A. Mader, Chief Officer, Management and Finance, Internal Revenue Service

Evelyn A. Petschek, Commissioner, Tax Exempt and Government Entities, Internal Revenue Service

Darlene R. Berthod, Deputy Commissioner, Tax Exempt and Government Entities, Internal Revenue Service

John M. Dalrymple, Chief Operations Officer, Internal Revenue Service

Toni L. Zimmerman, Deputy CIO (Information Resources), Internal Revenue Service

Deborah M. Nolan, Deputy Division Commissioner, Large and Mid-Sized Business Division, Internal Revenue Service

Frederic V. Zeck, Commissioner, Bureau of the Public Debt

Kenneth R. Schmalzbach, Assistant General Counsel (General Law & Ethics)

Roberta K. McInerney, Assistant General Counsel (Banking & Finance)

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Ronald A. Glaser, Department of the Treasury, Director, Office of Personnel Policy, Metropolitan Square Building, Room 6075, 15th and Pennsylvania Ave., NW., Washington, DC 20220, Telephone: (202) 622–1890.

This notice does not meet the Department's criteria for significant regulations.

Ronald A. Glaser,

Director, Office of Personnel Policy.

[FR Doc. 00–21538 Filed 8–22–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[T.D. 8418]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, T.D. 8418, Arbitrage Restrictions on Tax-exempt Bonds (§§ 1.148–1, 1.148–2, 1.148–3, 1.148–4, 1.148–5, 1.148–6, 1.148–7, 1.148–8, and 1.148–11).

DATES: Written comments should be received on or before October 23, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on Tax-exempt Bonds.

OMB Number: 1545–1098.

Regulation Project Number: T.D. 8418.

Abstract: These regulations requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local, or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 3,100.

Estimated Time Per Respondent: 2 hours, 46 minutes.

Estimated Total Annual Burden Hours: 8,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–21548 Filed 8–22–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–311–81]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, LR–311–81 (T.D. 7925), Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time For Filing Information Returns of Owners, Officers and Directors of Foreign Corporations (§§ 1.6046–1, 301.6656–1, and 301.6656–2).

DATES: Written comments should be received on or before October 23, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time For Filing Information Returns of Owners, Officers and Directors of Foreign Corporations.

OMB Number: 1545–0794.

Regulation Project Number: LR–311–81.

Abstract: These regulations relate to the penalty for underpayment of deposits and the penalty for overstated deposit claims, and to the time for filing information returns of owners, officers and directors of foreign corporations. Internal Revenue Code section 6046 requires information returns with respect to certain foreign corporations, and the regulations provide the date by which these returns must be filed. Code section 6656 provides penalties with respect to failure to properly satisfy tax deposit obligations, and the regulations provide the method for applying for relief from these penalties.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–21549 Filed 8–22–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Payments by banks and other financial institutions of United States Savings Bonds/Notes.

DATES: Written comments should be received on or before October 23, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Payments by Banks and Other Financial Institutions of United States Savings Bonds and Notes (Freedom Shares).

OMB Number: 1535–0087.

Abstract: Qualified financial institutions are authorized to redeem eligible savings bonds and notes, and receive settlement through the Federal Reserve check collection system.

Current Actions: None.

Type of Review: Extension.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 40,000.

Estimated Time Per Respondent: 4 seconds.

Estimated Total Annual Burden Hours: 73,667.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 17, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–21466 Filed 8–22–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

DATES: Written comments should be received on or before October 23, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

OMB Number: 1535–0068.

Abstract: The information is requested to establish an investor's Treasury account; to dispose of securities upon the owner's request; and, to determine entitlement to securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, Businesses or other for-profit, and state or local governments.

Estimated Number of Respondents: 75,000.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 8,775.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 17, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–21467 Filed 8–22–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request for Reissue of U.S. Savings Bonds/Notes in name of trustee of personal trust estate.

DATES: Written comments should be received on or before October 23,2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request For Reissue Of United States Savings Bonds/Notes In Name Of Trustee Of Personal Trust Estate.

OMB Number: 1535–0009.

Form Number: PD F 1851.

Abstract: The information is requested to support a request for reissue of savings bonds/notes in the name of the trustee of a personal trust estate.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 55,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 13,750.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 17, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–21468 Filed 8–22–00; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Wednesday,

August 23, 2000

Part II

Environmental Protection Agency

40 CFR Part 49

Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[Docket 24–7004; FRL–6846–2]

Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, Agency or we) is taking final action on a Federal Implementation Plan (FIP) to control particulate matter emissions from an elemental phosphorus facility owned by Astaris-Idaho LLC (formerly owned by FMC Corporation) in southeastern Idaho (Astaris facility). The Astaris facility is located on the Fort Hall Indian Reservation and in an area known as the Fort Hall PM–10 nonattainment area. The Fort Hall PM–10 nonattainment area is not in attainment with the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The purpose of the FIP is to impose emission limits and work practice requirements that constitute reasonably available control technology (RACT) for particulate matter and that will, in light of this area's longstanding nonattainment problem, ensure expeditious progress towards improving air quality and attaining the PM–10 standards in order to protect the public health.

DATES: Effective September 22, 2000.

ADDRESSES: Copies of all information supporting this action are available for public inspection and copying between 8:30 a.m. and 5:30 p.m. Eastern Standard Time at EPA's Central Docket Section, Office of Air and Radiation, Room 1500 (M–6102), 401 M Street, SW., Washington, DC 20460, and between 8:30 a.m. and 3:30 p.m. Pacific Standard Time at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the docket is also available for review at the Shoshone-Bannock Tribes, Office of Air Quality Program, Land Use Commission, Fort Hall Government Center, Agency and Bannock Roads, Fort Hall, Idaho 83203. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION:

The contents of today's preamble are listed in the following outline:

I. General Information
A. How Can I Get Additional Information or Copies of Support Documents?
B. Who Does This FIP Apply To?
II. Background of the Final Rule
III. Summary of the Final Rule
IV. Major Issues Raised by Commenters
A. Trust Responsibility and Consultation
B. Consideration of Information Received Outside of the Public Comment Period
C. Scope of the FIP
D. RCRA Consent Decree
E. Reliability of Source Test Data Submitted by Astaris-Idaho
F. Emission Limits for Sources at RACT
G. Emission Limits for Calciners
H. Emission Limits for Calciner Cooler Vents
I. Emission Limits for Furnace Building
J. Emission Limits for Excess CO Burner
K. Opacity Limits
L. Excess Emissions
M. Monitoring, Recordkeeping, and Reporting
N. PM–10 Precursors
O. Implementation and Enforcement of the FIP
P. Transportation Conformity
V. Other Changes From the January 2000 Supplemental Proposal
A. Codification
B. Definitions
C. Emission Limits
D. New and Modified Sources
E. Monitoring, Recordkeeping, and Reporting
VI. Effectiveness of the Control Strategy
VII. Administrative Requirements
A. Executive Order 12866
B. Regulatory Flexibility Act (RFA)
C. Unfunded Mandates Reform Act (UMRA)
D. Paperwork Reduction Act
E. Executive Order 13045: Protection of Children From Environmental ——Health Risks and Safety Risks
F. Executive Order 13132: Federalism
G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
H. National Technology Transfer and Advancement Act of 1995 (NTTAA)
I. Submission to Congress and the Comptroller General
J. Petitions for Judicial Review

I. General Information

A. How Can I Get Additional Information or Copies of Support Documents?

1. Electronically. You may obtain electronic copies of this document, the February 12, 1999, FIP proposal, and the January 27, 2000 supplemental proposal from the internet at the following address: *http://www.epa.gov/fedrgstr/.*

2. In person or by phone. If you have any questions or need additional information about this action, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. In addition, the official record for this document, which is called the ''docket,'' has been established under docket control number ID 24–7004. The docket is available for public inspection and copying as described above in the **ADDRESSES** section.

B. Who Does This FIP Apply To?

This regulation applies to the owner(s) or operator(s) of the elemental phosphorous facility located on the Fort Hall Indian Reservation in Idaho adjacent to Highway 30 and the State-Reservation boundary. The facility was owned by FMC Corporation until April 17, 2000. On that day, ownership and operation of the facility was transferred to Astaris-Idaho LLC (Astaris-Idaho). Astaris-Idaho is a subsidiary of Astaris LLC, a joint venture between the FMC Corporation and Solutia, Inc. A copy of the agreement between FMC Corporation and Astaris-Idaho documenting the transfer is in the docket. This regulation will also apply to any new owner or operator of the Astaris-Idaho facility in the event of a later change in ownership. All references in this notice and in the regulation to the facility will be to the ''Astaris-Idaho facility.''

II. Background of the Final Rule

Astaris-Idaho produces elemental phosphorus at its facility located on the Fort Hall Indian Reservation in southeastern Idaho near Pocatello. The Astaris-Idaho facility emits over 1400 tons of particulate matter into the atmosphere each year. Numerous exceedences of the PM–10 NAAQS, in effect as of July 1, 1987, have been and continue to be recorded at monitoring stations located in the Fort Hall PM–10 nonattainment area in the vicinity of the Astaris-Idaho facility (the Tribal monitors).

On February 12, 1999, we published a proposed rule containing air pollution emission limitations, work practice requirements, and related monitoring, recordkeeping, and reporting requirements designed to control PM–10 emissions from the Astaris-Idaho facility. 64 FR 7308 (February 12, 1999) (February 1999 FIP proposal).[1] We held a public workshop on the Fort Hall Indian Reservation on March 4, 1999, to explain the February 1999 FIP proposal and to answer questions on the proposal. On March 18, 1999, we held a public hearing on the February 1999 FIP proposal on the Fort Hall Indian Reservation. Three members of the

[1] EPA published a **Federal Register** document with minor corrections to the February 1999 FIP proposal on April 13, 1999. 64 FR 17990. All future references to the February 1999 FIP proposal include the corrections in the April 13, 1999, document.

Shoshone-Bannock Tribes provided oral testimony at the hearing. A copy of the transcript from the public hearing is in the docket. EPA accepted written comments on the February 1999 FIP proposal until May 13, 1999, and received timely written comments from five commenters, including Astaris-Idaho and the Shoshone-Bannock Tribes (Tribes). Additional comments on the February 1999 FIP proposal were received after the close of the public comment period. Copies of all written comments on the February 1999 FIP proposal, both timely and late, are in the docket.

After carefully reviewing the public comments, including additional technical and source test information provided by Astaris-Idaho, EPA issued a supplemental proposal in which EPA revised certain limited aspects of the original FIP proposal. 65 FR 4466 (January 27, 2000) (January 2000 supplemental proposal). EPA held public hearings on the January 2000 supplemental proposal on February 29, 2000, in Pocatello, and on March 1, 2000, on the Fort Hall Indian Reservation. Thirty-two persons provided comments over the course of the two evening sessions. A copy of the transcript from the public hearings is located in the docket. EPA solicited written comments on the January 2000 supplemental proposal until the extended date of March 13, 2000. 65 FR 8679 (February 22, 2000) (notice of public hearing schedule and extension of public comment period). EPA received written comments from 13 commenters, including the Tribes and Astaris-Idaho. Copies of all written comments on the January 2000 supplemental proposal, both timely and late, are in the docket.

After carefully reviewing and considering all comments received on the February 1999 FIP proposal and the January 2000 supplemental proposal, EPA is issuing this final FIP.

III. Summary of the Final Rule

In issuing this FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the Clean Air Act (CAA or Act) to promulgate such FIP provisions as are necessary or appropriate to protect air quality within the Fort Hall Indian Reservation. EPA's ultimate goal is to ensure that all persons residing in, working in, and traveling through the Fort Hall PM-10 nonattainment area can breathe air that meets the PM–10 NAAQS standards. EPA has used the PM–10 planning requirements applicable to States with PM–10 nonattainment areas as a guide in determining what is necessary or appropriate for the protection of air quality in the Fort Hall PM–10 nonattainment area.

The Clean Air Act requires States to impose RACT on major stationary sources of PM–10 in moderate PM–10 nonattainment areas. See sections 172(c)(1) and 189(a)(1)(C) of the CAA. This FIP contains emission limits and work practice requirements that EPA believes represent RACT, along with related monitoring, recordkeeping, and reporting requirements, for PM–10 emissions from the Astaris-Idaho facility that emanate from the Fort Hall PM–10 nonattainment area. EPA believes that many sources at Astaris-Idaho currently employ RACT-level controls. For point sources that EPA believes currently employ RACT-level controls, the FIP imposes mass emissions limits based on current actual maximum daily emission rates from these point sources and opacity limits designed to keep PM–10 emissions at current levels. For area sources that EPA believes currently employ RACT-level controls, the FIP proposes opacity limits and work practice requirements designed to keep emissions at current levels.

The largest sources of PM–10 emissions at the Astaris-Idaho facility are the slag pit and related slag handling operations, the elevated secondary condenser and carbon monoxide (CO) ground flares, and the calciners. EPA believes that these sources, along with the phosphorous loading dock and the furnace building, do not currently employ RACT-level controls. For these sources, the FIP establishes emission limits and opacity requirements that will require process changes and additional control equipment to achieve substantial emission reductions, along with related monitoring, recordkeeping, and reporting requirements. The controls required to comply with the emission limits and work practice requirements in the FIP will be costly—an estimated $49 million dollars in capital expenditures, and annual costs for monitoring, work practice requirements, recordkeeping, and reporting of up to $202,000. EPA nonetheless believes the controls needed to comply with the requirements of this FIP, many of which have already been implemented, are both technologically and economically feasible. In developing the FIP, EPA has carefully evaluated alternative control technologies for each source at Astaris-Idaho, including the incremental emission reductions and estimated cost of installing, operating, and maintaining these alternative control technologies. In addition, in connection with the settlement of alleged violations of the Resource Conservation and Recovery Act (RCRA) at the Astaris-Idaho facility, FMC Corporation [2] has entered into a consent agreement with the United States (RCRA Consent Decree) in which FMC has agreed to expend more than $64 million in capital costs to implement 13 PM–10 reduction projects at the facility. Five of these projects include the controls that EPA believes are necessary to comply with the proposed FIP. EPA believes that the remaining eight projects will better enable Astaris-Idaho to comply with the requirements of the proposed FIP. The company's commitment to install and operate the 13 PM–10 reduction projects for five years as part of the RCRA settlement is persuasive evidence that the control technology identified in this FIP is both technologically and economically feasible.

EPA believes that emission reductions that will be achieved by this FIP are necessary in order to ensure that PM–10 levels in the Fort Hall PM–10 nonattainment area do not endanger public health, and that emissions reductions will be achieved on a time frame that will contribute to attainment of the PM–10 NAAQS as expeditiously as practicable. To achieve these goals, EPA believes that PM–10 emissions from the Astaris-Idaho facility must be reduced by approximately 65%, based on measured air quality and the levels of the PM–10 standards. EPA anticipates that the emission limitations and work practice requirements in this proposed FIP, when considered together, will result in an overall reduction in PM–10 emissions of almost 80%.

To further these objectives, EPA is proposing a rigorous compliance schedule. For sources that EPA believes currently employ RACT-level controls, as well as for the phosphorous loading dock, compliance with the applicable emission limits and work practice requirements is required 60 days after the effective date of the FIP. The emission limits and related control requirements for slag handling, the calciner scrubbers, and the secondary condenser flare and CO ground flare will be in place and in effect on November 1, 2000, December 1, 2000, and January 1, 2001, respectively. By January 1, 2001, emissions from the Astaris-Idaho facility are expected to be reduced by almost 80%. The last requirements of the FIP, to control fugitive emissions from the furnace building, come into effect on April 1,

[2] FMC Corporation retains responsibility for funding the capital costs of and for implementing the RCRA Consent Decree.

2002. Because most of the emission reductions at the Astaris-Idaho facility will occur by January 1, 2001, EPA does not expect particulate values above the level of the PM–10 NAAQS to be recorded on the Tribal monitors after that date.

IV. Major Issues Raised by Commenters

The following is a summary of the major issues raised in comments on the February 1999 FIP proposal (64 FR 7308 (February 12, 1999)), as well as the January 2000 supplemental proposal (65 FR 4466 (January 27, 2000)), along with a summary of EPA's responses to those issues. A separate document containing responses to all comments on the two proposals (Response to Comments) is in the docket.

A. Trust Responsibility and Consultation

The Tribes and several individual tribal members commented that EPA has a trust responsibility to the Shoshone-Bannock Tribes to fully consider tribal interests and protect tribal interests in carrying out its responsibilities under the Clean Air Act on Tribal lands, which includes a responsibility to consult with and fully involve the Tribes in decisions affecting the Tribes and their resources. These commenters assert that, in issuing the January 2000 supplemental proposal, EPA failed to adequately consult on a government-to-government basis with the Tribes prior to changing several requirements in the 1999 FIP proposal and failed to meet its trust responsibility toward the Tribes.

EPA acknowledges that the federal government has a trust responsibility to federally-recognized tribes, including the Shoshone-Bannock Tribes. EPA has recognized this responsibility throughout the development of the FIP and believes its actions have been consistent with its responsibility to consult with the Tribes on a government-to-government basis. EPA offered the Tribes an opportunity to provide their views and concerns before it made decisions, made a number of offers to meet with the Tribal government, and fully considered the issues raised by the Tribes prior to issuing the original and supplemental proposals, as well as this final rule.

As described in more detail in the Response to Comments, the Tribes were invited to participate in all aspects of the FIP development process that led up to and followed the February 1999 proposal. The Tribes were invited to all meetings with Astaris-Idaho to discuss Astaris-Idaho's comments on the February 1999 FIP proposal, and representatives of the Tribes participated directly in all but one of those meetings. The Tribes were provided with the technical information and proposals submitted by Astaris-Idaho to EPA, and offered opportunities to give their views to EPA on that information and raise any concerns. Staff from the Tribes have had numerous telephone conferences with EPA, and met separately with EPA to discuss the technical issues arising from both the February 1999 FIP proposal and the January 2000 supplemental proposal. The Tribes were asked to comment on preliminary drafts of the February 1999 FIP proposal and the January 2000 supplemental proposal, and the Tribes provided their views and perspectives in writing as well as orally on those drafts. The Tribes' views and perspectives were considered by EPA prior to making decisions on the proposals and on this final rule. EPA has continued to consult with the Tribes since publication of the January 2000 supplemental proposal. EPA met with Tribal air quality staff and legal staff on several occasions to discuss the Tribes' comments on and concerns with the January 2000 supplemental proposal and sought their input on changes to be made in the final FIP. The Tribes' comments and involvement throughout this entire rulemaking process were welcome and valuable. This summary clearly documents that EPA has made a number of diligent, continuing efforts to consult with the Tribes throughout the process before making decisions on the numerous regulatory requirements established in this FIP.

The FIP that EPA is publishing today for the Astaris-Idaho facility has been designed to meet the requirements of the Clean Air Act, and to protect the members and natural resources of the Tribes. The limits that have been placed on facility emissions through a number of specific regulatory controls are expected to curb air pollution sufficiently so that air quality in the region attains the PM–10 NAAQS, national standards which EPA has established to protect human health and the environment. The requirements in the FIP also establish additional requirements that are necessary or appropriate to protect human and environmental health, in accordance with EPA's authorities under the CAA. The FIP published today establishes strict, federally enforceable requirements to control and monitor PM–10 emissions. EPA expects that these requirements will provide a verifiable means of ensuring that the facility complies with the federal regulations and is operated in a manner that protects the health and welfare of the Tribes, its members, and its resources.

EPA believes that its actions to include the Tribes in the FIP development process and to consult with and consider the interests of the Tribes prior to making decisions have been consistent with its trust responsibility to the Tribes. *See Nance* v. *EPA,* 645 F.2d 701, 710–11 (9th Cir. 1981), *cert. denied,* 454 U.S. 1081 (1981). By promulgating the FIP while operating within a proactive government-to-government relationship with the Tribes, EPA has been able to fully consider the views of the Tribes. Thus, EPA is satisfied that it has consulted with the Tribes consistent with its trust responsibility to the Tribes while fulfilling its duties under the CAA.

B. Consideration of Information Received Outside of the Public Comment Period

The Tribes and several other commenters objected to EPA's consideration of information submitted to EPA by Astaris-Idaho after the close of the public comment period on the February 1999 FIP proposal. EPA did receive information from Astaris-Idaho after the close of the public comment period on the February 1999 FIP proposal. [3] However, the comment materials submitted by Astaris-Idaho contained substantively relevant information disputing the technical adequacy of certain aspects of the February 1999 FIP proposal. Section 553(c) of the Administrative Procedures Act (APA) states that administrative agencies ''shall give interested persons'' an opportunity to comment on proposed rulemakings. That section further states that final rulemaking action may occur only ''after consideration of the relevant matter presented.'' In EPA's view, the information presented by Astaris-Idaho constitutes ''relevant matter'' which, pursuant to the APA, is required to be considered by the Agency. There is

[3] The Tribes also argue that EPA should not consider Astaris-Idaho's formal comments on the February 1999 FIP proposal because the copy on file with EPA is date stamped ''May 14, 1999,'' one day after the close of the public comment period. EPA believes that it received an electronic version of Astaris-Idaho's comments on May 13, 1999. Therefore, even if Astaris-Idaho's comments were late, the comments were only one day late. However, what is more relevant is that EPA was aware that Astaris-Idaho would be submitting comments on the FIP. Astaris-Idaho had already provided EPA with a substantial portion of the information that comprised its comments in documents that were submitted to EPA and the Tribes on April 23 and April 27, 1999—well before the close of the public comment period.

nothing in the APA that would preclude EPA from considering information received after the close of the public comment period. In addition, EPA has a long-standing, historical policy of accepting and considering all written comments submitted during rulemakings, even those submitted after the close of the public comment period. [4] Congress effectively adopted this policy when it included detailed public record requirements for certain rulemakings under subsection 307(d) of the Clean Air Act. This action is not a rulemaking under subsection 307(d), since this FIP is being promulgated subject to requirements imposed under subsections 301(a) and 301(d) of the Act. However, the process being followed in this rulemaking is substantially similar to that followed for rulemakings under subsection 307(d) of the Act. In litigation challenging EPA's rulemaking process, courts have upheld the Agency's practice of considering and including in the public record or docket for final rulemakings documents received after the close of the comment period that are materially relevant. See *Air Pollution Control District of Jefferson County, Kentucky* v. *United States Environmental Protection Agency,* 739 F.2d 1071, 1079–1080 (6th Cir. 1984); *Sierra Club* v. *Costle,* 657 F.2d 298, 397–98 (D.C. Cir. 1981). In fact, EPA failure to consider information of the type submitted by Astaris-Idaho would be a violation of the APA and could significantly delay promulgation of the FIP. If the FIP were challenged on grounds that information of central relevance to the rulemaking had not been considered by EPA, a court, upon such a determination, would likely remand the FIP to EPA for further consideration. However, given that EPA has made the information itself, as well as the adjustments it has proposed to make to the FIP in light of the additional data, fully available for public review through notice and comment, neither the commenters specifically nor the public in general were denied an opportunity for meaningful public participation. Indeed, EPA also received comments after the close of the public comment period on both the February 1999 FIP proposal and the January 2000 supplemental proposal from the Tribes and members of the public. Consistent with the APA requirements and Agency policy, EPA has considered and responded, without exception, to all comments received during this FIP rulemaking, and, moreover, has put all the comments into the final rulemaking docket, including all those that were received after the close of the several public comment periods.

C. Scope of the FIP

The Tribes commented that the focus of the FIP is too narrow in two respects. First, the Tribes contend that the FIP is too narrow in its geographic coverage in that it only applies to the Astaris-Idaho facility and does not address the entire Fort Hall PM–10 nonattainment area. In this regard, the Tribes point to a resolution of the Fort Hall Business Council which requested that the FIP cover the entire nonattainment area. A major concern of the Tribes is that a major source of air pollution could move into the Fort Hall PM–10 nonattainment area without adequate controls and cause or contribute to violations of the PM–10 NAAQS. Second, the Tribes contend that the FIP does not contain all of the elements normally associated with a State implementation plan (SIP) under Title I of the Clean Air Act, such as reasonable further progress, an emission inventory, identification and quantification, permits for new and modified major stationary sources, other measures such as enforceable emission limits, the elements of section 110(a)(2) of the Act, and contingency measures. The Tribes contend that the FIP should contain all of the elements that a State must include in a moderate PM–10 nonattainment SIP.

As discussed above in section III, in promulgating this FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the Clean Air Act and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or appropriate to protect air quality within the Fort Hall Indian Reservation. The Title I planning requirements of the Clean Air Act applicable to States do not directly apply to EPA in promulgating a Federal Implementation Plan in Indian Country although, as stated in the FIP proposal, EPA used the planning requirements applicable to States with PM–10 nonattainment areas as a guide in developing this FIP. See 64 FR at 7313.

Because of the serious PM–10 nonattainment problem that exists in the Fort Hall PM–10 nonattainment area, EPA believes it is appropriate to focus this FIP on the sources that cause or contribute to the air quality problem in the area and the elements applicable to States with PM–10 nonattainment areas that will address the PM–10 air quality problem as quickly as possible. As stated in the FIP proposal, EPA believes that the primary cause of the PM–10 problem in the Fort Hall PM–10 nonattainment area is primary PM–10 emissions from the Astaris-Idaho facility. 64 FR at 7309, 7321–7323. There are no other major stationary sources in the nonattainment area and the five other minor stationary sources in the nonattainment area collectively account for less than 1% of PM–10 emissions from stationary sources in the nonattainment area, with Astaris-Idaho emitting more than 99% of all such emissions. Although area source emissions account for approximately 43% of all PM–10 emissions in the nonattainment area, these area source emissions are spread out over the entire nonattainment area and EPA believes these emissions have an insignificant impact on the PM–10 violations that have been recorded. The Source Apportionment Study, which is discussed in the January 2000 supplemental proposal and is included in the docket, supports the conclusion that the PM–10 exceedences are local in nature and points conclusively to Astaris-Idaho as the source of the exceedences on the Tribal monitors. 65 FR at 4481–4482.

EPA did receive a copy of a resolution enacted by the Fort Hall Business Council, the governing body of the Shoshone-Bannock Tribes, which acknowledged EPA's efforts in the development of a FIP proposal. A careful reading of the resolution indicates that the Tribes were requesting that EPA promulgate a FIP regulating PM–10 emissions for all sources in the PM–10 nonattainment area and not just for the Astaris-Idaho facility. EPA had not understood this was the case initially because the resolution also expresses support for the draft FIP that EPA had been developing in coordination with the Tribes which covered only the Astaris-Idaho facility. In addition, the resolution was received by EPA just shortly before the FIP proposal was signed by Administrator Browner.

EPA now understands that the Tribes desire is for EPA, and not the Tribes, to take the initial lead in developing restrictions on PM–10 emissions from other sources within the Fort Hall PM–10 nonattainment area, and that the Tribes intend to take the lead in

[4] ''[E]PA must provide for the most extensive public participation possible in decision-making * * * Therefore, after a rule is proposed * * * [a]ll written comments received from people outside the Agency (whether during or after the comment period) [must be] entered in the public record for the rulemaking * * * Of paramount importance, however, is ensuring any new data or information affecting the decision is promptly placed in the public record.'' Memorandum from Carol M. Browner to all EPA employees, August 8, 1993. See also original Memorandum on EPA ''open rulemaking'' policy (known as the ''Fishbowl Memo'') from William D. Ruckelshaus, May 19, 1983.

promulgating an implementation plan for the remainder of the Fort Hall Indian Reservation. EPA does not believe, however, that promulgation of final PM–10 control requirements for the Astaris-Idaho facility, the major if not sole contributor to the PM–10 violations that have been recorded on the Reservation, should be delayed while EPA considers whether imposition of requirements for PM–10 emissions on other sources of PM–10 within the nonattainment area are necessary or appropriate to safeguard public health and the environment. In exercising its discretionary authority under section 301(a) and 301(d)(4) of the Clean Air Act and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or appropriate to protect air quality within Indian country, EPA has stated that it will carry out this authority in a prioritized way, beginning with the facilities that pose the greatest threat to public health and the environment. 64 FR 8247, 8255 (February 12, 1999). Accordingly, EPA intends to go forward with this FIP for the Astaris-Idaho facility and, as it has stated throughout this rulemaking process, will address particulate emissions from other sources in the Fort Hall PM–10 nonattainment area in a subsequent rulemaking. EPA believes this approach is the best way to address the Tribes' and the public's concern that the Astaris-Idaho facility be subject to limits on its particulate emissions as soon as possible.

With respect to the concern that this FIP does not contain all of the elements a State must address in a PM–10 nonattainment SIP, EPA again notes that, in promulgating this FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the Clean Air Act and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or appropriate to protect air quality within the Fort Hall Indian Reservation. EPA focused the efforts of this FIP rulemaking on the elements that would bring the area into attainment with the PM–10 NAAQS as expeditiously as possible: imposing RACT on Astaris-Idaho and demonstrating that the Fort Hall PM–10 nonattainment area will attain the PM–10 standard once these RACT-level control requirements are in place at the Astaris-Idaho facility. Again, as stated in its proposal, EPA will address the other PM–10 planning elements that are applicable to States with moderate PM–10 nonattainment areas as necessary or appropriate in future rulemaking proceedings. 64 FR at 7342.

It should be noted, however, that although the focus of this FIP is on implementation of RACT and demonstrating attainment, many of the specific planning elements usually required of States in PM–10 nonattainment SIPs are in fact addressed by this FIP. For example, EPA believes that the compliance dates for the control measures promulgated in this FIP are consistent with the quantitative milestone reporting requirements. Similarly, implementation of the control measures in accordance with the compliance schedule will result in annual incremental reductions that represent reasonable further progress, as required by sections 172(c)(2) and 189(c)(1) of the Act. The FIP is based on and does include a comprehensive, accurate, and current inventory of reasonable worst case PM–10 emissions from the Astaris-Idaho facility. EPA revised the emission inventory in the January 2000 supplemental proposal and has made further refinements in this final action. As discussed in more detail below in section VI, EPA believes the revised emission inventory represents the best available information regarding PM-10 emissions from the Astaris-Idaho facility.

A major concern of the Tribes and other commenters relates to EPA's authority, resources, and plans for ensuring implementation and enforcement of the FIP. That issue is discussed in more detail in section IV.O. below. Another major concern of the Tribes and other commenters is the requirement of section 189(e) of the CAA that a State SIP impose RACT on major stationary sources of PM–10 precursors that contribute to exceedences of the PM–10 standards. That issue is discussed in more detail in section IV.N. below. With respect to contingency measures, the FIP does include a cushion of over-control: EPA has determined that a 65% reduction in daily PM–10 emissions is needed to attain the PM–10 standards and expects that, after full implementation of all control measures in the FIP, PM–10 emissions will be reduced by almost 80% on a 24-hour basis. In addition, EPA intends to propose in a separate **Federal Register** published in the fall of 2000 a lower emission limit for the facility's calciner cooler vents as a contingency measure. [5] Once finalized as a contingency measure, the reduced emission limit for the calciner coolers would become effective when triggered without further administrative action.

It is true that the FIP does not include a permit program for the construction and operation of new and modified major stationary sources of PM–10 that meets the requirements of sections 172(b)(6) and 173 of the Clean Air Act and 40 CFR 51.165 (often referred to as a ''Part D NSR program'') or a program for the review and permitting of minor sources, as is required of States in PM–10 nonattainment SIPs. See sections 110(a)(2) and 189(a). EPA is addressing the issue of new sources of PM–10 in several respects. First, EPA, in a rulemaking process separate from this FIP for Astaris-Idaho, is developing a national rule that would apply to the construction or modification of new minor sources in Indian Country, and also extend to Indian Country the requirements of Part D NSR for new major stationary sources and major modifications to major stationary sources in nonattainment areas. To the extent a new major source of PM–10 locates in the Fort Hall PM–10 nonattainment area before EPA revises 40 CFR part 52 to apply in Indian Country, it is EPA's intention to act as necessary or appropriate to promulgate a source-specific FIP setting out the permitting requirements for the new or modified source. EPA has taken this approach for a new major source that wanted to construct a new major facility on the reservation of the Salt River Pima-Maricopa Indian Community, which is located in a nonattainment area. 64 FR 65660 (November 23, 1999). Thus, EPA does not agree that a new major source could locate within the Fort Hall PM–10 nonattainment area without installing controls that would assure protection of the PM–10 NAAQS. Finally, as discussed in the January 2000 supplemental proposal, EPA has revised the FIP to better address new construction and modifications at the Astaris-Idaho facility. 65 FR at 4477. The FIP requires Astaris-Idaho to notify EPA and the Tribes at least 90 days prior to beginning construction of any new source of PM–10 or a modification to an existing source that would result in an increase of PM–10 emissions. After 90 days, Astaris-Idaho would be authorized to construct the new or modified source, but the source would be subject to an opacity limit of 10% and must be addressed in the facility's operation and maintenance plan, unless EPA established alternative or additional emission limitations or work practice requirements for the source through a revision to the FIP.

Please refer to the Response to Comments document for a more

[5] A contingency measure is a requirement that becomes effective without further action by EPA upon a determination that the area has failed to achieve reasonable further progress or to attain the PM–10 NAAQS by the attainment date. See generally 57 FR 13510–13512 and 13543-13544.

detailed discussion of the other PM–10 planning issues referenced earlier.

D. RCRA Consent Decree

The Tribes and several other commenters expressed concern that the control technologies relied on in the FIP were pre-selected by Astaris-Idaho as part of the RCRA Consent Decree before the FIP process was started and without consideration of comments by the Tribes and public. These commenters believe that EPA made a decision to take the projects selected by Astaris-Idaho in the RCRA process outside of the public comment process and transfer each one of them over to satisfy this RACT FIP. As a consequence of this, these commenters assert that EPA has proposed a FIP that does not adhere to the Clean Air Act requirements for nonattainment areas and that Astaris-Idaho has had too much control in determining the outcome of the FIP.

EPA has considered technical information and comments from Astaris-Idaho, as it has from all commenters, but, as discussed below, EPA does not agree that Astaris-Idaho is or has been in control of the outcome of the FIP, nor with the corollary implication that public comment, including comments from the Tribes, has been meaningless or unfairly prejudiced. Although the FIP now under consideration was not proposed in the **Federal Register** until February 1999, after the RCRA Consent Decree was signed by the United States and FMC in October 1998, the control strategy for the FIP has been under development and discussion with Astaris-Idaho, the Tribes, the local community, and EPA since the early 1990s. Environmental Quality Management, Inc. (EQM), a contractor with extensive knowledge of the phosphorus industry in general and experience with the Astaris-Idaho facility in particular, was hired in the mid-1990s to conduct an evaluation of alternative control technologies for each source at Astaris-Idaho that could be used as the basis for a determination of RACT. Based on EQM's work, EPA ultimately presented a workshop in Fort Hall and Pocatello in September 1997 in which EPA explained the basic control strategy for the FIP that EPA intended to propose. That presentation included a discussion of installation of hot pour pot handling to control emissions from slag handling, upgrades to the calciner scrubbers, controls on the calciner cooler vents, and the enclosure and control of the secondary condenser flare and CO ground flare. In the final RACT report issued by EQM in July 1998 (EQM RACT Report), hot pour pot handling was identified as the best control option for slag handling at Astaris-Idaho and spray towers were identified as the best control option for the calciner scrubbers at Astaris-Idaho. The EQM RACT Report stated that, with respect to the secondary condenser flare and CO ground flare, there were no options for control of P_2O_5 emissions from CO gas flares in the phosphate industry. EQM RACT Report, p. 113. The report goes on to discuss the theoretical options for the control of these flares, including combustion of the CO gases in an enclosed device and control by a wet scrubber.

During settlement negotiations to resolve the RCRA violations at the Astaris-Idaho facility, Astaris-Idaho provided EPA and the Tribes with a document entitled ''RACT Project Descriptions—Astaris-Idaho—15 October 1997.'' That document included a proposal to install hot pour pot handling, to increase the performance of the scrubbing control system from 50–60% to 80–90%, and to direct all excess CO gas to an enclosed burner/combuster device with the off gas sent to a high efficiency scrubber. Astaris-Idaho's proposal also included ten other projects to reduce PM–10 emissions at Astaris-Idaho. Hot pour slag handling, upgrades to the calciner scrubbers, and control of the excess CO gas, however, were, and have always been, the three projects believed by EPA to be essential to bringing the Fort Hall PM–10 nonattainment area into attainment with the PM–10 NAAQS. Moreover, they represent RACT-level controls for those sources. Thus, the control equipment and project upgrades that are the basis of the FIP were in fact not pre-selected by Astaris-Idaho as part of the RCRA Consent Decree, but instead driven by EPA's preliminary determination of what represented RACT-level controls. Although it is true that Astaris-Idaho began to design and implement these controls before the FIP went out for public notice and comment, the Tribes and the public were aware of what EPA believed represented RACT-level controls at least since the public workshops in Fort Hall and Pocatello in September 1997. During the public comment period on the February 1999 FIP proposal and the January 2000 supplemental proposal, no commenter has suggested any better technology that could achieve higher emission reductions for slag handling, the calciner scrubbers, or the flares. The Tribes have suggested additional controls for the furnace building (i.e., enclosing the building) which, as discussed below in section IV.I., EPA believes goes far beyond RACT in terms of cost effectiveness. The Tribes and the members of the public have commented that EPA should consider additional controls on the calciner cooler vents in light of the recent information showing that PM–10 emissions from this source are much higher than originally thought. As discussed in section IV.H. below, EPA intends to propose in the fall a reduced emission limit for the calciner cooler vents based on the installation of additional controls that would serve as a contingency measure.

In short, the RCRA Consent Decree and the FIP are two separate mechanisms by which EPA is bringing about PM–10 emission reductions in the Fort Hall PM–10 nonattainment area. The RCRA Consent Decree was designed to address past violations of the RCRA requirements, whereas the FIP is designed to implement RACT and ensure ultimate attainment of the PM–10 NAAQS. As part of the RCRA Consent Decree, Astaris-Idaho did commit to implement 13 PM–10 emission reduction projects ahead of the schedule that would have otherwise been required in the FIP, and Astaris-Idaho received some reduction in the RCRA penalty for this agreement. This agreement was done in accordance with EPA's policies for Supplemental Environmental Projects, and is a common feature in settlements in these types of enforcement cases. See ''Supplemental Environmental Projects Policy,'' 63 FR 24976 (May 5, 1998). Although there is some overlap in the requirements of the RCRA Consent Decree and the requirements of the FIP, in each case EPA issued each document in accordance with the governing environmental statute, regulations, and policies of the Agency. As is evident from even a quick review of the RCRA Consent Decree and the FIP, the FIP is separate from and far more extensive and stringent than the RCRA Consent Decree with respect to PM–10 emission reduction requirements.

E. Reliability of Source Test Data Submitted by Astaris-Idaho

The Tribes, the State of Idaho, and other commenters questioned EPA's reliance on source test data submitted by Astaris-Idaho after the February 1999 FIP proposal. Because this information was based on source tests conducted by Astaris-Idaho that were not observed by EPA or the Tribes, these commenters do not believe EPA should have revised the emission inventory or the proposed emission limits to allow higher emission levels from Astaris-Idaho based on this source test data. The Tribes, the State of Idaho, and many citizens also commented that EPA should not

exclude condensible PM–10 [6] from the emission limits because the source tests conducted by Astaris-Idaho did, in fact, measure condensible PM–10 from these sources.

Astaris-Idaho did submit more recent source test data it collected in response to the February 1999 FIP proposal. EPA has reviewed the tests and believes, with some exceptions related to condensible particulate matter reported from sources at ambient temperatures, that the recent test data are more representative of current conditions at the Astaris-Idaho facility than the previously available information. With respect to many sources, the recent source test data show that filterable PM–10 emissions [7] from these sources are less than shown by previous source tests and, based on its review of the results, EPA has reduced the emission limits on filterable PM–10 for these sources. For four other sources (the west shale baghouse, the calciner scrubbers, the calciner cooler vents, and the excess CO burner), EPA has increased the emission limits based on its review of information from Astaris-Idaho showing that emissions from these sources are higher than previously shown. EPA has explained these changes in great detail in the January 2000 supplemental proposal, elsewhere in this notice, and in the Response to Comments. Neither the Tribes nor any other commenter has provided information to show that the recent source test data provided by Astaris-Idaho do not accurately reflect current reasonable worst-case emissions of filterable PM–10 at the Astaris-Idaho facility. Issues relating to the reliability of the condensible PM–10 emission data is discussed in section IV.F below.

It is important to remember that, at the time of the February 1999 FIP proposal, EPA believed that Astaris-Idaho emitted 6920 pounds of PM–10 per day and that emissions would be reduced to approximately 2164 pounds per day, a reduction of 69%. EPA now believes that Astaris-Idaho emits more than 15,000 pounds of PM–10 per day under reasonable worst case conditions, but anticipates that the FIP will reduce PM–10 emissions from Astaris-Idaho to approximately 3200 pounds per day, a reduction of almost 80%. Thus, although emissions after the FIP will be higher under the final rule (as compared to the February 1999 FIP proposal), the improvement in air quality, when compared to existing emissions, should be greater than expected under the February 1999 FIP proposal.

F. Emission Limits for Sources at RACT

As stated in the preamble to the February 1999 FIP proposal, we believe that many of the sources at Astaris-Idaho currently employ RACT-level controls. See 64 FR at 7311 and 7325. These include the following point sources: source 5a (east shale baghouse); source 6a (middle shale baghouse); source 7a (west shale baghouse); source 10 (calciner cooler vents); sources 12a and 12b (north and south nodule discharge baghouses); source 13 (nodule reclaim baghouse); source 15a and 15b (east and west nodule discharge baghouses); source 16a (nodule stockpile baghouse) [8]; 17a (dust silo baghouse); sources 18a and 18b (furnace building east and west baghouses); source 18d, 18e, 18f, and 18g (furnace building Medusa-Andersen stacks); and source 20a (coke handling baghouse). For these point sources, EPA intended to propose mass emission limits designed to keep PM–10 emissions at current levels and not to require additional controls in order to meet the FIP limits. See 64 FR at 7311 and 7325.

Based on information provided by Astaris-Idaho during the public comment period, EPA determined that the mass emission limits proposed for the above-identified sources were not consistent with current emission levels. The proposed mass emission limits were derived from the 1996 emission inventory, which included only filterable PM–10 emissions using EPA Method 5 and did not consider condensible PM–10 emissions. In the February 1999 FIP proposal, however, we proposed EPA Methods 201/201A and 202 as the reference test methods for determining compliance with the proposed mass emission limits. Method 201/201A measures all filterable PM–10 and Method 202 measures condensible PM–10. Thus, the proposed reference test method required the inclusion of more particulate matter (condensible PM–10) than originally considered when developing the 1996 emission inventory and establishing the proposed emission limits. To address this issue, EPA proposed in the January 2000 supplemental proposal that, for these sources, condensible emissions would not be included in the emission limit and that Method 202 would be required for informational purposes only (that is, not as part of the reference test method).

It is true that the source tests conducted by Astaris-Idaho show the presence of condensible PM–10 emissions from these sources. However, this is a result that would not normally be expected. Except for the calciner cooler vents, the calciners, and the excess CO burner, the PM–10 sources at Astaris-Idaho have stack temperatures at, or near, ambient temperature. Therefore, condensible particulate should already have condensed, that is, changed from a gaseous to a particulate state, and, therefore, should not be measurable by the Method 202 source tests. Given that these sources are not high temperature sources, it is likely that the particulate measured by Method 202 is an artifact of the sampling method, a sampling error, or a contaminant in the sample. To determine if the condensible PM–10 measured at these sources represents real emissions, the material collected by Method 202 in the source tests would need to be chemically analyzed to determine its composition and source. Until the condensible material is chemically analyzed or additional source tests for condensible particulate emissions are conducted for sources at Astaris-Idaho at ambient temperatures, EPA believes it would be inadvisable to consider the condensible particulate matter in establishing emission limits for these sources. To do so could result in an emission limit far higher than appropriate to ensure PM–10 emissions remain at current levels. Requiring Astaris-Idaho to conduct source tests with Method 202 for informational purposes will allow EPA to further analyze whether the condensible particulate matter measured in the source tests is an artifact or is being actually measured, and determine whether additional controls may be necessary. 65 FR at 4468–4469. At the same time, because the source test data submitted by Astaris-Idaho showed that filterable PM–10 emissions for 13 of these sources (as well as for the phos dock scrubber) was lower than previously realized, EPA proposed to reduce the emission limits for these 14 sources to ensure emissions do not increase above existing levels. 65 FR at 4469.

[6] Condensible particulate matter refers to material that is not particulate matter at stack conditions but which condenses or reacts upon cooling and dilution in the ambient air to form particulate matter immediately after discharge from the stack. The condensible emissions form particles in the PM–10 size range and are considered PM–10 emissions. See 57 FR 13498, 13542 (April 16, 1992). Method 202 is the EPA reference test method for measuring condensible PM–10. 40 CFR part 51, subpart M (Method 202).

[7] Filterable particulate matter refers to material that is particulate matter at existing gas stream temperatures and conditions. Method 201/201A is the EPA reference test method for measuring filterable PM–10 emissions. 40 CFR part 51, appendix M (Method 201/201A)). Method 5 measures filterable total suspended particulate emissions. 40 CFR part 60, appendix A (Method 5).

[8] As discussed below in section V.C, EPA source 13 is now known as the ''nodule reclaim baghouse'' and source 16a as the ''nodule stockpile baghouse.''

These commenters also stated that EPA should conduct another RACT analysis for these sources because the previous RACT analysis did not consider condensible PM–10 emissions from these sources. EPA disagrees that the potential presence of condensible emissions from these sources would change the RACT analysis. First, as discussed above, EPA believes it is very unlikely that condensible PM–10 is in fact being emitted from these sources because the emissions are already at or near ambient temperatures. EPA has advised States that condensible PM–10 emissions need to be controlled as part of implementing RACT-level controls only where condensible PM–10 is determined to be a significant portion of the emissions from an existing stationary source. *See* 57 FR 13498, 13543 (April 16, 1992). Even if the condensible emissions measured from these sources are assumed to represent actual PM–10 emissions, among other things, the incremental cost to control condensible PM–10 from the material handling sources in this category (the sources controlled by baghouses) would be very high, well in excess of what EPA would consider to be reasonably available (*i.e.*, RACT) because traditional methods of control such as baghouses are not effective for controlling condensible particulate matter and any condensible fractions collected by other available control devices would be extremely small. Also, to capture the condensible fraction, it would have to be condensed from vapor to particulate using techniques such as gas cooling, capillary condensation, or carbon adsorption. However, no abatement systems of this type are known to be used for controlling particulate matter from material handling sources or are defined as RACT for material handling sources in any industry. The furnace building Medusa-Andersen scrubbers and the phos dock scrubber are controlled by scrubbing systems that do control condensible PM–10 if in fact condensible PM–10 is being emitted from these sources.[9]

Astaris-Idaho commented that the source test data provided by Astaris-Idaho, which EPA relied on to reduce the emission limits for the 14 sources discussed above, did not reflect reasonable worst case emissions. Moreover, Astaris-Idaho argued, EPA erred in relying on the average of the three source test runs, rather than the highest source test run for each of these sources. Astaris-Idaho therefore requested that EPA increase the emission limit for several of these sources. EPA notes that Astaris-Idaho submitted the average of the three runs, not the individual source test runs, with its comments on the February 1999 FIP proposal. Moreover, it submitted the source test data to EPA as being representative of emissions from these sources and without qualification. In any event, a source test using Method 201/201A consists of the average of three individual runs, not the results of an individual run or even the highest run. The fact that an individual source test run exceeds the emission limit would not of itself represent a violation of the emission limit.

In proposing the revised emission limits for these sources in the January 2000 supplemental proposal, EPA took the average of the three test runs and added a small margin to allow for normal variability in source test results. Because the data set on which EPA was relying then was limited, in this final action EPA has increased the limit slightly for six sources: middle shale baghouse (source 6a) from 0.30 pounds per hour (lb/hr) to 0.50 lb/hr; west shale baghouse (source 7a) from 0.20 to 0.50 lb/hr; east nodule baghouse (source 15a) from 0.50 lb/hr to 0.60 lb/hr; nodule stockpile baghouse (source 16a) from 0.20 lb/hr to 0.30 lb/hr; furnace building-east baghouse (source 18a) from 0.75 lb/hr to 0.80 /hr; and furnace building-west baghouse (source 18b) from 0.75 lb/hr to 0.80 lb/hr. The increases range from 0.05 to 0.30 lb/hr. In contrast, EPA has lowered the emission limit for the west nodule baghouse (source 15b) from 0.50 lb/hr to 0.30 lb/hr because the highest test run was 0.248 lb/hr, with an average of 0.202 lb/hr. The net change in emissions from these sources is an increase of 0.60 lb/hr. EPA believes this is an insignificant increase from that proposed in the January 2000 supplemental proposal. However, the changes should provide Astaris-Idaho with some level of confidence that it will be able to operate these sources, which EPA believes currently employ RACT-level controls, without needing to install additional controls. These increases will provide a minimum cushion of 20% beyond the recorded source test results for each of these sources.

EPA has not increased the emission limits for the following other sources as Astaris-Idaho requested: the furnace building Medusa-Andersen scrubbers (sources 18d, 18e, 18f, and 18g) and the coke handling baghouse (source 20a). The emission limit of 1.70 lb/hr for the coke handling baghouse is more than 30% above the source test result for this source (the average of the three source test runs). In addition, in commenting on the February 1999 FIP proposal, Astaris-Idaho did not contest the numerical value of this limit, but instead only requested that the limit not apply to condensible PM–10 emissions. EPA has made that change. With respect to the Medusa-Andersen scrubber stacks on the furnace building, Astaris-Idaho submitted test data comprising a total of 12 source test runs on all four stacks, which are similar in design and operation and control similar sources. Only one of the 12 source test runs (stack 1—source 18d) was above the 2.0 lb/hr limit proposed by EPA. For the three other furnace scrubber stacks, the highest source test run for any of the stacks was 1.520 lb/hr, well below EPA's 2.0 lb/hr limit, and the average of the three runs for each of the these three furnace scrubber stacks was less than 1.0 lb/hr. EPA believes that the source test data provides sufficient evidence that Astaris-Idaho can comply with an emission limit of 2.0 lb/hr for each of the four furnace scrubber stacks. In this regard, EPA again notes that the source test run of 2.634 for stack 1 would not, of itself, represent a violation of the emission limit of 2.0 lb/hr, because a source test consists of three runs that are averaged for the purpose of determining compliance with the standard. The calciner cooler vents are discussed in section IV.H. below.

G. Emission Limits for Calciners

The February 1999 FIP proposal proposed a mass concentration limit for the calciner scrubbers of 0.005 grains per dry standard cubic foot (gr/dscf). During the public comment period on the February 1999 FIP proposal, Astaris-Idaho argued that the proposed emission limit was not achievable because the February 1999 FIP proposal underestimated existing emissions from the calciner scrubbers and underestimated the control efficiency of the existing control system. The result, according to Astaris-Idaho, was an emission limit that was not achievable by Astaris-Idaho with the installation of RACT-level controls. Astaris-Idaho also stated that the emission limit was inconsistent with the performance criteria for the calciner scrubbers agreed to by EPA and Astaris-Idaho in the RCRA Consent Decree. After reviewing the information presented by Astaris-Idaho, EPA agreed that existing emissions from the calciner scrubbers

[9] EPA also notes that the State of Idaho does not, to EPA's knowledge, regulate or require testing of condensible PM–10 emissions using Method 202. The PM–10 SIP submitted by Idaho for the neighboring Portneuf Valley PM–10 nonattainment area does not discuss, regulate, or require sources to measure condensible PM–10 emissions.

had been underestimated in the February 1999 FIP proposal. EPA concluded that a more accurate estimate of current reasonable worst case PM–10 emissions from the calciner scrubbers was 0.043 gr/dscf using Method 5 and Method 202. 65 FR at 4469–4471.

EPA further determined that enhancing the scrubber control system to achieve a control efficiency of at least 90% was reasonably available and, thus, constituted RACT-level controls. A 90% control efficiency would result in a decrease in emissions from the calciner scrubbers of approximately 50%. To effect this, EPA proposed an emission limit of 0.022 gr/dscf (with Method 5 and Method 202 as the reference test methods) for the calciner scrubbers. EPA also proposed to require that the pollution control equipment on the calciner scrubber stacks achieve at least a 90% control efficiency under all operating conditions to ensure that the modified scrubbing control system was being properly operated and maintained at all times. 65 FR at 4469–4471.

The Tribes, the State of Idaho, and members of the public expressed concern over EPA's proposal to increase the emission limit for the calciner scrubbers. These commenters believed that EPA had not adequately demonstrated that an emission limit of 0.022 gr/dscf (for both filterable and condensible PM–10) was the lowest emission limit that the calciner scrubbers are capable of meeting using control technology that is reasonably available in light of economic and technological considerations. Astaris-Idaho also commented that it could not demonstrate a 90% control efficiency for low inlet loadings during which PM–10 emissions at the outlet would be low. Astaris-Idaho therefore requested that EPA eliminate the control efficiency requirement or restrict the requirement to higher inlet loadings. To support its claims, Astaris-Idaho submitted additional information regarding source tests it has conducted with different pilot technologies in an attempt to reduce emissions from the calciner scrubbers. After reviewing these comments, as well as the additional source test data provided by Astaris-Idaho, EPA has determined that reasonably available control technology can, in light of technological and economic considerations, achieve emission limits for the calciner scrubbers lower than the limits proposed in the January 2000 supplemental proposal.

Astaris-Idaho's pilot studies of improvements to the calciner scrubbers utilized two different technologies: dry lime and water injection.[10] The source test results for each technology are summarized in the docket. See Memorandum from Paul Boys to Julie Vergeront and Steve Body, ''Technical Recommendation for the Astaris-Idaho LLC Calciner Scrubber,'' dated June 29, 2000, Attachment 2. The emission test run results from trials with dry lime ranged from 0.0014 to 0.0145 gr/dscf for filterable PM–10 and from 0.0096 to 0.0317 gr/dscf for total PM–10.[11] In addition to reducing PM–10 emissions, the dry lime has the added benefit of reducing sulfur dioxide emissions. When dry lime is injected at a rate of 900 to 1000 lb/hr, sulfur dioxide emissions were reduced by about 53%. Source test runs with water injection showed results ranging from 0.0019 to 0.0079 gr/dscf for filterable PM–10 emissions and from 0.0089 to 0.0262 gr/dscf for total PM–10 emissions.[12] In February 1999, Astaris LLC conducted several tests while using cleaner water in the existing scrubber system. These tests demonstrated that the water quality in the scrubbing system has an influence on the emissions and that cleaner water can also reduce the PM–10 emissions to some extent.

The test data gathered to date for the calciner scrubbers show that a significant portion of the total PM–10 emissions is attributable to condensible PM–10. The total amounts of PM–10 emissions and the percentage that appears to represent condensible particulate emissions varies between data sets and has not been sufficiently characterized by chemical speciation to reliably explain what the results actually reveal and consequently what type of control strategy would be most effective in reducing those emissions. EPA suspects that a portion of the PM–10 that is reported as condensible particulate may well be an artifact of the test procedure due to absorption and reaction of gases and/or contamination of test trains during handling and cleanup. Therefore, EPA has decided that, rather than establishing a single emission limit for the total PM–10 emissions, it is more appropriate to establish one emission limit that applies to filterable and another emission limit that applies to total PM–10 emissions. This approach is best designed to assure that overall PM–10 emissions are reduced.

Based on the emissions data discussed above and other available information, EPA believes that the calciner scrubbers can achieve an emission limit of 0.0080 gr/dscf for filterable PM–10 and 0.0180 gr/dscf for total PM–10 using cleaner water in the calciner scrubbing system in conjunction with either water injection or dry lime technology. These values for emission limits provide a moderate margin above the average values from the trial data, are slightly higher than all but one of the individual test data points for dry lime injection, and slightly higher than all but two data points for water injection.[13] EPA believes that Astaris-Idaho will be able to optimize a full-scale control system and thereby achieve even better results than they have shown in the trials. The emission limits allow Astaris-Idaho the flexibility to use either dry lime injection or water injection, in conjunction with improved secondary scrubber water quality (lower total dissolved solids), to achieve the limits, or any other technology of their choosing, so long as it achieves the final emission limits established in the FIP, and otherwise complies with the requirements of the Clean Air Act and EPA implementing regulations.

Astaris-Idaho requested that the emission limit for the calciner scrubbers be averaged over all eight calciner stacks. With a ''bubble'', or averaging, approach, the source test results for each of the calciner scrubber stacks would be added together and then divided by the total number of calciner scrubber stacks, and the resulting average compared to the emission limit. Although ''bubbling'' among stacks would reduce the inherent variability of any single source test run, EPA is concerned that this approach could mask performance problems that might exist in any one of the four calciner scrubbers or the two calciners. To minimize this risk, use of a bubbling approach for all calciner scrubbing stacks would require that all eight stacks be tested simultaneously or within a short duration under the same operating conditions, a difficult task given the number of stacks involved. EPA nonetheless believes that some limited ''bubbling'' or averaging can be accommodated while still ensuring that each calciner scrubbing system is being operated at optimal conditions. Accordingly, EPA has established that the limit for the calciner scrubbers as the arithmetic average of source test

[10] Astaris-Idaho also conducted trials using lime slurry. This approach was not successful due to excessive buildup of lime deposits on the walls of the calciner windbox and ductwork.

[11] These ranges do not include data from tests conducted in October 1999 and April 2000. According to Astaris-Idaho, these data have limited utility due to adverse water quality in the scrubbing system.

[12] See footnote 11.

[13] See footnote 11.

results from the four individual calciner stacks from a single calciner. The individual source tests for these four stacks must be conducted simultaneously or at most within three hours of each other under the same operating conditions. This approach should reduce some of the variability in the test data results and yet provide a more representative indication of how each calciner is operating.

In reaching the determination that an emission limit of 0.008 gr/dscf for filterable and 0.018 gr/dscf for total PM–10 emissions represents RACT for the calciner scrubbers, EPA has re-evaluated the various control technologies for the calciner scrubbers considered by EPA as potential RACT in the February 1999 FIP proposal and the January 2000 supplemental proposal: steam injection with high energy wet scrubbers, spray tower with hydrosonic scrubbers, replacement of the existing scrubbing system with a baghouse, lime injection, and installation of waste evaporators. Water injection, coupled with Astaris-Idaho's existing primary scrubbers and John Zink hydrosonic scrubbers, is similar in theory to a spray tower followed by hydrosonic scrubbers and, consequently, would be expected to achieve comparable emission reductions. Although replacement of the existing scrubbing control system with a baghouse could potentially achieve a lower emission rate for filterable PM–10 than water injection or a spray tower, it is undesirable for several reasons. First, because polonium-210 (Po-210), a radioactive isotope released in significant quantities in the calciner emissions, would be captured in the baghouse dust and retained on the baghouse walls, hoppers, and bags, it creates potential health and safety risks for workers. 64 FR at 7332. These risks can be overcome, but doing so would add additional expense to the cost of the system. Second, baghouses are less effective for controlling condensible PM–10 emissions than other control methods unless the baghouse gas is cooled considerably. The existing test data shows that almost 50% of the total PM–10 from the calciner scrubbers consists of condensibles. Adding a cooling system to a baghouse in order to increase the capture and control of condensible PM–10 emissions would further add to the cost of the baghouse system. For these reasons, EPA continues to believe that replacement of the existing scrubbing system with a baghouse is not economically or technologically feasible and therefore does not represent RACT-level control for this source. The other control options considered by EPA are expected to achieve lower or similar emission reductions, often at a higher cost, than water injection or a spray tower. Therefore, EPA believes that modification of the existing calciner scrubbers by installation of a spray tower or through the similar process of water injection represents RACT-level control for this source. The source test data from the Astaris-Idaho pilot projects show that dry lime injection can achieve comparable emission reductions and would therefore also constitute RACT-level controls.

The Tribes, the State of Idaho, and several other commenters stated that the emission limit for the calciner scrubbers proposed in the FIP for Astaris-Idaho was less stringent than the emission limit for the calciners at a Monsanto facility in Soda Springs, Idaho, the only other operating elemental phosphorous facility in the United States. EPA disagrees. As an initial matter, there are important differences between the emission limit for the calciners at Astaris-Idaho's facility and the Monsanto facility that prevent a direct comparison between the emission limits. At Astaris-Idaho, the limit is a mass concentration limit (gr/dscf), along with a limit on the volume flow rate, and it applies only to the calciner stack emissions. The State of Idaho's permit limit for the Monsanto facility combines emissions from four calciner scrubber stacks and the calciner cooler stacks. Also, the permit limits emissions from the calcining process based on production rate using a mathematical equation: the higher the production rate, the higher the emission limitation, which is expressed in pounds per hour. In addition, the State limit for the Monsanto facility only applies to filterable particulates. There is no limit on condensible PM–10 emissions from the Monsanto facility, and EPA is not aware of any source test data available on condensible PM–10 emissions from the Monsanto facility. A review of the most recent source test results from the calciners at the Monsanto facility conducted during the 1998, however, shows that the emission limit established by EPA in the FIP for filterable PM–10 emissions from the calciner scrubbers at Astaris-Idaho will result in emissions that are lower than the current actual filterable PM–10 emissions from the calciner scrubbers at the Monsanto facility. The 1998 source tests showed that actual filterable emissions from the calciners at the Monsanto facility ranged from 0.006 to 0.017 gr/dscf based on Method 5 (filterable particulate only) for each calciner scrubber stack. Three of the four stacks had filterable particulate emission rates at, or above, 0.010 gr/dscf. Thus, only one of the calciner stacks at Monsanto had emissions lower than the emission limit of 0.008 gr/dscf that will now apply to the calciners at the Astaris-Idaho facility.

With respect to the control efficiency requirement, EPA agrees, based on further review of the information provided by Astaris-Idaho, that requiring Astaris-Idaho to demonstrate a control efficiency of 90% under low inlet loadings is not reasonable. After reviewing the available source test data, EPA believes that, after the improvements to the scrubbing system, the facility should be able to demonstrate a control efficiency of 90% at inlet loadings of 0.150 gr/dscf or above. With an emission limit of 0.0180 for all PM–10, when inlet PM–10 concentrations are at 0.180 gr/dscf or above, the control efficiency must be at least 90% in order to be in compliance with the 0.0180 gr/dscf limit for all PM–10. Thus, only when inlet loadings are at or above 0.150 gr/dscf but below 0.180 gr/dscf would the control efficiency requirement potentially be the limiting factor. Given the logistical difficulties associated with measuring inlet and outlet loadings at each of eight different stacks and the narrow range where the control efficiency requirement would be the limiting factor for emissions, EPA is requiring a one time performance test for this control efficiency requirement. EPA believes the other monitoring requirements for the calciner scrubbers, coupled with the grain loading standards, should be adequate to ensure ongoing compliance with the control efficiency requirement. EPA could also require additional source testing for the control efficiency requirement through Astaris-Idaho's Title V permit or under section 114 of the Clean Air Act.

The Tribes commented that during source testing of the calciners, Tribal Air Quality Staff observed fugitive emissions that were not captured by the exhaust hoods, especially during windy conditions, and asked EPA to assess this problem in the FIP. EPA staff also recently observed such fugitive emissions from the calciners during source testing in connection with the radionuclides NESHAP. EPA has therefore added to Tables 1 and 2, a source 9b, ''calciner traveling grate—fugitive emissions,'' and has redesignated the calciner scrubbers as source 9a. Consistent with the approach for establishing emission limits for fugitive emissions escaping from other control devices, EPA has established an

opacity limit for this source of 10%, with a corrective action level of 5%. EPA will also work with the Tribes and Astaris-Idaho to develop a method for estimating emissions from this source through source testing or other means.

H. Emission Limits for Calciner Cooler Vents

Emissions from the calciner cooler vents are not currently controlled by a baghouse, scrubber, or other add-on control technology. In the February 1999 FIP proposal, EPA stated that no additional control constituted RACT-level controls for the calciner cooler vents. We therefore proposed an emission limit for this source that we believed would keep emissions from the calciner cooler vents at current levels, 64 FR at 7324, which would essentially operate as a limit on the production of nodules. In response to the February 1999 FIP proposal, Astaris-Idaho submitted source test data showing emissions from the calciner cooler vents were much higher than previously understood, both because the previous emission rate had included only filterable PM–10 and because the assumed ratio of PM–10 to total suspended particulate fraction had been underestimated. 65 FR at 4471–4472. Because the gas stream in the calciner coolers is above ambient temperatures, some condensible PM–10 emissions would be expected and in fact were documented through source testing. Based on the more recent source test data, filterable PM–10 emissions are almost 50% greater than in the emission inventory relied on in the February 1999 FIP proposal. When condensible PM–10 emissions are included, the emission estimate is again increased by approximately 100%. In the January 2000 supplemental proposal, EPA proposed to increase the emission limit for the calciner cooler vents from 2.0 lbs/hr for each stack (filterable and condensible PM–10) to 4.4 lbs/hr for each stack (for filterable PM–10 only). EPA did not revisit the RACT analysis for this source.

In commenting on the January 2000 supplemental proposal, the Tribes, the State, and members of the public expressed strong disagreement with EPA's proposal to increase the emission limit for this source and to exclude consideration of condensible emissions in establishing the emission limit without first conducting another RACT analysis in light of the revised emission information from Astaris-Idaho. These commenters believe that the significant increase in the emissions estimate for this source calls for a lower emission limit for this source, rather than a higher emission limit, as proposed by EPA. By contrast, Astaris-Idaho commented that the emission limit should be further increased to 6.0 pounds/hour (lb/hr) because one run from the source tests on one of the four calciner cooler vents exceeded 4.4 lb/hr.

EPA is rejecting Astaris-Idaho's request that the emission limit for the calciner cooler vents be further increased to 6.0 lb/hr. In its earlier comments on the February 1999 FIP proposal, Astaris-Idaho requested a limit of 4.0 lb/hr for the calciner cooler vents. EPA proposed a limit of 4.4 lb/hr in the January 2000 supplemental proposal to provide for a margin of error. Astaris-Idaho has not submitted any additional test data to justify a further increase, nor has it explained in any detail why it now believes it needs the additional increase in the emission limit. The source test results show that only two of the 12 source test runs were above the 4.4 lb/hr limit proposed by EPA and the average of the three runs for each of the four calciner cooler vents was less than 4.10 lb/hr. EPA believes that the source test data provides sufficient evidence that Astaris-Idaho can comply with an emission limit of 4.40 lb/hr for each of the calciner cooler vents.

In response to the comments submitted by the Tribes, the State, and members of the public, EPA has reconsidered its previous RACT analysis for the calciner cooler vents in light of the higher emissions estimate for this source, including consideration of condensible particulates. A preliminary review indicates that the cost effectiveness of PM–10 removal for the calciner cooler vents would be at the very least more than $10,000 per ton, with some technologies ranging as high as $60,000 per ton of PM–10. In addition, there are questions regarding which control technology would be the most effective in reducing PM–10 emissions because the nature and extent of condensible PM–10 emissions from the calciner cooler vents is not well understood. A baghouse would have a high removal efficiency for filterable PM–10 but would have little impact in reducing condensible PM–10 emissions. A scrubber would be more efficient than a baghouse in controlling condensible PM–10 emissions, but would be less effective in controlling filterable PM–10 emissions. EPA plans to further investigate the nature and extent of PM–10 emissions from the calciner cooler vents over the next several months through additional source testing and filter analysis, and to propose a reduced emission limit based on additional controls to serve as a contingency measure. Until that time, a limit of 4.4 pounds per hour for filterable PM-10 should ensure that emissions from the calciner cooler vents do not increase above existing levels.

I. Emission Limits for Furnace Building

In the February 1999 FIP proposal, EPA determined that furnace building Medusa-Andersen scrubber stacks (sources 18d, 18e, 18f, and 18g) are RACT-level controls. See Technical Support Document, pp. 102–103. EPA also determined that additional controls, including slag ladling and improvements to the control and capture of emissions on the burden level of the furnace building were needed. See 64 FR at 7334–7335. EPA proposed an opacity limit of 10%, with a corrective action level of 5%, except that fugitive emissions from the furnace building are subject to an opacity limit of 20% and a corrective action level of 10% until April 1, 2002, when the upgrades to the burden level of the furnace building must be completed. See 65 FR at 4489–4493 (Tables 1 and 2, sources 18a to 18g). The Tribes commented that they do not believe Astaris-Idaho will be able to comply with the opacity limits in the FIP for the furnace building and that they have frequently observed opacity levels from the furnace building sources in excess of the proposed opacity limits. The Tribes therefore state that the furnace building sources do not employ RACT and that additional controls, such as enclosure of the furnace building and ducting the air mass to a control device, should be required and are needed to meet the opacity limits.

The focus of the Tribes' comments appears to center on their belief Astaris-Idaho cannot comply with the opacity limits for the furnace building because it has not done so in the past. As an initial matter, EPA continues to believe that the Medusa-Andersen scrubbers represent RACT for point source emissions from the furnace building. These scrubbers are the most effective control technology known to EPA at this time for water soluble phosphorus compounds. As discussed in the TSD for the February 1999 FIP proposal, although adding low energy scrubbers to the existing Medusa-Andersen scrubbing system would result in additional emissions reductions, EPA believes that such a requirement would go beyond RACT in light of the cost of these additional controls when compared to anticipated additional emission reductions. See TSD, pp. 102–103. EPA also believes that the current control equipment, when properly operated and maintained, can achieve

the opacity limits in the FIP on a continuous basis. During the three visible emissions surveys conducted by the Tribes from 1995 to 1999, the highest reported six-minute average was 1.25%, with most individual readings at zero percent opacity, well below the opacity limit of 10% and the corrective action level of 5% for the furnace building scrubbers.

The furnace building itself is subject to an opacity limit of 20% until April 1, 2002, and thereafter subject to an opacity limit of 10%. Complying with the 20% opacity limit will necessitate implementation of stringent operations and maintenance procedures and good housekeeping procedures by Astaris-Idaho until the upgrades to the furnace building are completed. Astaris-Idaho has not contested application of a 20% opacity limit to this source and EPA fully expects that the facility will be able to achieve it. Failure to do so would put the facility in violation of the FIP and subject to penalties and injunctive relief. If the violations continue, such injunctive action could include expedited imposition of all actions necessary to comply with the emission limits, including the early installation of additional controls on the furnace building.

EPA has carefully evaluated the feasibility of enclosing the furnace building and ducting the emissions to a control device. EPA has concluded that, in light of the nature and amount of emissions from the furnace building and safety issues relating to complete enclosure of the building, implementation of this control option would do go beyond what is considered reasonable and would therefore not constitute RACT. EPA believes that Astaris-Idaho should be able to comply with the opacity limits in the FIP by completing implementation of hot pour slag ladling on all four furnaces, completing the upgrades to the upper level of the furnace building, closing doors and other openings on the side of the furnace building during windy conditions, and if necessary, constructing a minimum additional building enclosure to reduce cross drafts. A copy of the analysis of the feasibility of additional controls for the furnace building is in the docket. See also 64 FR at 7323–7324.

J. Emission Limits for Excess CO Burner

The elevated secondary condenser flare and CO ground flare (excess CO flares) are the largest emitters of PM–10 at the Astaris-Idaho facility. At the time of the February 1999 FIP proposal, EPA believed that these sources emitted approximately 3109 lb/day, accounting for almost one half of all PM–10 emissions at the Astaris-Idaho facility. EPA determined that replacing the flares with a combustion chamber to burn the phosphorus in the excess CO gas stream and ducting exhaust gasses to a scrubber to remove phosphorus pentoxide would constitute effective RACT-level controls for this source (this control option has been referred to as an excess CO burner). See 64 FR at 7332–7333. Indeed, it is a very novel control option for controlling the excess CO flare gas. EPA also believes it is technologically and economically feasible because Astaris-Idaho has already committed to installing the excess CO burner as part of the RCRA Consent Decree and meeting a control efficiency of 95%. The February 1999 FIP proposal proposed an emission limit of 6.5 lb/hr and an opacity limit of 5%, commencing January 1, 2001. The emission limit was derived by assuming a 95% reduction in existing emissions from the flares. The February FIP proposal also proposed interim requirements on the flares to reduce emissions attributable to ''mini-flushes'' until the excess CO burner is in place. Id.

During the summer of 1999, Astaris-Idaho built, operated, and tested a pilot excess CO burner demonstration project. This project is approximately 1/80th in scale of the excess CO burner Astaris-Idaho intends to build to satisfy its obligations under the RCRA Consent Decree. Operation and testing of the excess CO burner pilot project over the summer of 1999 revealed that emissions from the excess CO flares were much higher than previously believed. This was the first time that emissions from the flares had been estimated through actual source testing and that condensible PM–10 emissions had been included in the estimate. Based on this source test data, EPA concluded that the flares emitted approximately 10,543 lb/day of PM–10 under reasonable worst case conditions, thus accounting for more than two-thirds of all PM–10 emissions from the Astaris-Idaho facility. See 65 FR at 4472–4474. Based on this revised emissions information, EPA proposed in the January 2000 supplemental proposal to increase the emission limit from for the excess CO burner to 24 lb/hr and to add a requirement that the excess CO burner meet a control efficiency of 95% under all operating conditions. The pounds per hour limit was again based on a 95% reduction in emissions from current levels from the flares. Consistent with the opacity limits for other sources and numerous opacity readings on the pilot plant, EPA proposed an opacity limit of 10% with a corrective action level of 5%. See 65 FR at 4472–4477. The effective date of these limits, including the interim requirements on the flares to limit mini-flushes, were not changed by the January 2000 supplemental proposal.

The Tribes and citizens raised several concerns with EPA's proposal for the flares and excess CO burner. First, due to the continued high emissions from the flares (more than 10,000 pounds per day under reasonable worst case conditions), these commenters requested that EPA propose an additional interim requirement that Astaris-Idaho curtail furnace use (i.e., curtail production) when use of one of the calciners must be shut down for maintenance or other reasons. Second, the commenters questioned the basis and reliability of the increase in the emissions estimate from this source and the resulting increase in the emission limit by EPA. The commenters argued that alternative control technology that can achieve the originally proposed limit of 6.5 lb/hr should be considered and required. Astaris-Idaho commented that it was not technologically feasible to achieve a control efficiency of 95% under low inlet loadings. Astaris-Idaho also requested flexibility to modify the reference test method.

EPA does not have sufficient information at this time to determine whether the commenters' proposal to curtail furnace use or to impose additional requirements before the excess CO burner is installed are technologically feasible. In support of their request, the commenters note that Astaris-Idaho earlier committed that if one of the calciners goes down, once the excess CO burner is in place, it would indeed curtail furnace operation within ten minutes so that the facility can handle the excess CO gas without further flaring. EPA does not have sufficient information at this time to determine whether this approach is feasible before the excess CO burner is constructed. Even if EPA were to establish additional interim requirements, they would not become effective until the late summer of 2000, at the earliest. The FIP requires that the excess CO burner be operational by January 1, 2001, but Astaris-Idaho has advised EPA that they intend to have the system in operation on November 1, 2000. This means that emissions from the excess CO burner will continue at current levels for only a period of approximately four months (six months if the system is not in place until January 1, 2001). During this period, EPA urges Astaris-Idaho to take all possible measures to ensure that the

flaring of excess CO gas is minimized, such as by deferring maintenance on the calciners until after the excess CO burner is operational.

With respect to the comments concerning the revisions to the emissions estimate for the excess CO flares and the resulting increase in the emission limit for the excess CO burner, EPA has reviewed the source test results and believes for a number of reasons that the information is more reliable than the previous emission estimates for the excess CO flares. First, the testing on the excess CO burner pilot project is the first actual source testing ever conducted on the excess CO flares. Previous emission estimates were derived from theoretical chemical reaction calculations and assumptions of worst case operating conditions. Second, the revised emission estimates include condensible PM–10 emissions, which would be expected from this source, whereas the previous emission estimate did not. Finally, the revised emission estimates, which indicate that emissions from the flares account for almost two-thirds of all PM–10 emissions from the Astaris-Idaho facility, is consistent with the conclusions of the Source Apportionment Study.

Based on the revised emission estimate, EPA does not believe an emission limit of 6.5 lb/hr is achievable with the excess CO burner or with any other reasonably available control technology. EPA has determined that the best control option available for the excess CO flares, one that is so novel that it has never been applied to an elemental phosphorous facility, is combustion of the CO gases and control by a scrubber. Based on the emission characteristics of the gas stream in the flares at Astaris-Idaho (including the chemical composition of the particulates and precursors), EPA further believes that the Andersen scrubber is the most effective technology available. No one has provided in their comments information regarding another control technology that would be more effective for controlling PM–10 emissions from flaring excess CO gas at the Astaris-Idaho facility. For these reasons, EPA continues to believe that an emission limit of 24 lb/hr is appropriate and represents RACT for this source.

As discussed above, Astaris-Idaho commented that requiring a 95% control efficiency under low inlet loadings (where the gas stream to the scrubber system is relatively clean) is contrary to accepted scrubber theory. Based on further review of the information provided by Astaris-Idaho, EPA agrees that requiring Astaris-Idaho to demonstrate a control efficiency of 95% under low inlet loadings is not reasonable. Astaris-Idaho requested that the control efficiency requirement not apply to situations where inlet loadings were below 0.69 gr/dscf. The equipment supplier, Andersen 2000, Inc., guaranteed in a comment letter dated February 29, 2000, that 95% control would be achieved at or above this inlet loading. In their March 13, 2000 comments, Astaris-Idaho provided a graph that showed overall control efficiency as a function of quench inlet loadings (gr/dscf). From that graph, at inlet loadings equal to or greater than 0.4 gr/dscf, overall control efficiency is greater than 95%. At inlet loadings below 0.4 gr/dscf, overall control efficiency drops below 95%. After reviewing the available source test data, EPA believes that Astaris-Idaho should be able to demonstrate a control efficiency of 95% at inlet loadings of 0.50 gr/dscf or above. Therefore, EPA has modified the control efficiency requirement to require that the excess CO burner achieve a control efficiency of at least 95% when inlet loadings are greater than or equal to 0.50 gr/dscf.

Astaris-Idaho also commented that an alternative stack sampling test method will be required for the excess CO burner because of the nature of the particulates being sampled . The FIP includes procedures to allow modifications to reference test methods if sufficient support information is provided. See 40 CFR 49.10711(d)(5). Those procedures should accommodate Astaris-Idaho's concerns.

Another issue relating to the excess CO burner is the need for an emergency flare on the system. Astaris-Idaho has indicated that during unplanned shutdowns of the excess CO burner and scrubber system, the excess CO burner will need to be equipped with an emergency flare for safety reasons. The Tribes and other commenters have expressed concern that the use of this emergency flare be carefully controlled.

In its comments on the January 2000 supplemental proposal, Astaris-Idaho stated that it would provide notification to EPA and the Tribes regarding the emergency flare on the excess CO burner in accordance with the requirements of the final FIP for new and modified sources. The FIP requires Astaris-Idaho to notify EPA of at least 90 days prior to the construction of a new or modified source of PM–10 at the facility. Because the emergency flare on the excess CO burner is not included in Table 1, it would be considered a new source. See 40 CFR 49.10711(c)(11). If Astaris-Idaho follows the procedure in 40 CFR 49.10711(c)(11), an emergency flare on the excess CO burner would be subject to an opacity limit of 10% and must be addressed in the operations and maintenance plan for the facility. If, based on the information provided by Astaris-Idaho, EPA determines that additional requirements for the emergency flare on the excess CO burner are necessary or appropriate, EPA would promulgate additional requirements for this source as a FIP revision through notice and comment rulemaking.

Prohibiting construction or operation of the emergency flare for the excess CO burner outright would delay construction and operation of the excess CO burner and scrubber, the control technology imposed by the FIP for the largest source of particulate matter at Astaris-Idaho, because the emergency flare is needed for safe operation of the excess CO burner. If operation of the excess CO burner were delayed, the elevated secondary condenser flare and CO ground flare would continue emitting up to 10,000 lb/day of PM–10 emissions. EPA urges Astaris-Idaho to honor its commitment to provide EPA and the Tribes with the information required by 40 CFR 49.10711(c)(11) regarding the emergency flare on the excess CO burner as promptly as possible so that construction and operation of the excess CO burner is not delayed.[14]

K. Opacity Limits

In the February 1999 FIP proposal, we proposed limits on visible emissions from all sources except for the calciner scrubbers, dumping to the slag pile, and the existing excess CO flares. The proposed opacity limits ranged from a limit of no visible emissions from certain piles and processes to 10% opacity on fugitive emissions not captured by baghouses. See 64 FR at 7325–7326. EPA did not rely on a direct correlation between opacity levels and mass emissions to support the opacity limits proposed in the FIP. Instead, the control strategy is premised on ensuring that, for those sources in the emission inventory that we believe currently employ RACT-level controls, emissions from those sources remain at current levels. 64 FR at 7325. The emissions rates in the emission inventory were established on the assumption that the process and control equipment that affect a particular source are properly operated and maintained at all times. In turn, the opacity limits proposed by

[14] Failing to begin operation of the excess CO burner by January 1, 2001, would be a violation of the FIP.

EPA are intended to ensure that assumption will in fact be met.

In commenting on the February 1999 FIP proposal, Astaris-Idaho conceded that some enforceable limits on visible emissions should be required in the FIP, but contended that the proposed opacity limits are overly stringent and not supported by the record. As an alternative, Astaris-Idaho suggested that the FIP establish a facility-wide opacity limit of 20% and then build in action levels for each source below 20% that would trigger a requirement for Astaris-Idaho to commence an investigation and take corrective action. A source that exceeded the action level would not, however, be considered in violation of the opacity limit so long as emissions do not exceed the 20% opacity limit. Another commenter stated that an opacity limit of zero percent should be required for all baghouses because baghouses should have no visible emissions if they are being properly operated and maintained.

In the January 2000 supplemental proposal, EPA adopted a slightly different approach to opacity in an attempt to accommodate some of Astaris-Idaho's concerns while still achieving EPA's goal of ensuring that all control and process equipment are being properly operated and maintained. To simplify the regime for monitoring opacity, EPA proposed a limit of 10% for most sources. To further ensure that emissions from these sources are minimized at all times, EPA also proposed an opacity action level for each source. In addition, for certain open (i.e., uncaptured) fugitive dust sources, such as certain piles and roads, that could be impacted by meteorological conditions, such as high winds during dry conditions, EPA proposed an opacity limit of 20%, with a corrective action level of 10%.

EPA agrees with the one commenter that a properly operating baghouse will generally have no visible emissions. When baghouses are in the self-cleaning mode (part of the normal and needed cleaning of the baghouse), however, visible emissions are occasionally observed. EPA, therefore, did not propose a limit of zero visible emissions on baghouses. For a more detailed discussion of this proposal, please refer to the January 2000 supplemental proposal. 65 FR at 4475–4476.

In response to the January 2000 supplemental proposal, Astaris-Idaho and a few other commenters again requested a facility-wide opacity limit of 20% and action levels for each source below 20% that would trigger a requirement for Astaris-Idaho to commence an investigation and take corrective action. Other commenters expressed a general concern with high opacity levels at the Astaris-Idaho facility, but these other commenters did not appear to take issue with the opacity limits proposed by EPA in the January 2000 supplemental proposal. EPA does not believe that a facility-wide opacity limit of 20% achieves its objective of ensuring emissions from sources employing RACT-level controls remain at current levels through proper operation and maintenance of process and control equipment. Based on the visible emission surveys of the Astaris-Idaho facility conducted in December 1995-January 1996, October-November 1998, and a recent survey conducted in September 1999, opacity levels above 20% are far above typical opacity levels for the sources at Astaris-Idaho and thus would reliably identify a source that was not being properly operated or maintained.

Based on a comment from Astaris-Idaho, EPA has made a minor revision to the opacity limit for the pressure relief vents (PRVs). EPA has added an exception to the 10% opacity limit for emissions occurring during steam cleaning and draining of the PRV drop tank. This operation and maintenance procedure occurs twice each day and Astaris-Idaho expressed concern that steam escaping the PRV during such cleaning events could be identified incorrectly as visible emissions. To account for this concern, EPA is providing an opacity limit of 20% during this operation and maintenance procedure twice each day. EPA is also requiring the facility to keep records of the date and time of this procedure, consistent with the facility's current practice.

L. Excess Emissions

In the February 1999 FIP proposal, EPA proposed two alternative approaches with respect to excess emissions due to startup, shutdown, scheduled maintenance, malfunction, or emergency. 64 FR at 7328; 64 FR 17990, 17991 (April 13, 1999). Under the first approach, the emission limitations would apply at all times and there would be no affirmative defense for excess emissions caused by such events. If emissions did exceed the proposed limits during startup, shutdown, scheduled maintenance, malfunction, or emergency, EPA would, of course, retain its enforcement discretion to forgo seeking a civil penalty for violation of the limits. Under the second alternative, EPA proposed to provide an affirmative defense to a penalty action (but not to an action for injunctive relief) provided certain conditions are satisfied. EPA based the affirmative defense on EPA's interpretation of the CAA set forth in a guidance document EPA issued to States regarding excess emissions during startup, shutdown, scheduled maintenance, and malfunctions, and also on the ''emergency defense'' provision in 40 CFR 71.6(g). See Memorandum from Kathleen M. Bennett, Assistant Administrator for Air And Radiation, to the Regional Administrators, entitled ''Policy Regarding Excess Emissions During Startup, Shutdown, Scheduled Maintenance, and Malfunctions'' (February 15, 1983) (referred to hereafter as ''1983 Excess Emissions Policy''). These two alternatives were not further discussed in the January 2000 supplemental proposal.

Although the Tribes, the State of Idaho, and members of the public expressed concerns regarding frequent events referred to by Astaris-Idaho in the past as ''upsets'' that the commenters believe cause exceedences of the PM–10 standards, none of the commenters opposed providing Astaris-Idaho a narrowly-tailored affirmative defense for emissions in excess of limits in the FIP so long as such a provision does not interfere with expeditious attainment and maintenance of the PM–10 NAAQS in the area. Astaris-Idaho strongly supported the affirmative defense proposed by EPA, although with several modifications. In general, Astaris-Idaho requested that the affirmative defense more closely follow EPA's 1983 Excess Emissions Policy. In particular, Astaris-Idaho objected to the provision that made the affirmative defense unavailable on any day an exceedence of the PM–10 NAAQS was recorded in the Fort Hall PM–10 nonattainment area. The Tribes also commented that EPA should more closely follow EPA's policies on excess emissions but expressed strong support for the provision objected to by Astaris-Idaho.

Since publication of the February 1999 FIP proposal, EPA issued a revised guidance document regarding excess emission events in SIPs. See Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Monitoring, and Robert Perciasepe, Assistant Administrator for Air And Radiation, to the Regional Administrators, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999) (referred to hereafter as ''1999 SIP Excess Emissions Policy''). That guidance document reaffirmed, clarified, and supplemented EPA's 1983 Excess Emissions Policy. Copies of the

1983 and 1999 policies are in the docket.

Based on the comments submitted to EPA, EPA believes it is appropriate to provide a narrowly drawn affirmative defense to a penalty action brought for emissions in excess of the FIP limits under certain conditions. EPA has made some minor revisions to the provisions to ensure consistency with the Clean Air Act, as interpreted in the guidance EPA has issued to States regarding the types of excess emissions provisions that States may incorporate into State Implementation Plans. For example, EPA has determined it is inappropriate to include scheduled maintenance as an event that could excuse excess emissions from a penalty action. EPA believes that maintenance is a predictable event that can be scheduled at the discretion of the operator to coincide with maintenance of production equipment or other source shutdowns. With respect to excess emissions caused by emergencies or malfunctions, EPA has clarified the proposal to ensure prompt corrective action and the minimization of excess emissions similar to that included in the provision for excess emissions in the case of startup and shutdown. EPA has continued to include the provision stating that the affirmative defense would not apply on any day on which an exceedence of the revised PM–10 NAAQS was recorded by any monitor in the Fort Hall PM–10 nonattainment area. EPA believes that an affirmative defense is appropriate only when the respective contributions of individual sources to pollutant concentrations in the ambient air are such that no single source or small group of sources has the potential to cause an exceedence of the NAAQS or PSD increments. See 1999 Excess Emissions Policy, Attachment p. 1. As discussed in the February 1999 FIP proposal, Astaris-Idaho is the primary or at least the most significant contributor to the PM–10 exceedences that have been recorded on the Tribal monitors. 64 FR at 7309. The Tribes and other commenters also stated it was important to ensure that allowing an affirmative defense must not interfere with attainment and maintenance of the PM–10 NAAQS in the area. To the extent Astaris-Idaho believes that an exceedence of the PM–10 NAAQS recorded in the Fort Hall PM–10 nonattainment area is not attributable to its facility and makes a persuasive case to that effect to EPA, EPA could exercise its enforcement discretion to forgo seeking a civil penalty for violation of the emission limit.

M. Monitoring, Recordkeeping, and Reporting

The February 1999 FIP proposal included extensive monitoring, recordkeeping, and reporting provisions for ensuring compliance with the emission limits and work practice requirements in the FIP. Astaris-Idaho requested that EPA include provisions that would provide procedural flexibility for modifying certain aspects of the FIP through a process other than a revision to the FIP. In the January 2000 supplemental proposal, EPA included several such provisions, such as a provision authorizing the Regional Administrator to extend the time period for conducting source tests for an additional 90 days for good cause, a provision authorizing the Regional Administrator to modify a reference test method, and a provision authorizing changes to monitoring, recordkeeping, and reporting provisions of the FIP through the issuance of or a significant permit modification to Astaris-Idaho's title V permit. See 65 FR at 4478–4479.

The Tribes requested that EPA require semi-annual source testing for the calciner scrubbers, the calciner cooler vents, the furnace Medusa-Andersen scrubbers, the phos-dock Andersen scrubber, and the excess CO burner, as well as continuous opacity monitors (COMs) on the furnace scrubbers, phos-dock Andersen scrubber, and excess CO burner because these sources have a larger potential to emit or a much higher probability of compliance problems. The Tribes further requested that, if a source test documents a violation of an emission limit, Astaris-Idaho should be required to conduct another test of that source within 90 days. The Tribes also requested a change in the reference test method for the furnace Medusa-Andersen scrubbers.

EPA has revised the FIP to require semi-annual source tests for the calciners and the excess CO burners because these two sources will either be completely new or have substantial changes made to existing control technology. EPA is not requiring more frequent testing of the other sources identified by the Tribes because the change in the control systems for these sources is less substantial. EPA has authority under section 114 of the Clean Air Act to require more frequent testing of these sources if needed. EPA has also revised the FIP to include a requirement that another source test be conducted within 90 days after a source test shows a violation of the emission limit for this source. In addition, EPA has revised the reference test method for the furnace scrubbers to include at least 20 minutes of slag tapping in each of two runs and at least 20 minutes of metal tapping in the other run. EPA based this approach on the fact that tapping occurs approximately every hour, a tap lasts approximately 20 minutes, and slag tapping occurs more frequently than metal tapping. Because each source test run takes a minimum of one hour, this approach should ensure that the source tests are representative of operational conditions. EPA has not revised the FIP to require COMs because EPA does not believe that COMs can be installed on the Andersen scrubber stacks due to interference from water vapor.

N. PM–10 Precursors

Under CAA section 189(e), the control requirements applicable under SIPs to major stationary sources of PM–10 must also be applied to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in the area. 57 FR at 13541. Not all particulate in the air is directly emitted in particulate form from emission sources. Particulate can also be formed in the air through complex chemical processes involving emission of gaseous pollutants called ''precursor gasses'' or ''precursors''. A precursor gas is a gas that is in the vapor state under both elevated stack temperature and at ambient temperature and cannot be measured in stack tests using either Methods 5 or 201/201A (filterable particulate) or Method 202 (condensible particulate). PM–10 precursors can include volatile organic compounds, which form secondary organic compounds; sulphur dioxide, which forms sulfate compounds; and nitrogen oxides, which form nitrate compounds. See 57 FR 13538. The particulates formed in the air from precursor gasses are generally referred to as ''secondary aerosol.''

In the February 1999 FIP proposal, EPA stated that it did not have sufficient information to determine whether PM–10 precursors contribute significantly to PM–10 levels in excess of the NAAQS in the Fort Hall PM–10 nonattainment area but that an analysis of the filters on the Tribal monitors (the Source Apportionment Study), which was to be completed in the summer of 1999, should provide this information. EPA also stated that it would address PM–10 precursors, as necessary or appropriate, in a subsequent rulemaking. *See* 64 FR at 7318, 7342. The January 2000 supplemental proposal did not directly address PM–10 precursors, although it did summarize the findings of the Source Apportionment Study.

EPA received many comments on PM–10 precursors, including comments from the Tribes and the State of Idaho. The Tribes stated that EPA should either revise the FIP to address precursors or directly address the possibility that the FIP will need to be reopened after the Source Apportionment Study was complete in order to include controls on emissions of PM–10 precursors. Two other commenters noted their expectation that EPA address PM–10 precursor emissions from the Astaris-Idaho facility if such emissions are determined to be a significant contributor to NAAQS violations in the area, and also stated that such emissions would likely need to be addressed and controlled under the new PM–2.5 standard. The comments on the January 2000 supplemental proposal revealed a heightened concern with PM–10 precursors for two apparent reasons. First, several commenters interpreted the Source Apportionment Study as finding that PM–10 precursor emissions from the Astaris-Idaho facility do contribute significantly to exceedences of the PM–10 standards on the Tribal monitors. The Tribes and Idaho are particularly concerned that phosphorus and sulfur dioxide emissions from Astaris-Idaho are PM-10 precursor emissions. Second, public concern with PM–10 precursors and air quality in general was heightened by the exceedences of the PM–10 NAAQS recorded on State monitors in and near Pocatello and on the Tribal monitors in December 1999 and January 2000 during an air stagnation event. These were the first exceedences recorded on the State monitors since January 1993. Preliminary information shows that sulfates were a significant portion of the PM–10 mass captured on the filters at the State and Tribal PM–10 monitors during the December 1999 and January 2000 exceedences.

EPA does not agree that the Source Apportionment Study supports a finding that PM–10 precursors contribute significantly to exceedences of PM–10 in the Fort Hall PM–10 nonattainment area.[15] In fact, the report states, ''Sulfate is contributed by regional sources and by the calciner stacks, but is a minor contributor to PM–10, accounting for about 5% of the fine mass during exceedences.'' *See* Source Apportionment Study, Executive Summary, Bullet #4. EPA also does not agree that phosphorous is a precursor to the formation of PM–10 secondary aerosol. Phosphorus in a gas stream converts to phosphorus pentoxide (P_2O_5), a fine particulate, prior to or immediately upon contact with the atmosphere. Phosphorus is, of course, emitted from Astaris-Idaho in significant quantities. The gases in the calciners, excess CO flares (which will be replaced by the excess CO burner), and phos dock contain significant amounts of phosphorus, which is oxidized to P_2O_5 when it meets with the ambient air. This P_2O_5 is collected and measured by reference test Methods 5, 201/201A and 202 as primary particulate matter, and is therefore not a precursor to PM–10 secondary aerosol. This P_2O_5 is included in the emission inventory and will be controlled by the requirements of in this FIP. For example, the largest sources of phosphorus and phosphorus compounds are the elevated secondary condenser flare and CO ground flare. These will be replaced by the excess CO burner and controlled by the Andersen scrubbing system, which will be required to remove 95% of the inlet particulate loadings under most operating conditions and meet an emission limit of 24 lbs/hr. EPA is not aware of any other alternative control technology that is more effective in controlling phosphorous and phosphorus compounds from the excess CO flares and believes that this technology constitutes RACT-level control and likely even BACT-level control. Another large source of phosphorus and phosphorus compounds are the calciners. Again, this source will be required to meet RACT-level emission limits of 0.008 gr/dscf for filterable PM–10 and 0.018 gr/dscf for all PM–10. In any event, these phosphorous gases will be regulated by the FIP because the FIP requires the implementation of RACT on all sources at the Astaris-Idaho facility and the phosphorus sources that contribute to exceedences of the PM–10 NAAQS are included in the sources regulated by the FIP.

As stated above, preliminary information from Idaho and the Tribes indicates that a significant portion of the filter loadings during the days when the level of the 24-hour PM–10 standard was exceeded in December 1999 and January 2000 was determined to be sulfates. This could suggest that PM–10 precursors do contribute significantly to PM–10 levels which exceed the PM–10 NAAQS in the area. EPA has not yet received the results of the filter analysis recently completed for the State and Tribal monitors for the December 1999–January 2000 exceedences. Once EPA receives this information, it will work with the Tribes and the State to better understand the sources, emissions, and chemical reactions that contributed to the recent exceedences of the PM–10 NAAQS and, if the results demonstrate precursor contributions are not insignificant, will address PM–10 precursor emissions from Astaris-Idaho as necessary or appropriate in a later rulemaking.

O. Implementation and Enforcement of the FIP

Several commenters, including the Tribes and the State, expressed concern that the FIP does not contain enforcement provisions or a detailed description of EPA's plans for determining whether Astaris-Idaho is complying with the requirements of the FIP and taking enforcement action if Astaris-Idaho is out of compliance. These commenters complained that the FIP relies heavily on self-monitoring by Astaris-Idaho and argued that regular EPA unannounced inspections of the Astaris-Idaho facility, observation of source tests, and a strong enforcement presence by EPA is essential if improved air quality is to be assured. Some commenters expressed support for the Tribes' involvement in this oversight and enforcement process.

EPA agrees that a strong enforcement presence is needed to ensure that Astaris-Idaho is complying with the requirements of the FIP and that the expected air quality benefits are in fact being realized. Until the Shoshone-Bannock Tribes are authorized to manage CAA programs within the Fort Hall Indian Reservation under the provisions of the Tribal Authority Rule (TAR), 40 CFR part 49, EPA is responsible for ensuring that all sources on the Fort Hall Indian Reservation, including Astaris-Idaho, comply with the requirements of the Clean Air Act and any applicable implementing regulations. The federal Clean Air Act programs that apply within the Fort Hall Indian Reservation at this time include Prevention of Significant Deterioration, section 169 of the CAA and 40 CFR part 51.21; New Source Performance Standards, section 111 of the CAA and 40 CFR part 60; National Emission Standards for Hazardous Air Pollutants, section 112 of the CAA and 40 CFR parts 61 and 63. For the Astaris-Idaho facility, the federal requirements will also include this FIP.

[15] It is important to emphasize that EPA is stating only that the Source Apportionment Study alone does not support a finding that PM–10 precursors contribute significantly to exceedences of PM–10 in the Fort Hall PM–10 nonattainment area. As discussed below, an analysis of monitor filters during days of high PM–10 levels in December 1999 and January 2000 do show that, on these days, sulfates were a significant portion of the PM–10 mass.

The Tribes have expressed a desire to assist EPA in ensuring that Astaris-Idaho acts in compliance with the requirements of this FIP, and for otherwise assuring that Astaris-Idaho and other sources located within the Fort Hall Indian Reservation are in compliance with the requirements of the Clean Air Act and its implementing regulations. EPA is working with the Tribes to develop a memorandum of agreement that will set forth the roles and responsibilities of EPA and the Tribes in overseeing enforcement of the Clean Air Act and this FIP within the Fort Hall Indian Reservation. With respect to the Astaris-Idaho facility, this agreement is expected to address the following activities:

- Inspections of the Astaris-Idaho facility at least two times per year. Except in unusual circumstances due to logistical or other planning considerations, such inspections will be unannounced inspections;
- Regular monitoring of visible emissions;
- Reviews of operating reports, excess emission reports, and emission monitoring reports;
- Reviews of required operation and maintenance manuals;
- Observations of scheduled source tests and reviews of the results;
- Investigations of causes of elevated levels of particulate matter as determined by ambient monitoring;
- Investigations of public complaints regarding the Astaris-Idaho facility;
- Logging of compliance and inspection data regarding the Astaris-Idaho facility into EPA data bases.

The agreement is also expected to address oversight of the air quality-related Supplemental Environmental Projects under the RCRA Consent Decree to ensure that the projects are completed in a timely manner.

When violations are reported by Astaris-Idaho or discovered by EPA or the Tribes as a result of inspections or other reviews, EPA intends to take prompt enforcement action consistent with EPA policy, including how penalties are assessed. The Clean Air Act provides EPA with broad discretionary authority in this regard. Under section 113 of the Clean Air Act, EPA is authorized to bring enforcement actions against Astaris-Idaho for violations of the FIP. This authority includes civil and administrative penalty authority, the authority to seek injunctive relief, and the authority to pursue criminal actions. Additional authority also exists in other parts of the Act, including EPA's emergency authority under section 303 and penalty authority under section 120. EPA rules under the Clean Air Act, such as this FIP, do not typically include separate or special enforcement provisions, but instead rely on the authority under section 113, 120, 303 and other EPA statutes. Under section 113 of the Clean Air Act, EPA has authority to collect up to $27,500 per day for each violation of each FIP requirement. Most States' penalty authority is limited to a maximum of $10,000 per day for each violations. See RCW 70.94.30 (Washington's civil penalty authority for air violations); Idaho Code 39–108(5) (Idaho's civil penalty authority for air violations).

Thus, the FIP does not rely on any single enforcement tool. Self-monitoring by Astaris-Idaho is a component, as indeed it is for sources subject to a SIP as well, but as discussed above, EPA also intends to play an active oversight role, along with the Shoshone-Bannock Tribes. Citizens also have a right to bring enforcement actions against Astaris-Idaho for violation of the FIP under section 304 of the Clean Air Act. In addition, the FIP includes many mechanisms that enhance the reliability of Astaris-Idaho's self-monitoring. First, the FIP requires Astaris-Idaho to install, maintain, and operate numerous monitoring devices that continuously measure and record emissions-related data. For example, all baghouses must be equipped with bag leak detectors, which will sound an alarm to signal when bag quality is deteriorating. Astaris-Idaho is also required to install monitoring devices to continuously record pressure drop and scrubbing functions. Under section 113(c)(2)(C), it is a criminal offense to falsify, tamper with, render inaccurate, or fail to install any monitoring device or method required under the Clean Air Act. Second, in some instances the FIP requires more than one monitoring method to ensure compliance with a single requirement. Finally, all reports and records required to be submitted to EPA and the Tribes must be certified by a responsible official as to their truth, accuracy, and completeness. Again, Astaris-Idaho would be subject to criminal liability for falsifying these records or reports.

P. Transportation Conformity

One commenter on the January 2000 supplemental proposal, Bannock Planning Organization (BPO), although favorably acknowledging EPA's efforts to regulate Astaris-Idaho and the emission reductions expected to be achieved through the FIP, expressed concern that the FIP did not adequately address transportation conformity. The commenter stated that, as the designated metropolitan planning organization (MPO) for the area, it is required to ensure that transportation projects conform with air quality plans. Without a mobile emissions budget in the FIP, BPO stated, they would not be able to make a conformity determination for the Fort Hall PM–10 nonattainment area and absent such a determination the area would be unable to complete any transportation projects. BPO requested that EPA either formally determine that transportation conformity requirements are inapplicable for the Fort Hall PM–10 nonattainment area, or, alternatively, assure BPO that a FIP which includes a mobile source emissions budget covering the entire nonattainment area would be adopted by the Agency by December 2002.

EPA is confused by the comments submitted by BPO, since they raise issues with respect to the Fort Hall PM–10 nonattainment area and the Astaris-Idaho facility that are inconsistent with prior regulatory actions by EPA, as well as with FIP actions that have been proposed and are being finalized today. EPA revised the designation for the former Power-Bannock Counties PM–10 nonattainment area to create two separate nonattainment areas, the Portneuf Valley PM–10 nonattainment area situated on State lands and the Fort Hall PM–10 nonattainment area comprised of lands located within the exterior boundaries of the Fort Hall Indian Reservation. 63 FR 59722 (November 5, 1998). In its initial FIP proposal notice, EPA stated that it was issuing this FIP pursuant to discretionary authority granted the Agency under sections 301(a) and 301(d)(4) of the Clean Air Act. 64 FR at 73010–11. These sections of the Act authorize EPA to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian tribes in the same manner as states. EPA promulgated such regulations, known as the Tribal Authority Rule (TAR), on February 12, 1998. 63 FR 7254. In the TAR, EPA determined that the CAA provisions cited above constitute a delegation of federal authority to Tribes approved by EPA to administer CAA programs over all air resources within the exterior boundaries of appropriate reservations. Id. EPA further explained that, pursuant to these provisions, Congress expressed an intent to grant to eligible Tribes jurisdiction over all areas within the exterior boundaries of their reservations for the management of CAA programs. 63 FR at 7255. The TAR provides that, until Tribes have received EPA approval to manage particular CAA programs, the

Agency itself will administer the CAA in Indian country in instances where EPA determines that doing so is necessary or appropriate to protect public health and welfare. See 40 CFR 49.11(a). Moreover, under the Federal Lands Highways Program, 23 U.S.C. 202(d), 204, as amended by the Transportation Equity Act for the 21st Century (TEA–21), authorization to promulgate and implement regulations regarding planning and construction, as well as transit-related improvement projects on Indian reservation roads are entrusted to the Secretary of the Interior, through the assistance of the Bureau of Indian Affairs. Given all the above, EPA is uncertain what BPO means when it asserts that ''it is the designated metropolitan planning organization for the area,'' if the area to which it is referring is the Fort Hall PM–10 nonattainment area that comprises the Fort Hall Indian Reservation.

In any event, the purpose of the FIP is to impose emission limits and work practice requirements that constitute RACT for particulate matter and that will, in light of this area's longstanding nonattainment problem, ensure expeditious progress towards improving air quality and attaining the PM–10 standards in order to protect the public health. Issues related to requirements on federal agencies, under section 176(c) of the Act, to demonstrate conformity of their emissions-generating activities to the air quality goals of the Fort Hall PM–10 nonattainment area, to the extent they are determined to be necessary or appropriate, will be addressed by EPA in a future rulemaking.

V. Other Changes From the January 2000 Supplemental Proposal

Many of the changes to the FIP have been discussed above in the discussion of the major comments on the FIP and EPA's responses to those comments. Other significant changes to the FIP are discussed below.

A. Codification

EPA originally proposed the FIP as an amendment to part 52, subpart N. That subpart codifies the provisions of the State Implementation Plan for the State of Idaho. In light of the opportunity to manage Clean Air Act programs now afforded to Tribes by the Tribal Authority Rule, EPA has determined that implementation provisions applicable in Indian Country should not be codified with State Implementation Plans, but should instead be codified separately to reflect and respect Tribal sovereignty. EPA is therefore codifying this FIP as an amendment to part 49, which is entitled ''Tribal Clean Air Act Authority.'' In connection with publication of this FIP, EPA is also making administrative amendments to part 49 that will create the structure for codifying this FIP, as well as future Federal Implementation Plans and Tribal Implementation Plans promulgated or approved by EPA for Indian Country. A subpart of part 49 is being created for each Region and will include the Federal and Tribal Implementation Plans for Tribes within that Region.

Implementation plans for Tribes in Region 10 will be codified in subpart M, and provisions for the Shoshone-Bannock Tribes will be codified at 40 CFR 49.10701 to 49.10730. This FIP for the Astaris-Idaho facility will be codified at 40 CFR 49.10711.

B. Definitions

EPA has revised the definition of Astaris-Idaho or Astaris-Idaho facility to include ponds and construction activities operated by Astaris-Idaho on Section 14 of Township 6 south, Range 33 east. The omission of this section of land from the definition was inadvertent. Because the definition of fugitive emissions is used for application of the emission limits and control requirements of the FIP, and not for applicability purposes, EPA has revised the definition to clarify that the relevant inquiry is whether the emissions actually do pass through a stack, chimney, vent, or other functionally equivalent opening.

C. Emission Limits

EPA has added a zero to the last digit of each emission limit to clarify rounding procedures. EPA has also revised the designation of three sources in Tables 1 and 2. In June 2000, Astaris-Idaho notified EPA that it had completed revamping its nodule reclaim operation as a Supplemental Environmental Project under the RCRA Consent Decree. That project eliminates the nodule fines pile (source 13) through enclosure of the pile under a dome that is controlled by a new baghouse, which Astaris-Idaho refers to as the ''Nodule Reclaim Baghouse.'' This is the name that EPA had used to identify sources 16a and 16b in Tables 1 and 2 of the proposals. EPA has renamed sources 16a and 16b as the ''nodule stockpile baghouse'' and the ''nodule stockpile baghouse outside capture hood—fugitive emissions.'' Because source 13 is now a baghouse rather than a pile, EPA has imposed the same opacity limit as for all other baghouses—10% opacity with a corrective action level of 5% opacity. EPA has also established an emission limit for this source of 0.90 pounds per hour. EPA derived this emission rate using a grain loading standard of 0.005 gr/dscf, an emission limit commonly established by States for new baghouses, and information provided by Astaris-Idaho regarding the flow rate of the baghouse.

D. New and Modified Sources

Astaris-Idaho objected to the 90-day advance notice provision for new and modified sources expected to cause an increase in PM–10 emissions and also to the definitions proposed by EPA to implement this provision. EPA believes a 90-day advance notice is appropriate and consistent with requirements in new source review provisions implemented in other States. EPA has added a provision, however, that would allow Astaris-Idaho to commence construction in less than 90-days upon receipt of written notification from EPA that the 90-day delay is not required. EPA intends to use this provision in appropriate situations such as where the PM–10 impacts of the project are small, less than the full 90 days is needed to review the project, and the existing opacity requirements in the FIP, as well as the operations and maintenance plan, are sufficient to address PM–10 emissions from the new or modified source. EPA also made minor changes to clarify what information must be submitted in connection with a new or modified source. EPA has clarified the definition of modification in response to a comment by Astaris-Idaho but has otherwise retained the definitions for this advance notice provision.

E. Monitoring, Recordkeeping, and Reporting

The changes to the frequency of source testing for certain sources are discussed in section IV.M. above. EPA has revised the source testing requirements to include provisions in the New Source Performance Standards for source testing, such as the requirement for 30 days prior written notice to EPA regarding the date of a scheduled source test and providing safe and effective facilities for source testing. See 40 CFR 60.8. Other minor changes to the source testing procedures were made to better ensure consistency between the requirements of this FIP and the standard terms and conditions of Region 10's part 71, Title V permits. At the request of Astaris-Idaho, EPA made minor modifications to the monitoring requirements for the calciner scrubbers and furnace Medusa-Andersen scrubbers. At the same time, EPA added a requirement that Astaris-Idaho propose and implement a plan for

monitoring scrubber water quality for these sources because EPA believes that water quality is an important parameter for ensuring the scrubbers are being properly operated and maintained. EPA has modified the provision regarding weekly visible emission inspections to ensure that, if the first visible emissions observation detects a potential compliance problem, the visible emission observation conducted after investigation and appropriate corrective action must be conducted with the reference test method for the opacity limit. This will provide information needed to determine whether the source is in compliance with the opacity limit.

At the request of the Tribes and Astaris-Idaho, EPA has revised the FIP to require that Astaris-Idaho provide to the Tribes a contemporaneous copy of all reports, notices, and other documents submitted to EPA under the FIP. This provision will better enable the Tribes to ensure that the facility complies with the FIP and is operated in a manner that protects the health and welfare of the Tribes, their members, and their resources. Making this information more readily available to the Tribes will also facilitate the Tribes' role in working with EPA to ensure compliance with and enforcement of the FIP and will assist in building the Tribes' experience and capacity for administering Clean Air Act programs.

Finally, EPA made other minor changes to the monitoring, recordkeeping, and reporting provisions to better ensure consistency between the requirements of the FIP and the terms of the RCRA Consent Decree.

VI. Effectiveness of the Control Strategy

EPA continues to believe that the emission limits and work practice requirements in this FIP will result in attainment of the PM–10 NAAQS as expeditiously as practicable. As discussed in the February 1999 FIP proposal and the January 2000 supplemental proposal, based on measured air quality values, EPA believes that daily PM–10 emissions from the Astaris-Idaho facility must be reduced by approximately 65% in order for the Fort Hall PM–10 nonattainment area to attain the 24-hour standard and that annual PM–10 emissions must be reduced by approximately 25% in order for the area to attain the annual PM–10 standard. 65 FR at 4482; 64 FR at 7342.

Table A, below, shows current actual daily PM–10 emissions for Astaris-Idaho before implementation of the control strategy in comparison to expected actual and allowable emissions after full implementation of the control strategy. Expected actual emissions after full implementation of the FIP requirements were determined by assuming that Astaris-Idaho would operate each source at current levels or at the FIP limit for the source, whichever is less. For example, in the case of sources controlled by baghouses, Astaris-Idaho operates those sources, based on source test information, at rates slightly below the maximum levels allowed under the FIP. Allowable emissions after implementation of the FIP were determined by assuming that Astaris-Idaho would operate each source at the maximum rate allowed by the FIP for 100% of the 24-hour and annual time periods in the case of those sources that have a mass emission limitation. For sources for which there is no mass emission limit in the FIP but for which opacity limits and other requirements were based on the installation of additional control technology (such as slag handling sources), allowable emissions are calculated by applying the control efficiency of that technology as determined from the RACT evaluation. In the case of all other sources for which there is no mass emission limitation and the FIP does not contemplate the installation of additional controls, actual and allowable emissions are assumed to remain the same before and after implementation of the control strategy. Note that allowable annual emissions for some sources can be significantly higher than actual emissions because some processes only operate for short periods throughout the year. In calculating allowable emissions however, it is assumed that the processes operate continuously all year. For example, the calciners typically operate 6500 out of 8760 hours per year, or approximately 75% of the year.

A few changes have been made to the emission inventory. Condensible emissions have been included in the emission estimate for the calciner cooler vents both before and after the implementation of the control strategy. The January 2000 supplemental proposal had included condensible PM–10 emissions for the calciner scrubbers and the excess CO burner. With the revision of the emission estimate to include condensible emissions for the calciner cooler vents, the emission inventory includes filterable and condensible PM–10 estimates for the three sources from which condensible PM–10 emissions are expected. Condensible PM–10 emissions have been assumed to be zero for all other sources for the reasons discussed in section IV.F. above.

EPA has revised the estimate of current reasonable worst case annual emissions for the calciner scrubbers. In the January 2000 supplemental proposal, EPA assumed a grain loading of 0.029 gr/dscf to calculate current annual reasonable worst case emissions. This grain loading was the average baseline number, not a reasonable worst case number and EPA believes it may have underestimated current reasonable worst case annual emissions from the calciner scrubbers. EPA has determined a more representative grain loading for calculating current reasonable worst case annual emissions is 0.031 gr/dscf, resulting in an estimate of 252 tons per year.

The nodule fines truck loading and nodule fines stock pile emission sources have been eliminated in the case of expected actual and allowable emissions after implementation of the control strategy. As a SEP under the RCRA Consent Decree, the truck loading has been eliminated and the stockpile is now totally enclosed. A new baghouse has been constructed to control the emissions from the newly enclosed nodule fines stockpile. The emissions formerly included under nodule fines loading and the nodule fines stockpile are now included under ''all other baghouses.'' The emission estimate for the Medusa-Andersen scrubbers on the furnace building has been revised to better reflect reasonable worst case emissions based on what EPA believes to be a more accurate estimate of how many hours the furnace scrubbers operate on a reasonable worst case day.

As indicated in Table A below, the FIP is expected to reduce 24-hour PM–10 emissions by almost 80%. As discussed above, based on air quality monitoring data, a 65% reduction in PM–10 (from 433 ug/m3 to 150 ug/m3) is needed to achieve the 24-hour PM–10 NAAQS. As indicated in Table B below, the FIP is expected to reduce annual PM–10 emissions by at least 60%. As discussed above, based on air quality monitoring data, a 25% reduction in PM–10 is needed to achieve the annual PM–10 NAAQS. Thus, the FIP is expected to achieve emission reductions significantly in excess of that needed for attainment of the PM–10 standards. This cushion of over control should help alleviate concerns regarding whether the FIP will result in attainment of the PM–10 NAAQS.

TABLE A.—ATTAINMENT DEMONSTRATION 24-HOUR PM–10 STANDARD ASTARIS-IDAHO REASONABLE WORST CASE PM–10 EMISSIONS SUMMARY FULL IMPLEMENTATION OF PROPOSED CONTROL STRATEGY

[Pounds per day]

Source name	Actual emissions before control	Actual emissions after control	Allowable emissions after control
Point sources:			
Ground & elevated CO flares*	10,543	527	576
Calciners*	2,419	1,012	1,208
All other baghouses	106	**125	**169
Medusa-Andersen	115	115	192
Calciner cooler vents*	679	679	679
Pressure relief vents	99	99	99
Cooling tower	96	96	96
Phos dock	34	34	34
Boilers	13	13	13
Emergency flares	12	12	12
Fugitive sources:			
Slag handling	1,045	146	146
All roads	190	190	190
All piles	163	163	163
Dry fines recycle	33	33	33
Nodule fines loading	12	0	0
Nodule fines stockpile	7	0	0
Grand total	15,566	3,244	3,610
Reduction (in percent)	.....	79	77

*Emission estimate includes condensible PM–10 emissions; emission limit for the calciner cooler vents does not apply to condensible PM–10.
**The emissions formerly included under nodule fines loading and the nodule fines stockpile are now included under ''all other baghouses.''

TABLE B.—ATTAINMENT DEMONSTRATION ANNUAL PM–10 STANDARD ASTARIS-IDAHO REASONABLE WORST CASE PM–10 EMISSIONS SUMMARY FULL IMPLEMENTATION OF PROPOSED CONTROL STRATEGY

[Tons/year]

Source name	Actual emissions before control	Actual emission after control	Allowable emissions after control
Point sources:			
Ground & elevated CO flares*	903	45	105
Calciners*	252	144	221
All other baghouses**	12	15	31
Medusa-Andersen	18	18	35
Calciner cooler vents*	98	98	98
Pressure relief vents	1	1	1
Cooling tower	18	18	18
Phos dock	6	6	6
Boilers	2	2	2
Emergency flares	0	0	0
Fugitive sources:			
Slag handling	165	23	23
All roads	25	25	25
All piles	23	23	23
Dry fines recycle	6	6	6
Nodule fines loading	2	0	0
Nodule fines stockpile	1	0	0
Grand total	1,532	424	594
Reduction (in percent)	.....	72	61

*Emission estimate includes condensible PM–10 emissions; emission limit for the calciner cooler vents does not apply to condensible PM–10.
**The emissions formerly included under nodule fines loading and the nodule fines stockpile are now included under ''all other baghouses.''

VII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), all ''regulatory actions'' that are ''significant'' are subject to Office of Management and Budget review and the requirements of the Executive Order. As discussed in the February 1999 FIP proposal, this FIP is not a rule of general applicability and therefore is not a ''regulatory action'' under Executive Order 12866. See 64 FR at 7342–7343.

B. Regulatory Flexibility Act (RFA)

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA generally must prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless EPA certifies that the rule will

not have a significant economic impact on a substantial number of small entities. 5 U.S.C. sections 603, 604 and 605(b). As discussed in the February 1999 FIP proposal, because Astaris-Idaho has more than 1,000 employees, it is not a small entity under the RFA. Therefore, pursuant to 5 U.S.C. 605(b), I certify that the FIP will not have a significant economic impact on a substantial number of small entities. See 64 FR at 7343.

C. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 04–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. For the reasons discussed in the February 1999 FIP proposal, the FIP does not impose any enforceable duties or contain any unfunded mandate on State, local or tribal governments, or impose any significant or unique impact on small governments as described in UMRA. Moreover, the FIP is not likely to result in the expenditure of $100 million or more by the private sector in any one year. Therefore, the requirements of UMRA do not apply. See 64 FR at 7343.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons* * *.'' 44 U.S.C. 3502(3)(A). Because the FIP only applies to one company, the Paperwork Reduction Act does not apply.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This executive order applies to any rule that: (1) is determined to be ''economically significant'' as that term is defined in Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. A rule is economically significant if it is likely to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. As discussed in the February 1999 FIP proposal, the costs to Astaris-Idaho of complying with the FIP are expected to be less than $50 million dollars. 64 FR at 7343. In addition, EPA does not believe the FIP will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Accordingly, EPA has determined that the FIP is not economically significant and thus not subject to Executive Order 13045.

F. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This FIP does 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, as specified in Executive Order 13132. This rule only prescribes standards appropriate for one facility on an Indian Reservation, and thus does not directly affect any State. Moreover, it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Nonetheless, as discussed in the February 1999 FIP proposal and the January 2000 supplemental proposal, EPA worked closely with representatives of the Tribes during the development of the FIP proposals. See 64 FR at 7312; 65 FR at 4485. EPA has continued to work with the Shoshone-Bannock Tribes in developing this final action.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' This Executive Order is discussed in more detail in the February 1999 FIP proposal. See 64 FR at 7312.

The FIP imposes obligations only on the owner or operator of Astaris-Idaho, and does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. As discussed in the February 1999 FIP proposal and the January 2000 supplemental proposal, EPA worked closely with representatives of the

Shoshone-Bannock Tribes during the development of the FIP proposal. See 64 FR at 7312; 65 FR at 4485. EPA has continued to work with the Tribes in developing this final action.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of NTTAA, Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards.

The proposed reference test methods for the emissions limitations and work practice requirements in this FIP are technical standards. The test methods for the emission limitations and work practice requirements in this FIP are test methods that have been promulgated by EPA. See Methods 201, 201A, and 202, 40 CFR part 51, appendix M; Methods 1, 2, 2C, 2D, 3, 3A, 4, 5, and 22 (in part), 40 CFR part 60, appendix A. Before proposing these reference test methods, EPA conducted a search to identify potentially applicable voluntary consensus standards. EPA did not identify any potentially applicable standards that could be used in place of Methods 201, 201A, and 202, 40 CFR part 51, appendix M; or Methods 1, 3, 3A, 4, 5, and 22 (in part), 40 CFR part 60, appendix A. EPA received no comments on either proposal that identified potentially-applicable voluntary consensus standards that could be used in place of the reference test methods proposed by EPA.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

J. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 23, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Administrative practice and procedure, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 31, 2000.

Carol Browner,

Administrator.

For the reasons set out in the preamble, title 40 , chapter I of the Code of Federal Regulations is amended as follows:

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

1. The authority citation for part 49 continues to read as follows:

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

Subpart A—Tribal Authority

§§ 49.1 through 49.11, and 49.22 [Redesignated as Subpart A]

§§ 49.12 through 49.21, 49.23 through 49.50 [Added and Reserved]

2. Part 49 is amended by designating §§ 49.1 through 49.11 and 49.22 as subpart A and adding and reserving §§ 49.12 through 49.21 and 49.23 through 49.50 to subpart A.

3. Part 49 is amended by adding Subparts B through L as follows:

Subpart B—General Provisions

Sec.

49.51–49.100 [Reserved]

Subpart C—General Federal Implementation Plan Provisions

49.101–49.200 [Reserved]

Subpart D—Implementation Plans for Tribes—Region I

49.201–49.470 [Reserved]

Subpart E—Implementation Plans for Tribes—Region II

49.471–49.680 [Reserved]

Subpart F—Implementation Plans for Tribes—Region III

49.681–49.710 [Reserved]

Subpart G—Implementation Plans for Tribes—Region IV

49.711–49.920 [Reserved]

Subpart H—Implementation Plans for Tribes—Region V

49.921–49.1970 [Reserved]

Subpart I—Implementation Plans for Tribes—Region VI

49.1971–49.3920 [Reserved]

Subpart J—Implementation Plans for Tribes—Region VII

49.3921–49.4160 [Reserved]

Subpart K—Implementation Plans for Tribes—Region VIII

49.4161–49.5510 [Reserved]

Subpart L—Implementation Plans for Tribes—Region IX

49.5511–49.9860 [Reserved]

4. Part 49 is amended by adding Subpart M to read as follows:

Subpart M—Implementation Plans for Tribes—Region X

49.9861–49.10700 [Reserved]

Implementation Plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation

49.10701 Identification of plan.
49.10702 Approval status.
49.10703 Legal authority. [Reserved]
49.10704 Source Surveillance. [Reserved]
49.10705 Classification of regions for episode plans.
49.10706 Contents of implementation plan.
49.10707 EPA-approved Tribal rules and plans. [Reserved]
49.10708 Permits to construct.
49.10709 Permits to operate. [Reserved]
49.10710 Federally-promulgated regulations and federal implementation plans.
49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.
49.10712–49.17810 [Reserved]

§§ 49.9861–49.10700 [Reserved]

Implementation Plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation

§ 49.10701 Identification of plan.

Sections 49.10701 through 49.10730 contain the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation. This plan consists of a combination of Tribal rules

and measures and federal regulations and measures which apply for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation.

§ 49.10702 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation.

§ 49.10703 Legal authority. [Reserved]

§ 49.10704 Source Surveillance. [Reserved]

§ 49.10705 Classification of regions for episode plans.

The air quality control region which encompasses the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM–10)	I
Sulfur dioxide	II

§ 49.10706 Contents of implementation plan.

The implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.10711. Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

(b) 40 CFR 52.21. Prevention of Significant Deterioration Permits

§ 49.10707 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10708 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10709 Permits to operate. [Reserved]

§ 49.10710 Federally-promulgated regulations and federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation:

(a) Section 49.10711. Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

(b) 40 CFR 52.21. Prevention of Significant Deterioration Permits.

§ 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

(a) *Applicability.* This section applies to the owner(s) or operator(s) of the Astaris-Idaho LLC's elemental phosphorus facility located on the Fort Hall Indian Reservation in Idaho, including any new owner(s) or operator(s) in the event of a change in ownership or operation of the Astaris-Idaho facility.

(b) *Definitions.* The terms used in this section retain the meaning accorded them under the Clean Air Act, except as follows:

Astaris-Idaho or Astaris-Idaho facility means all of the pollutant-emitting activities that comprise the elemental phosphorus plant owned by or under the common control of Astaris-Idaho LLC in Township 6 south, Range 33 east, Sections 12, 13, and 14, and that lie within the exterior boundaries of the Fort Hall Indian Reservation, in Idaho, including, without limitation, all buildings, structures, facilities, installations, material handling areas, storage piles, roads, staging areas, parking lots, mechanical processes and related areas, and other processes and related areas. For purposes of this section, the term ''Astaris-Idaho'' or ''Astaris-Idaho facility'' shall not include pollutant emitting activities located on lands outside the exterior boundaries of the Fort Hall Indian Reservation.

Bag leak detection guidance means Office of Air Quality Planning and Standards (OAQPS): Fabric Filter Bag Leak Detection Guidance, EPA 454/R–98–015 (Sept. 1997).

Begin actual construction means, in general, initiation of physical on-site construction activities on a source which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in the method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

Certified observer means a visual emissions observer who has been properly certified using the initial certification and periodic semi-annual recertification procedures of 40 CFR part 60, appendix A, Method 9.

Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of a source) which would result in a change in actual emissions.

Emergency means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator of the Astaris-Idaho facility, including acts of God, which requires immediate corrective action to restore normal operation. An emergency shall not include events caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

Emission limitation or emission standard means a requirement which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operations or maintenance procedures to assure continuous emission reduction.

EPA means United States Environmental Protection Agency, Region 10.

Excess emissions means emissions of an air pollutant in excess of an emission limitation.

Excursion means a departure from a parameter range approved under paragraphs (e)(3) or (g)(1) of this section, consistent with any averaging period specified for averaging the results of monitoring.

Fugitive emissions means those emissions that do not actually pass through a stack, chimney, vent, or other functionally equivalent opening.

Malfunction means any sudden and unavoidable breakdown of process or control equipment. A sudden breakdown which could have been avoided by better operation and maintenance is not a malfunction.

Method 5 is the reference test method described in 40 CFR part 60, appendix A, conducted in accordance with the requirements of this section.

Method 9 is the reference test method described in 40 CFR part 60, appendix A.

Methods 201, 201A, and *202* are the reference test methods described in 40 CFR part 51, appendix M, conducted in accordance with the requirements of this section.

Mini-flush means the process of flushing elemental phosphorus, which has solidified in the secondary condenser, to the elevated secondary condenser flare or to the ground flare, and thus into the atmosphere.

Modification means any physical change in or a change in the method of operation of, an existing source which increases the amount of particulate matter emitted by that source. The following shall not, by themselves, be considered modifications:

(1) Maintenance, repair, and replacement which the Regional Administrator determines to be routine for the particular source;

(2) An increase in production rate of an existing source, if that increase can be accomplished without a physical change to the source or the Astaris-Idaho facility;

(3) An increase in the hours of operation of an existing source, if that increase can be accomplished without a physical change to the source or the Astaris-Idaho facility;

(4) Use of an alternative fuel or raw material, if the existing source is capable of accommodating that alternative without a physical change to the source or the Astaris-Idaho facility; or

(5) The addition, replacement, or use of any system or device whose primary function is the reduction of an air pollutant, except when an emissions control system is removed or replaced by a system which the Regional Administrator determines to be less environmentally beneficial.

Monitoring malfunction means any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not monitoring malfunctions.

O&M plan means an operation and maintenance plan developed by Astaris-Idaho and submitted to EPA in accordance with paragraph (e)(8) of this section.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Opacity action level means the level of opacity of emissions from a source requiring the owner or operator of the Astaris-Idaho facility to take prompt corrective action to minimize emissions, including without limitation those actions described in the approved operations and maintenance plan.

Owner or *operator* means any person who owns, leases, operates, controls, or supervises the Astaris-Idaho facility or any portion thereof.

Particulate matter means any airborne finely-divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

PM–10 or *PM–10 emissions* means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method such as Method 201, 201A, or 202, of 40 CFR Part 51, appendix M, or an equivalent or alternative method specifically approved by the Regional Administrator.

Regional Administrator means the Regional Administrator, EPA Region 10, or a duly designated representative of the Regional Administrator.

Road means access and haul roads, driveways or established vehicle paths, permanent or temporary, which are graded, constructed, used, reconstructed, improved, or maintained for use in vehicle movement throughout the Astaris-Idaho facility.

Shutdown means the cessation of operation of a source for any purpose.

Slag Pit Area means the area of the Astaris-Idaho facility immediately bordering the south side of the furnace building extending out 100 yards.

Source means any building, structure, facility, installation, material handling area, storage pile, road, staging area, parking lot, mechanical process or related area, or other process or related area which emits or may emit particulate matter.

Startup means the setting in operation of a source for any purpose.

Title V permit means an operating permit issued under 40 CFR part 70 or 71.

Tribes means the Shoshone-Bannock Tribes.

Visible emissions means the emission of pollutants into the atmosphere, excluding uncombined condensed water vapor (steam), that is observable by the naked eye.

Visual observation means the continuous observation of a source for the presence of visible emissions for a period of ten consecutive minutes conducted in accordance with section 5 of EPA Method 22, 40 CFR part 60, appendix A, by a person who meets the training guidelines described in section 1 of Method 22.

(c) *Emission limitations and work practice requirements.* (1)(i) Except as otherwise provided in paragraphs (c)(1)(ii), (c)(1)(iii), and (c)(2) of this section, there shall be no visible emissions from any location at the Astaris-Idaho facility at any time, as determined by a visual observation.

(ii) Emissions from the following equipment, activities, processes, or sources shall not exceed 20% opacity over a six minute average. Method 9, of 40 CFR Part 60, appendix A, is the reference test method for this requirement.

(A) Brazing, welding, and welding equipment and oxygen-hydrogen cutting torches;

(B) Plant upkeep, including routine housekeeping, preparation for and painting of structures;

(C) Grinding, sandblasting, and cleaning operations that are not part of a routine operation or a process at the Astaris-Idaho facility;

(D) Cleaning and sweeping of streets and paved surfaces;

(E) Lawn and landscaping activities;

(F) Repair and maintenance activities;

(G) Landfill operations;

(H) Laboratory vent stacks; and

(I) Pond piping discharges.

(iii) Except as otherwise provided in paragraph (c)(1)(ii) of this section, emissions from equipment, activities, processes, or sources not identified in Table 1 to this section shall not exceed 10% opacity over a six minute average provided that Astaris-Idaho has complied with the requirements of paragraph (c)(11) of this section and provided further that a more stringent opacity limit has not been established for the source in this section. Method 9, 40 CFR Part 60, appendix A, is the reference test method for this requirement.

(2) For each source identified in Column II of Table 1 to this section, the owner or operator of the Astaris-Idaho facility shall comply with the emission limitations and work practice requirements for that source established in Column III of Table 1 to this section.

(3) The opacity limits for the following fugitive emission sources, which are also identified in Column II of Table 1 to this section, apply to adding of material to, taking of material from, reforming, or otherwise disturbing the pile: main shale pile (Table 1 of this section, source 2), emergency/contingency raw ore shale pile (Table 1 of this section, source 3), stacker and reclaimer (Table 1 of this section, source 4), recycle material pile (Table 1 of this section, source 8b), nodule pile (Table 1 of this section, source 11), and screened shale fines pile (Table 1 of this section, source 14).

(4)(i) Except as provided in paragraph (c)(4)(ii) of this section, beginning November 1, 2000, the following activities shall be prohibited:

(A) The discharge of molten slag from furnaces or slag runners onto the ground, pit floors (whether dressed with crushed slag or not), or other non-mobile permanent surface.

(B) The digging of solid slag in the slag pit area or the loading of slag into transport trucks in the slag pit area.

(ii) The prohibition set forth in paragraph (c)(4)(i) of this section shall

not apply to the lining of slag pots and the handling (including but not limited to loading, crushing, or digging) of cold slag for purposes of the lining of slag pots.

(5)(i) Beginning January 1, 2001, no furnace gas shall be burned in the existing elevated secondary condenser flare or the existing ground flare (Table 1 of this section, source 26a).

(ii) Until December 31, 2000, the owner or operator of the Astaris-Idaho facility shall take the following measures to reduce PM–10 emissions from mini-flushes and to ensure there is no bias toward conducting mini-flushes during night-time hours.

(A) Mini-flushes shall be limited to no more than 50 minutes per day (based on a monthly average) beginning January 1, 1999. Failure to meet this limit for any given calendar month will be construed as a separate violation for each day during that month that mini-flushes lasted more than 50 minutes. The monthly average for any calendar month shall be calculated by summing the duration (in actual minutes) of each mini-flush during that month and dividing by the number of days in that month. (B)(*1*) No mini-flush shall be conducted at any time unless one of the following operating parameters is satisfied:

(*i*) The flow rate of recirculated phossy water is equal to or less than 1800 gallons per minute; or

(*ii*) The secondary condenser outlet temperature is equal to or greater than 36 degrees Centigrade.

(*2*) The prohibition set forth in paragraph (c)(5)(ii)(B)(*1*) of this section shall not apply during periods of malfunction or emergency, provided the owner or operator of the Astaris-Idaho facility complies with the requirements of paragraph (c)(9) of this section.

(6) At all times, including periods of startup, shutdown, malfunction, or emergency, the owner or operator of the Astaris-Idaho facility shall, to the extent practicable, maintain and operate each source of PM–10 at the Astaris-Idaho facility, including without limitation those sources identified in Column II of Table 1 to this section and associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(7) Maintaining operation of a source within approved parameter ranges, promptly taking corrective action, and otherwise following the work practice, monitoring, record keeping, and reporting requirements of this section do not relieve the owner or operator of the Astaris-Idaho facility from the obligation to comply with applicable emission limitations and work practice requirements at all times.

(8) An affirmative defense to a penalty action brought for emissions in excess of an emission limitation shall be available if the excess emissions were due to startup or shutdown and all of the following conditions are met:

(i) The owner or operator of the Astaris-Idaho facility notifies EPA and the Tribes in writing of any startup or shutdown that is expected to cause excess emissions. The notification shall be given as soon as possible, but no later than 48 hours prior to the start of the startup or shutdown, unless the owner or operator demonstrates to EPA's satisfaction that a shorter advanced notice was necessary. The notice shall identify the expected date, time, and duration of the excess emissions event, the source involved in the excess emissions event, and the type of excess emissions event.

(ii) The periods of excess emissions that occurred during startup or shutdown were short and infrequent and could not have been prevented through careful planning and design.

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(iv) If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(v) At all times, the facility was operated in a manner consistent with good practice for minimizing emissions.

(vi) The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable.

(vii) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality.

(viii) All emission monitoring systems were kept in operation if at all possible.

(ix) The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(x) The owner or operator of the Astaris-Idaho facility submitted notice of the startup or shutdown to EPA and the Tribes within 48 hours of the time when emission limitations were exceeded due to startup or shutdown. This notice fulfills the requirement of paragraph (g)(5) of this section. This notice must contain a description of the startup or shutdown, any steps taken to mitigate emissions, and corrective actions taken.

(xi) No exceedance of the 24-hour PM–10 National Ambient Air Quality Standard, 40 CFR 50.6(a) was recorded on any monitor located within the Fort Hall PM–10 nonattainment area that regularly reports information to the Aerometric Information Retrieval System-Air Quality Subsystem, as defined under 40 CFR 58.1(p), on any day for which the defense of startup or shutdown is asserted.

(xii) In any enforcement proceeding, the owner or operator of the Astaris-Idaho facility has the burden of proof on all requirements of this paragraph (c)(8).

(9) An affirmative defense to a penalty action brought for emissions in excess of an emission limitation shall be available if the excess emissions were due to an emergency or malfunction and all of the following conditions are met:

(i) The excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond the control of the owner or operator of the Astaris-Idaho facility.

(ii) The excess emissions;

(A) Did not stem from any activity or event that could have been foreseen and avoided or planned for; and

(B) Could not have been avoided by better operation and maintenance practices.

(iii) To the maximum extent practicable the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions.

(iv) Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable.

(v) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions.

(vi) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality.

(vii) All emission monitoring systems were kept in operation if at all possible.

(viii) The owner or operator's actions in response to the excess emissions were documented by properly signed,

contemporaneous operating logs, or other relevant evidence.

(ix) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(x) The owner or operator of the Astaris-Idaho facility submitted notice of the emergency or malfunction to EPA and the Tribes within 48 hours of the time when emission limitations were exceeded due to the emergency or malfunction. This notice fulfills the requirement of paragraph (g)(5) of this section. This notice must contain a description of the emergency or malfunction, any steps taken to mitigate emissions, and corrective actions taken.

(xi) No exceedance of the 24-hour PM–10 National Ambient Air Quality Standard, 40 CFR 50.6(a), was recorded on any monitor located within the Fort Hall PM–10 nonattainment area that regularly reports information to the Aerometric Information Retrieval System-Air Quality Subsystem, as defined under 40 CFR 58.1(p), on any day for which the defense of emergency or malfunction is asserted.

(xii) In any enforcement proceeding, the owner or operator of the Astaris-Idaho facility has the burden of proof on all requirements of this paragraph (c)(9).

(10) For each source identified in Column II of Table 2 to this section, the owner or operator of the Astaris-Idaho facility shall take appropriate actions to reduce visible emissions from the source if opacity exceeds the opacity action level for that source identified in Column III of Table 2 of this section. Such actions shall be commenced as soon as possible but not to exceed 24 hours after an exceedance of the opacity action level is first identified and shall be completed as soon as possible. Such actions shall include, but not be limited to, those actions identified in the O&M plan for the source. Exceedance of an opacity action level does not constitute a violation of this section, but failure to take appropriate corrective action as identified in this paragraph (c)(10) does constitute a violation of this section.

(11) The owner or operator of the Astaris-Idaho facility shall notify EPA prior to the construction of a new source of PM–10 at the Astaris-Idaho facility or the modification of an existing source at the Astaris-Idaho facility in a manner that increases emissions of PM–10 as follows:

(i) Such notification shall be submitted to EPA at least 90 days prior to commencement of the construction or modification.

(ii) Such notification shall include the following information:

(A) A description of the source, including location of the process and associated control equipment, and any modification thereto;

(B) An estimate of potential PM–10 emissions from the source on both a 24-hour and annual basis, without consideration of any proposed air pollution control equipment;

(C) The expected daily hours of operation of the source, including any seasonal variation, and an estimate of actual PM–10 emissions from the source on both a 24-hour and annual basis, considering the effect of any proposed air pollution control equipment; and

(D) A description of any PM–10 control technology to be implemented at the source along with an analysis of alternative control technologies considered but rejected.

(iii) Any source identified in this section shall continue to be subject to the requirements of this section notwithstanding the modification of the source.

(iv) The requirements of this paragraph (c)(11) are in addition to any other requirements to obtain a permit under the Clean Air Act.

(v) This paragraph (c)(11) shall cease to apply if either of the following events occur:

(A) EPA promulgates a minor new source review program for PM–10 that applies to the Astaris-Idaho facility; or

(B) The Tribes promulgate a minor new source review program for PM–10 that applies to the Astaris-Idaho facility and EPA approves the Tribes' program under of this part.

(vi) If, after receipt of the notice referred to in this paragraph (c)(11), EPA notifies Astaris-Idaho in writing that a 90 day delay in the commencement of construction or modification is not required, Astaris-Idaho may proceed with the commencement of the construction or modification as described in the notice, subject to the other requirements of this section.

(d) *Reference test methods.* (1) For each source identified in Column II of Table 1 to this section, the reference test method for the corresponding emission limitation in Column III of Table 1 to this section for that source is identified in Column IV of Table 1 to this section. For each source identified in Column II of Table 2 to this section, the reference test method for the corresponding opacity action level in Column III of Table 2 to this section for that source is identified in Column IV of Table 2 to this section.

(2) When Method 201/201A or Methods 201/201A and 202 of 40 CFR Part 60, appendix A, are specified as the reference test methods, the testing shall be conducted in accordance with the identified test methods and the following additional requirements:

(i) Each test shall consist of three runs, with each run a minimum of one hour.

(ii) Method 202 shall be run concurrently with Method 201 or Method 201A. Unless Method 202 is specifically designated as part of the reference test method, Method 202 shall be performed on each source for informational purposes only and the results from the Method 202 test shall not be included in determining compliance with the mass emission limit for the source.

(iii) The source shall be operated at a capacity of at least 90% of maximum during all tests unless the Regional Administrator determines in writing that other operating conditions are representative of normal operations.

(iv) Only regular operating staff may adjust the processes or emission control device parameters during a performance test or within two hours prior to the tests. Any operating adjustments made during a performance test, which are a result of consultation during the tests with source testing personnel, equipment vendors, or other consultants may render the source test invalid.

(v) For all reference tests, the sampling site and minimum number of sampling points shall be selected according to EPA Method 1 (40 CFR part 60, appendix A).

(vi) EPA Methods 2, 2C, 2D, 3, 3A, and 4 (40 CFR part 60, appendix A) shall be used, as appropriate, for determining mass emission rates.

(vii) The mass emission rate of PM–10 shall be determined as follows:

(A)(*1*) Where Method 201/201A is identified as the reference test method, the mass emission rate of PM–10 shall be determined by taking the results of the Method 201/201A test and then multiplying by the average hourly volumetric flow rate for the run.

(*2*) Where Methods 201/201A and 202 are identified as the reference test methods, the mass emission rate of PM–10 shall be determined by first adding the PM–10 concentrations from Methods 201/201A and 202, and then multiplying by the average hourly volumetric flow rate for the run.

(B) The average of the three required runs shall be compared to the emission standard for purposes of determining compliance.

(viii) Two of the three runs from a source test of each Medusa-Andersen stack on the furnace building (Table 1 of this section, sources 18d, 18e, 18f, and 18g) shall include at least 20 minutes of slag tapping and a third run

shall include at least 20 minutes of metal tapping.

(ix) At least one of the three runs from a source test of the excess CO burner (Table 1 of this section, source 26b) shall be conducted during either a mini-flush or hot-flush that lasts for at least 30 minutes.

(3) Method 5 shall be used in place of Method 201 or 201A for the calciner scrubbers (Table 1 of this section, source 9a) and any other sources with entrained water drops. In such case, all the particulate matter measured by Method 5 must be counted as PM–10, and the testing shall be conducted in accordance with paragraph (d)(2) of this section.

(4) Method 5 may be used as an alternative to Method 201 or 201A for a particular point source, provided that all of the particulate measured by Method 5 is counted as PM–10 and the testing is conducted in accordance with paragraph (d)(2) of this section.

(5)(i) An alternative reference test method or a deviation from a reference test method identified in this section may be approved as follows:

(A) The owner or operator of the Astaris-Idaho facility must submit a written request to the Regional Administrator at least 60 days before the performance test is scheduled to begin which includes the reasons why the alternative or deviation is needed and the rationale and data to demonstrate that the alternative test method or deviation from the reference test method:

(*1*) Provides equal or improved accuracy and precision as compared to the specified reference test method; and (2) Does not decrease the stringency of the standard as compared to the specified reference test method.

(B) If requested by EPA, the demonstration referred to in paragraph (d)(5)(i)(A) of this section must use Method 301 in 40 CFR part 63, appendix A to validate the alternative test method or deviation.

(C) The Regional Administrator must approve the request in writing.

(ii) Until the Regional Administrator has given written approval to use an alternative test method or to deviate from the reference test method, the owner or operator of the Astaris-Idaho facility is required to use the reference test method when conducting a performance test pursuant to paragraph (e)(1) of this section.

(6) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any requirement of this section, nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or reference test or procedure had been performed.

(e) Monitoring and additional work practice requirements. (1) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to measure PM–10 emissions as follows:

(i) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to measure PM–10 emissions from each of the following sources on an annual basis using the specified reference test methods: east shale baghouse (Table 1 of this section, source 5a), middle shale baghouse (Table 1 of this section, source 6a), west shale baghouse (Table 1 of this section, source 7a), calciner cooler vents (Table 1 of this section, source 10), north nodule discharge baghouse (Table 1 of this section, source 12a), south nodule discharge baghouse (Table 1 of this section, source 12b), proportioning building-east nodule baghouse (Table 1 of this section, source 15a), proportioning building-west nodule baghouse (Table 1 of this section, source 15b), nodule stockpile baghouse (Table 1 of this section, source 16a), dust silo baghouse (Table 1 of this section, source 17a), furnace building-east baghouse (Table 1 of this section, source 18a), furnace building-west baghouse (Table 1 of this section, source 18b), furnace #1, #2, #3, and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g), coke handling baghouse (Table 1 of this section, source 20a), and phos dock-Andersen scrubber (Table 1 of this section, source 21a).

(A) The first annual test for each source shall be completed within 16 months of August 23, 2000. Subsequent annual tests shall be completed within 12 months of the most recent previous test.

(B) If, after conducting annual source tests for a particular source for two consecutive years, the emissions from that source are less than 80% of the applicable emission limit, then the frequency of source testing for that source may be reduced to every other year. The frequency of source testing shall revert to annually if the emissions from any source test on the source are greater than or equal to 80% of the applicable emission limit.

(ii) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to measure PM–10 emissions from the calciner scrubbers (Table 1 of this section, source 9a) and the excess CO burner (Table 1 of this section, source 26b) on a semi-annual basis using the specified reference test methods.

(A) The first semi-annual performance test for each source shall be conducted within 90 days after the date on which the PM–10 emission limitations become applicable to the source. Subsequent semi-annual tests shall be completed within 6 months of the most recent previous test.

(B) If, after conducting semi-annual source tests for the calciners or the excess CO burner for two consecutive years, the emissions from that source during each of the four previous consecutive semi-annual tests are less than 80% of the applicable emission limit, then the frequency of source testing for the source may be reduced to annual testing. The frequency of source testing shall revert to semi-annually if the emissions from any source test on the source are greater than or equal to 80% of the applicable emission limit.

(iii) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to determine the control efficiency of the calciner scrubbers (Table 1 of this section, source 9a) and the excess CO burner (Table 1 of this section, source 26b) using the specified reference test methods as follows:

(A) A performance test for the calciner scrubbers shall be conducted within 90 days after the date on which the PM–10 emission limitations become applicable to the source.

(B) The first performance test for the excess CO burner shall be conducted within 90 days after the date on which the PM–10 emission limitations become applicable to the source. Subsequent semi-annual tests shall be completed within 6 months of the most recent previous test.

(C) If, after conducting semi-annual source tests for the excess CO burner for two consecutive years, the emissions from that source during each of the four previous consecutive semi-annual tests are less than 80% of the mass emission limit, then the frequency of source testing for the control efficiency requirement for the excess CO burner may be reduced to annual testing. The frequency of source testing shall revert to semi-annually if the emissions from any source test on the source are greater than or equal to 80% of the mass emission limit.

(iv) If a source test indicates an exceedence of the emission limit applicable to the source, the owner or operator of the Astaris-Idaho facility shall conduct a performance test of that source within 90 days of the source test showing the exceedence. The schedule

for conducting future source tests shall not be affected by this requirement.

(v) The time period for conducting any source test may be extended by a period of up to 90 days provided that:

(A) The owner or operator of the Astaris-Idaho facility submits a written request to the Regional Administrator at least 30 days prior to the expiration of the time period for conducting the test which demonstrates the need for the extension; and

(B) The Regional Administrator approves the request in writing.

(vi) The owner or operator of the Astaris-Idaho facility shall provide the Regional Administrator a proposed test plan at least 30 days in advance of each scheduled source test. If the proposed test plan is unchanged for the next scheduled source test on the source, the owner or operator of the Astaris-Idaho facility shall not be required to resubmit a source test plan. Astaris-Idaho shall submit a new source test plan to EPA in accordance with this paragraph (e)(1) if the proposed test plan will be different from the immediately preceding source test plan that had been submitted to EPA.

(vii) The owner or operator of the Astaris-Idaho facility shall provide the Regional Administrator at least 30 days prior written notice of any performance test required under this section to afford the Regional Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of the Astaris-Idaho facility shall notify the Regional Administrator as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test or by arranging a rescheduled date with the Regional Administrator by mutual agreement.

(viii)(A) The owner or operator of the Astaris-Idaho facility shall provide, or cause to be provided, performance testing facilities as follows:

(*1*) Sampling ports adequate for test methods applicable to the source. This includes:

(*i*) Constructing any new or modified air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by the applicable test methods and procedures; and

(*ii*) Except with respect to the calciner scrubber stacks (Table 1 of this section, source 9a), providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures.

(*2*) Safe sampling platforms.

(*3*) Safe access to sampling platforms.

(*4*) Utilities for sampling and testing equipment.

(B) A modification to these requirements can be approved with respect a particular source provided that:

(*1*) The owner or operator of the Astaris-Idaho facility submits a written request to the Regional Administrator which demonstrates the need for the modification; and

(*2*) The Regional Administrator approves the request in writing.

(ix) During each test run and for at least two hours prior to the test and two hours after the test is completed, the owner or operator of the Astaris-Idaho facility shall monitor and record the parameters specified in paragraphs (e)(2), (e)(3), (e)(4), (e)(5), and (e)(6) of this section, as appropriate, for the source being tested, and shall report the results to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(G) of this section.

(x) The owner or operator of the Astaris-Idaho facility shall conduct a 12 minute visible emission observation using Method 9 of 40 CFR Part 60, appendix A, at least twice during the performance test at an interval of no less than one hour apart, and shall report the results of this observation to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(G) of this section.

(xi) Concurrently with the performance testing, the owner or operator of the Astaris-Idaho facility shall measure the flow rate (throughput to the control device) using Method 2 of 40 CFR Part 60, appendix A, for the calciner scrubbers (Table 1 of this section, source 9a) and the phos dock Andersen scrubber (Table 1 of this section, source 21a) and shall report the results to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(G) of this section.

(2) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications a device to continuously measure and continuously record the pressure drop across the baghouse for each of the following sources identified in Column II of Table I: east shale baghouse (Table 1 of this section, source 5a), middle shale baghouse (Table 1 of this section, source 6a), west shale baghouse (Table 1 of this section, source 7a), north nodule discharge baghouse (Table 1 of this section, source 12a), north reclaim baghouse (Table 1 of this section, source 13), south nodule discharge baghouse (Table 1 of this section, source 12b), proportioning building-east nodule baghouse (Table 1 of this section, source 15a), proportioning building-west nodule baghouse (Table 1 of this section, source 15b), nodule stockpile baghouse (Table 1 of this section, source 16a), dust silo baghouse (Table 1 of this section, source 17a), furnace building-east baghouse (Table 1 of this section, source 18a), furnace building-west baghouse (Table 1 of this section, source 18b), and coke handling baghouse (Table 1 of this section, source 20a).

(i) The devices shall be installed and fully operational no later than 210 days after August 23, 2000.

(ii) Upon EPA approval of the acceptable range of baghouse pressure drop for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable range of baghouse pressure drop for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(3) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacture's specifications and the bag leak detection guidance a triboelectric monitor to continuously monitor and record the readout of the instrument response for each of the following sources identified in Column II of Table 1 to this section: east shale baghouse (Table 1 of this section, source 5a), middle shale baghouse (Table 1 of this section, source 6a), west shale baghouse (Table 1 of this section, source 7a), north nodule discharge baghouse (Table 1 of this section, source 12a), south nodule discharge baghouse (Table 1 of this section, source 12b), north reclaim baghouse (Table 1 of this section, source 13), proportioning building-east nodule baghouse (Table 1 of this section, source 15a), proportioning building-west nodule baghouse (Table 1 of this section, source 15b), nodule stockpile baghouse (Table 1 of this section, source

16a), dust silo baghouse (Table 1 of this section, source 17a), furnace building-east baghouse (Table 1 of this section, source 18a), furnace building-west baghouse (Table 1 of this section, source 18b), and coke handling baghouse (Table 1 of this section, source 20a).

(i) The triboelectric monitors shall be installed and fully operational no later than 210 days after August 23, 2000.

(ii) The owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. For the triboelectric monitors, the ''approved range'' shall be defined as operating the source so that an ''alarm,'' as defined in and as determined in accordance with the bag leak detection guidance, does not occur.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(4) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, a device to continuously measure and continuously record the pressure drop across the scrubber and the scrubber liquor flowrate for each of the calciner scrubbers (Table 1 of this section, source 9a).

(i) The devices for the calciner scrubbers (Table 1 of this section, source 9a) shall be installed and fully operational on or before December 1, 2000.

(ii) Upon EPA approval of the acceptable range of pressure drop, scrubber liquor flow rate, and scrubber liquor pH for the calciner scrubbers, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable ranges for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the calciner scrubbers to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, Astaris-Idaho shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring calciner scrubber operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(5) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, a device to continuously measure and continuously record the pressure drop across the scrubber for each of the following sources identified in Column II of Table 1 to this section: furnaces #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g), phos dock Andersen scrubber (Table 1 of this section, source 21a), and excess CO burner—Andersen scrubber (Table 1 of this section, source 26b).

(i) The device for furnaces #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g) and the phos dock Andersen scrubber (Table 1 of this section, source 21a) shall be installed and fully operational no later than 210 days after August 23, 2000. The device for the excess CO burner (Table 1 of this section, source 26b) shall be installed and fully operational no later than January 1, 2001.

(ii) Upon EPA approval of the acceptable range of scrubber pressure drop for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable ranges of scrubber pressure drop for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(6) The owner or operator of the Astaris-Idaho facility shall develop and implement a written plan for monitoring the scrubber water quality (through a parameter(s) such as total dissolved solids, total suspended solids, conductivity, specific gravity, etc) on a daily basis for the following sources: calciner scrubbers (Table 1 of this section, source 9a) and furnace #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g).

(i) The plan for furnaces #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g) shall be submitted to the Regional Administrator within 180 days after September 22, 2000. The plan for the calciner scrubbers (Table 1 of this section, source 9a) shall submitted to the Regional Administrator no later than December 1, 2000.

(ii) Upon EPA approval of the acceptable parameter range for water quality for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable range of water quality for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(7) For each of the pressure relief vents on the furnaces (Table 1 of this section, source 24), Astaris-Idaho shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, devices to continuously measure and continuously record the temperature and pressure of gases in the relief vent downstream of the pressure relief valve and the water level of the pressure relief valve.

(i) The devices shall be installed and fully operational no later than 90 days after August 23, 2000.

(ii) A ''pressure release'' is defined as an excursion of the temperature, pressure, or water level outside of the parameters approved in accordance with paragraph (g)(1) of this section. Until EPA approval of the acceptable range of parameters for the pressure release vents, a ''pressure release'' is defined as an excursion of the temperature, pressure, or water level outside of the parameters proposed by the owner or operator of the Astaris-Idaho facility for the pressure relief vents, as provided in paragraph (g)(1) of this section.

(iii) The release point on each pressure relief vent shall be maintained at no less than 18 inches of water.

(iv) When a pressure release through a pressure relief vent is detected, the owner or operator of the Astaris-Idaho facility shall, within 30 minutes of the beginning of the pressure release, inspect the pressure relief valve to ensure that it has properly sealed and verify that at least 18 inches of water seal pressure is maintained.

(8) The owner or operator of the Astaris-Idaho facility shall develop and implement a written O&M plan covering all sources of PM–10 at the Astaris-Idaho facility, including without limitation, each source identified in Column II of Table 1 of this section and uncaptured fugitive and general fugitive emissions of PM–10 from each source.

(i) The purpose of the O&M plan is to ensure each source at the Astaris-Idaho facility will be operated and maintained consistent with good air pollution control practices and procedures for maximizing control efficiency and minimizing emissions at all times, including periods of startup, shutdown, emergency, and malfunction, and to establish procedures for assuring continuous compliance with the emission limitations, work practice requirements, and other requirements of this section.

(ii) The O&M plan shall be submitted to the Regional Administrator within 60 days of September 22, 2000 and shall cover all sources and requirements for which compliance is required 90 days after August 23, 2000.

(A) A revision to the O&M plan covering each source or requirement with a compliance date of more than 60 days after September 22, 2000 shall be submitted at least 60 days before the source is required to comply with the requirement.

(B) The owner or operator of the Astaris-Idaho facility shall review and, as appropriate, update the O&M plan at least annually.

(C) The Regional Administrator may require the owner or operator of the Astaris-Idaho facility to modify the plan if, at any time, the Regional Administrator determines that the O&M plan does not:

(*1*) Adequately ensure that each source at the Astaris-Idaho facility will be operated and maintained consistent with good air pollution control practices and procedures for maximizing control efficiency and minimizing emissions at all times;

(*2*) Contain adequate procedures for assuring continuous compliance with the emission limitations, work practice requirements, and other requirements of this section;

(*3*) Adequately address the topics identified in this paragraph (e)(8); or

(*4*) Include sufficient mechanisms for ensuring that the O&M plan is being implemented.

(iii) The O&M plan shall address at least the following topics:

(A) Procedures for minimizing fugitive PM–10 emissions from material handling, storage piles, roads, staging areas, parking lots, mechanical processes, and other processes, including but not limited to:

(*1*) A visual inspection of all material handling, storage piles, roads, staging areas, parking lots, mechanical processes, and other processes at least once each week at a regularly scheduled time. The O&M plan shall include a list of equipment, operations, and storage piles, and what to look for at each source during this regularly scheduled inspection.

(*2*) A requirement to document the time, date, and results of each visual inspection, including any problems identified and any corrective actions taken.

(*3*) A requirement to take corrective action as soon as possible but no later than within 48 hours of identification of operations or maintenance problems identified during the visual inspection (unless a shorter time frame is specified by this rule or is warranted by the nature of the problem).

(*4*) Procedures for the application of dust suppressants to and the sweeping of material from storage piles, roads, staging areas, parking lots, or any open area as appropriate to maintain compliance with applicable emission limitations or work practice requirements. Such procedures shall include the specification of dust suppressants, the application rate, and application frequency, and the frequency of sweeping. Such procedures shall also include the procedures for application of latex to the main shale pile (source 2) and the emergency/contingency raw ore shale pile (source 3) after each reforming of the pile or portion of the pile.

(B) Specifications for parts or elements of control or process equipment needing replacement after some set interval prior to breakdown or malfunction.

(C) Process conditions that indicate need for repair, maintenance or cleaning of control or process equipment, such as the need to open furnace access ports or holes.

(D) Procedures for the visual inspection of all baghouses, scrubbers, and other control equipment of at least once each week at a regularly scheduled time.

(E) Procedures for the regular maintenance of control equipment, including without limitation, procedures for the rapid identification and replacement of broken or ripped bags for all sources controlled by a baghouse, bag dimensions, bag fabric, air-to-cloth ratio, bag cleaning methods, cleaning type, bag spacing, compartment design, bag replacement schedule, and typical exhaust gas volume.

(F) Procedures that meet or exceed the manufacturer's recommendations for the inspection, maintenance, operation, and calibration of each monitoring device required by this part.

(G) Procedures for the rapid identification and repair of equipment or processes causing a malfunction or emergency and for reducing or minimizing the duration of and emissions resulting from any malfunction or emergency.

(H) Procedures for the training of staff in procedures listed in paragraph (e)(8)(i) of this section.

(I) For each source identified in Column II of Table 2 to this section, additional control measures or other actions to be taken if the emissions from the source exceed the opacity action level identified in Column III of Table 2 to this section.

(9) For each source identified in Column II of Table 1 to this section, the owner or operator of the Astaris-Idaho facility shall conduct a visual observation of each source at least once during each calendar week.

(i) If visible emissions are observed for any period of time during the observation period, the owner or operator of the Astaris-Idaho facility shall immediately, but no later than within 24 hours of discovery, take corrective action to minimize visible emissions from the source. Such actions shall include, but not be limited to, those actions identified in the O&M plan for the source. Immediately upon completion of the corrective action, a certified observer shall conduct a visible emissions observation of the source using the reference test method for the opacity limit with an observation duration of at least six minutes. If opacity exceeds the opacity action level, the owner or operator of the Astaris-Idaho facility shall take prompt corrective action. This process shall be repeated until opacity returns to below the opacity action level.

(ii) In lieu of the periodic visual observation under this paragraph (e)(9), the owner or operator of the Astaris-Idaho facility may conduct a visible

emission observation of any source subject to the requirements of this paragraph (e)(9) using the reference test method for the opacity limit, in which case corrective action must be taken only if opacity exceeds the opacity action level.

(iii) Should, for good cause, the visible emissions reading not be conducted on schedule, the owner or operator of the Astaris-Idaho facility shall record the reason observations were not conducted. Visible emissions observations shall be conducted immediately upon the return of conditions suitable for visible emissions observations.

(iv) If, after conducting weekly visible emissions observations for a given source for more than one year and detecting no visible emissions from that source for 52 consecutive weeks, the frequency of observations may be reduced to monthly. The frequency of observations for such source shall revert to weekly if visible emissions are detected from that source during any monthly observation or at any other time.

(v) With respect to slag handling (Table 1 of this section, source 8a):

(A) Visible emission observations shall be made of the slag tapping area as viewed from the exterior of the furnace building and in the general area of the old slag pits;

(B) For the first three months after the effective date of the opacity limit, the owner or operator of the Astaris-Idaho facility shall conduct a visual observation of this source three days each week and shall submit the results of such observations at the end of the three month time frame. Thereafter, such observations shall be conducted weekly or as otherwise provided in this paragraph (e)(9).

(10) Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero span adjustments), the owner or operator of the Astaris-Idaho facility shall conduct all monitoring with the monitoring devices required by paragraphs (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), and (e)(7) of this section in continuous operation at all times that the monitored process is in operation. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of this section, including data averages and calculations, or fulfilling a minimum data availability requirement. The owner or operator of the Astaris-Idaho facility shall use data collected during all other periods in assessing the operation of the control device and associated control system.

(11) The minimum data availability requirement for monitoring data pursuant to paragraphs (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), and (e)(7) of this section is 90% on a monthly average basis. Data availability is determined by dividing the time (or number of data points) representing valid data by the time (or number of data points) that the monitored process is in operation.

(12) Nothing in this paragraph (e) shall preclude EPA from requiring any other testing or monitoring pursuant to section 114 of the Clean Air Act.

(f) *Record keeping requirements.* (1) The owner or operator of the Astaris-Idaho facility shall keep records of all monitoring required by this section that include, at a minimum, the following information:

(i) The date, place as defined in this section, and time of the sampling or measurement.

(ii) The dates the analyses were performed.

(iii) The company or entity that performed the analyses.

(iv) The analytical techniques or methods used.

(v) The results of the analyses.

(vi) The operating conditions existing at the time of the sampling or measurement.

(2)(i) The owner or operator of the Astaris-Idaho facility shall keep records of all inspections and all visible emissions observations required by this section or conducted pursuant to the O&M plan, which records shall include the following:

(A) The date, place, and time of the inspection or observation.

(B) The name and title of the person conducting the inspection or observation.

(C) In the case of a visible emission observation, the test method (Method 9 or visual observation), the relevant or specified meteorological conditions, and the results of the observation, including raw data and calculations. In the case of visible emission observations of slag handling (Table 1 of this section, source 8a), the owner or operator of the Astaris-Idaho facility shall also document whether visible emissions emanate from fuming of hot slag from pots or other points in the old slag pit area.

(D) For any corrective action required by this section or the O&M plan or taken in response to a problem identified during an inspection or visible emissions observation required by this section or the O&M plan, the time and date corrective action was initiated and completed and the nature of corrective action taken.

(E) The reason for any monitoring not conducted on schedule.

(ii) With respect to control devices, the requirement of paragraph (f)(2)(i) of this section is satisfied by meeting the requirements of paragraph (f)(11) of this section.

(3) The owner or operator of the Astaris-Idaho facility shall continuously record the parameters specified in paragraphs (e)(2), (e)(3), (e)(4), (e)(5), and (e)(7) of this section, and shall record the parameters specified in paragraphs (e)(6) of this section on the frequency specified in the monitoring plan required under paragraph (e)(6) of this section.

(4) The owner or operator of the Astaris-Idaho facility shall keep records of all excursions from ranges approved under paragraph (e)(3) or (g)(1) of this section, including without limitation, the measured excursion, time and date of the excursion, duration of the excursion, time and date corrective action was initiated and completed, and nature of corrective action taken.

(5) The owner or operator of the Astaris-Idaho facility shall keep records of:

(i) The time, date, and duration of each pressure release from a furnace pressure relief vent (Table 1 of this section, source 24), the method of detecting the release, the results of the inspection required by paragraph (e)(7) of this section, and any actions taken to ensure resealing, including the time and date of such actions; and

(ii) The time, date, and duration of the steaming and draining of the pressure relief vent drop tank.

(6) The owner or operator of the Astaris-Idaho facility shall keep records of the time, date, and duration of each flaring of the emergency CO flares (Table 1 of this section, source 25) due to an emergency, the method of detecting the emergency, and all corrective action taken in response to the emergency.

(7) Until January 1, 2001, the owner or operator of the Astaris-Idaho facility shall keep records of the date and start/stop time of each mini-flush; the phossy water flow rate and outlet temperature immediately preceding the start time; whether the operating parameters for conducting the mini-flush set forth in paragraph (c)(5)(ii) of this section were met; and, if the parameters were not met, whether the failure to comply with the parameters was attributable to a malfunction or emergency.

(8) The owner or operator of the Astaris-Idaho facility shall keep records of the application of dust suppressants

to all storage piles, roads, staging areas, parking lots, and any other area, including the purchase of dust suppressants, the identification of the surface covered, type of dust suppressant used, the application rate (gallons per square foot), and date of application.

(9) The owner or operator of the Astaris-Idaho facility shall keep records of the frequency of sweeping of all roads, staging areas, parking lots, and any other area, including the identification of the surface swept and date and duration of sweeping.

(10) The owner or operator of the Astaris-Idaho facility shall keep the following records with respect to the main shale pile (Table 1 of this section, source 2) and emergency/contingency raw ore shale pile (Table 1 of this section, source 3):

(i) The date and time of each reforming of the pile or portion of the pile.

(ii) The date, time, and quantity of latex applied.

(11) The owner or operator of the Astaris-Idaho facility shall keep a log for each control device of all inspections of and maintenance on the control device, including without limitation the following information:

(i) The date, place, and time of the inspection or maintenance activity.

(ii) The name and title of the person conducting the inspection or maintenance activity.

(iii) The condition of the control device at the time.

(iv) For any corrective action required by this section or the O&M plan or taken in response to a problem identified during an inspection required by this section or the O&M plan, the time and date corrective action was initiated and completed, and the nature of corrective action taken.

(v) A description of, reason for, and the date of all maintenance activities, including without limitation any bag replacements.

(vi) The reason any monitoring was not conducted on schedule, including a description of any monitoring malfunction, and the reason any required data was not collected.

(12) The owner or operator of the Astaris-Idaho facility shall keep the following records:

(i) The Method 9 initial certification and recertification for all individuals conducting visual emissions observations using Method 9 as required by this section.

(ii) Evidence that all individuals conducting visual observations as required by this section meet the training guidelines described in section 1 of Method 22, 40 CFR part 60, appendix A.

(13) The owner or operator of the Astaris-Idaho facility shall keep records on the type and quantity of fuel used in the boilers (Table 1 of this section, source 23), including without limitation the date of any change in the type of fuel used.

(14) The owner or operator of the Astaris-Idaho facility shall keep records of the results of the daily monitoring of the water quality of the scrubber water in the calciner scrubbers (Table 1 of this section, source 9a) and the Medusa-Andersen furnace scrubbers (Table 1 of this section, sources 18d, 18e, 18f, and 18g) as specified in the O&M plan.

(15) The owner or operator of the Astaris-Idaho facility shall keep records of the time, date, and duration of each damper vent opening for the furnace building east and west baghouses (Table 1 of this section, sources 18a and 18b), the reason for the damper vent opening, and all corrective action taken in response to the damper vent opening.

(16) The owner or operator of the Astaris-Idaho facility shall keep a copy of all reports required to be submitted to EPA under paragraph (g) of this section.

(17) All records required to be maintained by this section and records of all required monitoring data and support information shall be maintained on site at the Astaris-Idaho facility in a readily accessible location for a period of at least five years from the date of the monitoring sample, measurement, report, or record.

(i) Such records shall be made available to EPA on request.

(ii) Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation.

(g) *Reporting requirements.* (1) The owner or operator of the Astaris-Idaho facility shall submit to EPA, for each of the operating parameters required to be continuously monitored pursuant to paragraphs (e)(2), (e)(4), (e)(5), (e)(6), and (e)(7) of this section, a proposed range of operation, including a proposed averaging period, and documentation demonstrating that operating the source within the proposed range will assure compliance with applicable emission limitations and work practice requirements of this section.

(i) The proposed parameter ranges shall be submitted within 210 days of August 23, 2000, for all sources except as follows:

(A) A proposed parameter range for the pressure relief vents (Table 1 of this section, source 24) shall be submitted within 90 days of August 23, 2000.

(B) Proposed parameter ranges for the calciner scrubbers (Table 1 of this section, source 9a) and the excess CO burner (Table 1 of this section, source 26b) shall be submitted no later than the date by which the emission limitations become applicable to those sources under this section.

(ii) A parameter range for each source shall be approved by EPA through the issuance of a title V operating permit to the Astaris-Idaho facility, or as a modification thereto. Until EPA approval of the acceptable range for a parameter for a source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source.

(iii) If EPA determines at any time that the proposed or approved range does not adequately assure compliance with applicable emission limitations and work practice requirements, EPA may request additional information, request that revised parameter ranges and supporting documentation be submitted to EPA for approval, or establish alternative approved parameter ranges through the issuance of a title V operating permit to the Astaris-Idaho facility, or as a modification thereto.

(iv) This requirement to submit proposed parameter ranges is in addition to and separate from any requirement to develop parameter ranges under 40 CFR part 64 (Compliance Assurance Monitoring rule). However, monitoring for any pollutant specific source that meets the design criteria of 40 CFR 64.3 and the submittal requirements of 40 CFR 64.4 may be submitted to meet the requirements of this paragraph (g)(1).

(2) The owner or operator of Astaris-Idaho shall submit to EPA a bi-monthly report covering the preceding two calendar months (*e.g.,* January-February, March-April). Such report shall be submitted 15 days after the end of each two month period, with the last such report covering the period of November and December 2000. The report shall include the following:

(i) The date and start/stop time of each mini-flush; the phossy water flow rate and outlet temperature immediately preceding the start time; and a ''Yes/No'' column indicating whether the operating parameters for conducting the mini-flush set forth in paragraph (c)(5)(ii) of this section were met.

(ii) For any ''No'' entry, an indication of whether the failure to comply with the parameters was attributable to a malfunction and, if so, the date and time of notification to EPA of the malfunction and a copy of the

contemporaneous record described in paragraph (c)(5)(ii) of this section.

(iii) For each month, the total mini-flush time in minutes, the number of operating days for the secondary condenser, and the average minutes per operating day.

(3) The owner or operator of the Astaris-Idaho facility shall submit to EPA a semi-annual report of all monitoring required by this section covering the six month period from January 1 through June 30 and July 1 through December 31 of each year. Such report shall be submitted 30 days after the end of such six month period.

(i) The semiannual report shall:

(A) Identify each time period (including the date, time, and duration) during which a visible emissions observation or PM–10 emissions measurement exceeded the applicable emission limitation and state what actions were taken to address the exceedence. If no action was taken, the report shall state the reason that no action was taken.

(B) Identify each time period (including the date, time, and duration) during which there was an excursion of a monitored parameter from the approved range and state what actions were taken to address the excursion. If no action was taken, the report shall state the reason that no action was taken.

(C) Identify each time period (including the date, time, and duration) during which there was an excursion above the opacity action level and state what actions were taken to address the excursion. If no action was taken, the report shall state the reason that no action was taken.

(D) Identify each time period (including date, time and duration) of each flaring of the emergency CO flares (Table 1 of this section, source 25) due to an emergency and state what actions were taken to address the emergency. If no action was taken, the report shall state the reason that no action was taken.

(E) Identify each time period (including date, time and duration) of each pressure release from a pressure relief vent (Table 1 of this section, source 24) and state what actions were taken to address the pressure release. If no action was taken, the report shall state the reason that no action was taken.

(F) Include a summary of all monitoring required under this section.

(G) Include a copy of the source test report for each performance test conducted in accordance with paragraph (e)(1) of this section.

(H) Describe the status of compliance with this section for the period covered by the semi-annual report, the methods or other means used for determining the compliance status, and whether such methods or means provide continuous or intermittent data.

(*1*) Such methods or other means shall include, at a minimum, the monitoring, record keeping, and reporting required by this section.

(*2*) If necessary, the owner or operator of Astaris-Idaho shall also identify any other material information that must be included in the report to comply with section 113(c)(2) of the Clean Air Act, which prohibits making a knowing false certification or omitting material information.

(*3*) The determination of compliance shall also take into account any excursions from the required parameter ranges reported pursuant to paragraph (g)(3)(i)(B) of this section.

(ii) Each semi-annual report submitted pursuant to this paragraph shall contain certification by a responsible official, as defined in 40 CFR 71.2, of truth, accuracy and completeness. Such certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the documents are true, accurate, and complete.

(4) The owner or operator of the Astaris-Idaho facility shall notify EPA by telephone or facsimile within 48 hours of the beginning of each flaring of the emergency CO flares (Table 1 of this section, source 25) due to an emergency.

(5)(i) For emissions that continue for more than two hours in excess of the applicable emissions limitation, the owner or operator of the Astaris-Idaho facility shall notify EPA by telephone or facsimile within 48 hours. A written report containing the following information shall be submitted to EPA within ten working days of the occurrence of the excess emissions:

(A) The identity of the stack and/or other source where excess emissions occurred.

(B) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions.

(C) The time and duration or expected duration of the excess emissions.

(D) The identity of the equipment causing the excess emissions.

(E) The nature and probable cause of such excess emissions.

(F) Any corrective action or preventative measures taken.

(G) The steps taken or being taken to limit excess emissions.

(ii) Compliance with this paragraph is required even in cases where the owner or operator of the Astaris-Idaho facility does not seek to establish an affirmative defense of startup, shutdown, malfunction, or emergency under paragraphs (c)(8) or (c)(9) of this section.

(6) The owner or operator of Astaris-Idaho shall notify EPA if it uses any fuel other than natural gas in the boilers (Table 1 of this section, source 23) within 24 hours of commencing use of such other fuel.

(*7*) All reports and notices submitted under this section shall be submitted to EPA at the addresses set forth below: U.S. Environmental Protection Agency, Region 10, State and Tribal Programs Unit, Re: Astaris-Idaho FIP, Office of Air Quality, OAQ 107, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1189, Fax: 206–553–0404.

(8) The owner or operator of the Astaris-Idaho facility shall submit a copy of each report, notice, or other document submitted to EPA under this section contemporaneously to the Shoshone-Bannock Tribes at the following address: Shoshone-Bannock Tribes, Air Quality Program, Land Use Department, P.O. Box 306, Fort Hall, Idaho, 83203, telephone (208) 478–3853; fax (208) 237–9736. The owner or operator of the Astaris-Idaho facility shall also provide contemporaneously to the Tribes notice by telephone in the event notice by telephone is provided to EPA under this section.

(h) *Title V Permit.* (1) Additional monitoring, work practice, record keeping, and reporting requirements may be included in the title V permit for the Astaris-Idaho facility to assure compliance with the requirements of this section.

(2)(i) A requirement of paragraph (e), (f), or (g) of this section may be revised through issuance or renewal of a title V operating permit by EPA to the Astaris-Idaho facility under 40 CFR part 71 or through a significant permit modification thereto, provided that:

(A) Any alternative monitoring, record keeping, or reporting requirements that revise requirements of paragraphs (e), (f), or (g) of this section:

(*1*) Are sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the requirements of paragraph (c) of this section; and

(*2*) Provide no less compliance assurance than the requirements of paragraphs (e), (f), or (g) of this section that the alternative requirements would replace.

(B) In the event the alternative monitoring, record keeping, or reporting requirements are requested by the owner or operator of the Astaris-Idaho facility, Astaris-Idaho's application for its title V operating permit or significant permit modification must include:

(*1*) The proposed alternative monitoring, record keeping, or reporting permit terms or conditions;

(*2*) The specific provisions of paragraphs (e), (f), or (g) of this section the owner or operator of the Astaris-Idaho facility is seeking to revise; and

(*3*) The supporting documentation to establish that the alternative permit terms or conditions meet the requirements of paragraph (h)(2)(i)(A) of this section.

(C) The draft and final title V operating permit or significant permit modification identifies the specific provisions of paragraphs (e), (f), or (g) of this section being revised;

(D) In the event a revision to paragraphs (e), (f), or (g) of this section is accomplished through a significant modification to Astaris-Idaho's title V operating permit, it is accomplished using the significant permit modification procedures of 40 CFR part 71; and

(ii) Upon issuance or renewal of Astaris-Idaho's title V permit or a significant permit modification thereto that revises a requirement of paragraphs (e), (f), or (g) of this section, the revision shall remain in effect as a requirement of this section not withstanding expiration, termination, or revocation of Astaris-Idaho's title V operating permit.

(i) *Compliance schedule.* Except as otherwise provided in this section, the owner or operator of the Astaris-Idaho facility shall comply with the requirements of this section within 90 days of August 23, 2000.

TABLE 1 TO § 49.10711

I Source No.	II Source description	III Emission limitations and work practice requirements	IV Reference test method
1	Railcar unloading of shale (ore) into underground hopper.	Opacity shall not exceed 10% over a 6 minute average.	Method 9.
2	Main shale pile (portion located on Fort Hall Indian Reservation).	Opacity shall not exceed 10% over a 6 minute average. Latex shall be applied after each re-forming of pile or portion of pile.	Method 9.
3	Emergency/contingency raw ore shale pile.	Opacity shall not exceed 10% over a 6 minute average. Latex shall be applied after each re-forming of pile or portion of pile.	Method 9.
4	Stacker and reclaimer	Opacity shall not exceed 10% over a 6 minute average.	Method 9.
5a	East shale baghouse	a. Emissions shall not exceed 0.10 lb. PM–10/hr (excluding condensible PM–10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
5b	East shale baghouse building	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	b. Method 9.
6a	Middle shale baghouse	a. Emissions shall not exceed 0.50 lb. PM–10/hr (excluding condensible PM–10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
6b	Middle shale baghouse building	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	b. Method 9.
6c	Middle shale baghouse outside capture hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
7a	West shale baghouse	a. Emissions shall not exceed 0.50 lb. PM–10/hr (excluding condensible PM–10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
7b	West shale baghouse building	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	b. Method 9.
7c	West shale baghouse outside capture hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
8a	a. Slag handling: slag pit area and pot rooms.	a. Until November 1, 2000, emissions from the slag pit area and the pot rooms shall be exempt from opacity limitations.	

TABLE 1 TO § 49.10711—Continued

I Source No.	II Source description	III Emission limitations and work practice requirements	IV Reference test method
		Effective November 1, 2000, opacity of emissions in the slag pit area and from pot rooms shall not exceed 10% over a 6 minute average. *Exemption:* Fuming of molten slag in transport pots during transport are exempt provided the pots remain in the pot room for at least 3 minutes after the flow of molten slag to the pots has ceased.	Method 9.
		See also 40 CFR 49.10711(c)(4)	
8b	b. Recycle material pile	b. Opacity shall not exceed 10% over a 6 minute average.	b. Method 9.
8c	c. Dump to slag pile	c. Fuming of molten slag during dump to slag pile shall be exempt from opacity limitations.	
9a	Calciner scrubbers	Effective December 1, 2000: The calciner scrubbing chain (air pollution control equipment) shall achieve an overall control efficiency [1] of at least 90% for PM–10 (including condensible PM–10) when inlet loadings equal or exceed 0.150 grains per dry standard cubic foot.	Method 5 (all particulate collected shall be counted as PM–10) and Method 202 at the scrubber outlet. Method 201A and Method 202 at the inlet to the scrubber systems.
		The arithmetic average of the emission concentration from the four stacks associated with each calciner shall not exceed 0.0080 grains per dry standard cubic foot PM–10 (excluding condensible PM–10) [2].	Method 5 (all particulate collected shall be counted as PM–10).
		The arithmetic average of the emission concentration from the four stacks associated with each calciner shall not exceed 0.0180 grains per dry standard cubic foot PM–10 (including condensible PM–10) [2].	Method 5 (all particulate collected shall be counted as PM–10) and Method 202 at the scrubber outlet.
	Calciner scrubbers	Total gas flow rate through any one outlet stack shall not exceed 40,800 dry standard cubic feet per minute.	Method 2.
		The calciner scrubbers shall be exempt from opacity limitations.	
9b	Calciner traveling grate—fugitive emissions.	b. Opacity shall not exceed 10% over a 6 minute average.	Method 9.
10	Calciner cooler vents	Emissions from any one calciner cooler vent shall not exceed 4.40 lb. PM–10/hr (excluding condensible PM–10).	Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
11	Nodule pile	Opacity shall not exceed 20% over a 6 minute average.	Method 9.
12a	North nodule discharge baghouse ..	a. Emissions shall not exceed 0.20 lb. PM–10/hr (excluding condensible PM–10).	a. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
12b	South nodule discharge baghouse ..	b. Emissions shall not exceed 0.20 lb. PM–10/hr (excluding condensible PM–10).	b. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
12c	North and south nodule discharge baghouse outside capture hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.

TABLE 1 TO § 49.10711—Continued

I Source No.	II Source description	III Emission limitations and work practice requirements	IV Reference test method
13	Nodule reclaim baghouse	a. Emissions shall not exceed 0.90 lb. PM–10/hr (excluding condensible PM–10).	Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
14	Screened shale fines pile adjacent to the West shale building.	Opacity shall not exceed 20% over a 6 minute average.	Method 9.
	Proportioning building		
15a	a. East nodule baghouse	a. Emissions shall not exceed 0.60 lb. PM–10/hr (excluding condensible PM–10).	a. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
15b	b. West nodule baghouse	b. Emissions shall not exceed 0.30 lb. PM–10/hr (excluding condensible PM–10).	b Methods 201/201A .
		Opacity shall not exceed 10% over a 6 minute average.	Method 9
15c	c. Proportioning building—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	c. Method 9.
16a	Nodule stockpile baghouse	a. Emissions shall not exceed 0.30 lb. PM–10/hr (excluding condensible PM–10).	a. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
16b	Nodule stockpile baghouse outside capture hood—fugitive emissions.	b. Opacity shall not exceed 10% over a 6 minute average.	b. Method 9.
17a	Dust silo baghouse	a. Emissions shall not exceed 0.150 lb. PM–10/hr(excluding condensible PM–10).	a. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
17b	Dust silo fugitive emissions and pneumatic dust handling system.	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the dust silo or pneumatic dust handling system.	b. Method 9.
	Furnace building		
18a	a. East baghouse	a. Emissions shall not exceed 0.80 lb. PM–10/hr (excluding condensible PM–10).	a. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
18b	b. West baghouse	b. Emissions shall not exceed 0.80 lb. PM–10/hr (excluding condensible PM–10).	b. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
18c	c. Furnace building; any emission point except 18a, 18b, 18d, 18e, 18f, or 18g.	c. Until April 1, 2002, opacity shall not exceed 20% over a 6 minute average.	c. Method 9.
		Effective April 1, 2002, opacity shall not exceed 10% over a 6 minute average.	Method 9.
18d	d. Furnace #1 Medusa-Andersen	d, e, f, g: Emissions from any one Medusa-Andersen stack shall not exceed 2.0 lb/hr (excluding condensible PM–10).	d, e, f, g: Methods 201/201A.
18e	e. Furnace #2 Medusa-Andersen		
18f	f. Furnace #3 Medusa-Andersen	Opacity from any one Medusa-Andersen shall not exceed 10% over a 6 minute average.	Method 9.
18g	g. Furnace #4 Medusa-Anderson		
19	Briquetting building	Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	Method 9.
20a	a. Coke handling baghouse	a. Emissions shall not exceed 1.70 lb. PM–10/hr (excluding condensible PM–10).	a. Methods 201/201A.

TABLE 1 TO § 49.10711—Continued

I Source No.	II Source description	III Emission limitations and work practice requirements	IV Reference test method
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
20b	b. Coke unloading building	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the coke unloading building.	b. Method 9.
21a	a. Phosphorous loading dock (phos dock), Andersen Scrubber.	Emissions shall not exceed 0.0040 grains per dry standard cubic foot PM–10 (excluding condensible PM–10).	a. Methods 201/201A.
		Flow rate (throughput to the control device) shall not exceed manufacturer's design specification.	Method 2.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
21b	b. Phosphorous loading dock—fugitive emissions.	b. Opacity shall not exceed 10% over a 6 minute average.	b. Method 9.
22	All roads	Opacity shall not exceed 20% over a 6 minute average.	Method 9.
23	Boilers	Emissions from any one boiler shall not exceed 0.090 lb. PM–10/hr (excluding condensible PM–10).	Methods 201/201A.
		Opacity from any one boiler shall not exceed 10% over a 6 minute average.	Method 9.
24	Pressure relief vents	Opacity shall not exceed 10% over a 6 minute average except: (i) during a pressure release, as defined in 40 CFR 49.10711(e)(7)(ii), which shall be exempt from opacity limits; and. (ii) during steaming and draining of the pressure relief vent drop tank, which shall occur no more than twice each day, opacity shall not exceed 20% over a 6 minute average.	Method 9.
		Pressure release point shall be maintained at 18 inches of water pressure at all times.	Inspection of pressure relief vent and monitoring device
25	Furnace CO emergency flares	Except during an emergency flaring caused by an emergency as defined in 40 CFR 49.10711(b), opacity shall not exceed 10% over a 6 minute average.	Method 9.
		Emissions during an emergency flaring caused by an emergency are exempt from opacity limitations.	
26a	a. Existing elevated secondary condenser flare and ground flare.	a. *See* 40 CFR 49.10711(c)(5).	
26b	b. Excess CO burner (to be built to replace the existing elevated secondary condenser flare and ground flare).	b. Effective January 1, 2001: i. The control efficiency [1] of the air pollution control equipment shall achieve an overall control efficiency of at least 95% for PM–10 (including condensible PM–10) when inlet loadings equal or exceed 0.50 grains per dry standard cubic foot.	i. Methods 201/201A and Method 202 for the inlet (sampling locations to be determined). Method 201/201A (Method 5 if gas stream contains condensed water vapor) and Method 202 for the outlet.
		ii. Emissions from the excess CO burner shall not exceed 24.0 lbs PM–10/hr (including condensible PM–10).	ii. Method 201/201A (Method 5 if gas stream contains condensed water vapor) and Method 202 for the outlet.
		Effective January 1, 2001, opacity shall not exceed 10% over a 6 minute average.	Method 9.

[1] The control efficiency (as a percentage) of the air pollution control equipment shall be determined by the following equation:
CE (%)=100 {1 − ([Fho+Bho]/[Fhi+Bhi])}

Where CE is the control efficiency
Fhi is the front half emissions for the inlet
Bhi is the back half emissions for the inlet
Fho is the sum of the front half emissions from each stack for the outlet
Bho is the sum of the back half emissions from each stack for the outlet
Inlet and all outlet stacks to be sampled simultaneously for required testing.

The individual source tests for the inlet and outlet to the emission control system shall be conducted simultaneously or within 3 hours of each other with the same operating conditions.

[2] The individual source tests for the four stacks associated with each calciner shall be conducted simultaneously or within 3 hours of each other with the same operating conditions.

TABLE 2 TO § 49.10711

I Source No.	II Source description	III Opacity action level	IV Reference test method
1	Railcar unloading of shale (ore) into underground hopper.	Any visible emissions	Visual observation.
2	Main shale pile (portion located on Fort Hall Indian Reservation).	Any visible emissions	Visual observation.
3	Emergency/ contingency raw ore shale pile.	Any visible emissions	Visual observation.
4	Stacker and reclaimer	Any visible emissions	Visual observation.
5a	East shale baghouse	a. 5% over a 6 minute average	a. Method 9.
5b	East shale baghouse building	b. Any visible emissions	b. Visual observation.
6a	Middle shale baghouse	a. 5% over a 6 minute average	a. Method 9.
6b	Middle shale baghouse building	b. Any visible emissions	b. Visual observation.
6c	Middle shale baghouse outside capture hood—fugitive emissions.	c. 5% over a 6 minute average	c. Method 9.
7a	West shale baghouse	a. 5% over a 6 minute average	a. Method 9.
7b	West shale baghouse building	b. Any visible emissions	b. Visual observation.
7c	West shale baghouse outside capture hood—fugitive emissions.	c. 5% over a 6 minute average	c. Method 9.
8a	a. Slag handling: slag pit area and pot rooms.	a. Until November 1, 2000, emissions from the slag pit area and the pot rooms shall be exempt from opacity limits and opacity action levels. Effective November 1, 2000, the opacity action level for this source shall be 5% over a 6 minute average. *Exemption:* Fuming of molten slag in transport pots during transport are exempt from opacity limits and opacity action levels provided the pots remain in the pot room for at least 3 minutes after the flow of molten slag to the pots has ceased.	Method 9.
8b	b. Recycle material pile	b. Any visible emissions	b. Visual observation.
8c	c. Dump to slag pile	c. Fuming of molten slag during dump to slag pile shall be exempt from opacity limits and opacity action levels.	
9a	Calciner scrubbers	a. The calciner scrubbers shall be exempt from opacity limits and opacity action levels.	
9b	Calciner traveling grate—fugitive emissions.	b. 5% over a 6 minute average.	
10	Calciner cooler vents	5% over a 6 minute average	Method 9.
11	Nodule pile	10% over a 6 minute average	Method 9.
12a	North nodule discharge baghouse	a. 5% over a 6 minute average	a. Method 9.
12b	South nodule discharge baghouse.	b. 5% over a 6 minute average	b. Method 9.
12c	North and south nodule discharge baghouse outside capture hood—fugitive emissions.	c. 5% over a 6 minute average	c. Method 9.
13	Nodule reclaim baghouse	5% over a 6 minute average	Method 9.
14	Screened shale fines pile adjacent to the West shale building. Proportioning building.	10% over a 6 minute average	Method 9.
15a	a. East nodule baghouse	a. 5% over a 6 minute average.	a. Method 9.
15b	b. West nodule baghouse	b. 5% over a 6 minute average	b. Method 9.

TABLE 2 TO § 49.10711—Continued

I Source No.	II Source description	III Opacity action level	IV Reference test method
15c	c. Proportioning building—fugitive emissions.	c. Any visible emissions	c. Visual observation.
16a	Nodule stockpile baghouse	a. 5% over a 6 minute average	a. Method 9.
16b	Nodule stockpile baghouse outside capture hood—fugitive emissions.	b. 5% over a 6 minute average	b. Method 9.
17a	Dust silo baghouse	a. 5% over a 6 minute average	a. Method 9.
17b	Dust silo fugitive emissions and pneumatic dust handling system.	b. Any visible emissions	b. Visual observation.
	Furnace building.		
18a	a. East baghouse	a. 5% over a 6 minute average	a. Method 9.
18b	b. West baghouse	b. 5% over a 6 minute average	b. Method 9.
18c	c. Furnace building; any emission point except 18a, 18b, 18d, 18e, 18f, or 18g.	c. Until April 1, 2002, 10% over a 6 minute average. Effective April 1, 2002, 5% over a 6 minute average.	c. Method 9.
18d	d. Furnace #1 Medusa-Andersen	d, e, f, g: 5% over a 6 minute average.	d, e, f, g: Method 9.
18e	e. Furnace #2 Medusa-Andersen.		
18f	f. Furnace #3 Medusa-Andersen.		
18g	g. Furnace #4 Medusa-Anderson.		
19	Briquetting building	Any visible emissions	Visual observation.
20a	a. Coke handling baghouse	a. 5% over a 6 minute average	a. Method 9.
20b	b. Coke unloading building	b. Any visible emissions	b.Visual observation.
21a	Phosphorous loading dock (phos dock), Andersen Scrubber.	a. 5% over a 6 minute average	Method 9.
21b	b. Phosphorous loading dock—fugitive emissions.	b. 5% over a 6 minute average	b. Method 9.
22	All roads	10% over a 6 minute average	Method 9.
23	Boilers	5% over a 6 minute average	Method 9.
24	Pressure relief vents	5% over a 6 minute average	Method 9.
25	Furnace CO emergency flares	Any visible emissions except during an emergency flaring caused by an emergency as defined in 40 CFR 49.10711(b). Emissions during an emergency flaring caused by an emergency are exempt from opacity limits and opacity action levels.	Visual observation.
26a	a. Existing elevated secondary condenser flare and ground flare.	a. Exempt from opacity limits and opacity action levels.	
26b	b. Excess CO burner (to be built to replace the elevated secondary condenser flare and ground flare).	5% over a 6 minute average	Method 9.

§§ 49.10712-49.10730 [Reserved]

§§ 49.10731-49.17810 [Reserved]

Appendix to Subpart M—Alphabetical Listing of Tribes and Corresponding Sections

Indian tribe	Refer to the following sections in subpart M
Burns Paiute Tribe	§§ 49.9861–49.9890
Chehalis Reservation—Confederated Tribes of the	§§ 49.9891–49.9920
Coeur d'Alene Tribe	§§ 49.9921–49.9950
Colville Reservation—Confederated Tribes of the	§§ 49.9951–49.9980
Coos, Lower Umpqua and Suislaw Indians—Confederated Tribes of the	§§ 49.9981–49.10010
Coquille Tribe	§§ 49.10011–49.10040
Cow Creek Band of Umpqua Indians	§§ 49.10041–49.10100
Grand Ronde Community—Confederated Tribes of the	§§ 49.10101–49.10130
Hoh Indian Tribe	§§ 49.10131–49.10160

Indian tribe	Refer to the following sections in subpart M
Jamestown S'Klallam Tribe	§§ 49.10161–49.10190
Kalispel Indian Community	§§ 49.10191–49.10220
Klamath Indian Tribe	§§ 49.10221–49.10250
Kootenai Tribe	§§ 49.10251–49.10280
Lower Elwah Tribal Community	§§ 49.10281–49.10310
Lummi Tribe	§§ 49.10311–49.10340
Makah Indian Tribe	§§ 49.10341–49.10370
Muckleshoot Indian Tribe	§§ 49.10371–49.10400
Nez Perce Tribe	§§ 49.10401–49.10430
Nisqually Indian Tribe	§§ 49.10431–49.10460
Nooksack Indian Tribe	§§ 49.10461–49.10490
Port Gamble Indian Community	§§ 49.10491–49.10520
Puyallup Tribe	§§ 49.10521–49.10550
Quileute Tribe	§§ 49.10551–49.10580
Quinault Tribe	§§ 49.10581–49.10610
Samish Indian Tribe	§§ 49.10611–49.10640
Sauk–Suiattle Indian Tribe	§§ 49.10641–49.10670
Shoalwater Bay Tribe	§§ 49.10671–49.10700
Shoshone–Bannock Tribes of the Fort Hall Indian Reservation	§§ 49.10701–49.10730
Siletz Reservation—Confederated Tribes of	§§ 49.10731–49.10760
Skokomish Indian Tribe	§§ 49.10761–49.10790
Snoqualmie Indian Tribe	§§ 49.10791–49.10820
Spokane Tribe	§§ 49.10821–49.10850
Squaxin Island Tribe	§§ 49.10851–49.10880
Stillaquamish Tribe	§§ 49.10881–49.10920
Suquamish Indian Tribe	§§ 49.10921–49.10950
Swinomish Indians	§§ 49.10951–49.10980
Tulalip Tribes	§§ 49.10981–49.11010
Umatilla Reservation—Confederated Tribes of the	§§ 49.11011–49.11040
Upper Skagit Indian Tribe	§§ 49.11041–49.11070
Warm Springs Reservation—Confederated Tribes of the	§§ 49.11071–49.11100
Yakama Indian Nation—Confederated Tribes and Bands of the	§§ 49.11101–49.11130

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August 23, 2000

Part III

Department of Labor

Pension and Welfare Benefits Administration

Proposed Amendment to Prohibited Transaction Exemption (PTE) 97–34 Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al., (D–10829); Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Amendment to Prohibited Transaction Exemption (PTE) 97–34 Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al., (D–10829)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of a proposed amendment to the Underwriter Exemptions.[1]

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The proposed amendment, if granted, would: (1) Permit, for certain categories of transactions, the offering of ''investment grade'' mortgage-backed securities and asset-backed securities which are either senior or subordinated; (2) permit the use of eligible interest rate swaps (both ratings dependent and non-ratings dependent) under circumstances described in this proposal; (3) permit the use of yield supplement agreements which involve notional principal amounts; and (4) make certain changes to the Underwriter Exemptions that would reflect the Department's current interpretation of the Underwriter Exemptions.

Finally, the proposed amendment, if granted, would provide exemptive relief for transactions involving: (1) an Issuer of mortgage-backed securities or asset-backed securities which is a trust (including a grantor or owner trust), REMIC, FASIT, special purpose corporation, limited liability company or partnership and (2) mortgage-backed securities or asset-backed securities issued which are either debt or equity investments.

DATES: Written comments and/or requests for a public hearing should be received by October 10, 2000.

Effective Date: If granted, the proposed amendment to the Underwriter Exemptions would be effective for transactions occurring on or after the date of publication of this notice in the **Federal Register**, except as otherwise provided in sections I.C., II.A.(4)(b), and III.JJ. of the proposed amendment to the Underwriter Exemptions.

ADDRESSES: All written comments and requests for a hearing (preferably at least three copies) should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attn: Proposed Amendment to the Underwriter Exemptions. The application pertaining to the amendment proposed herein and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Wendy McColough of the Department, telephone (202) 219–8971. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption to amend PTE 97–34, 62 FR 39021 (July 21, 1997) (the 1997 Amendment). PTE 97–34 amended over forty individual Underwriter Exemptions. The Underwriter Exemptions provide substantially identical relief for the operation of certain asset pool investment trusts and the acquisition and holding by plans of certain asset-backed pass-through certificates representing interests in those trusts. These exemptions provide relief from certain of the restrictions of sections 406(a), 406(b) and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of certain provisions of section 4975(c)(1) of the Code.

I. Introduction

The proposed amendment was requested by application dated October 22, 1999, and as restated in later submissions on behalf of Morgan Stanley & Co. Incorporated.[2] (the Applicant). In preparing the application, the Applicant received input from members of The Bond Market Association (TBMA).

The Department is proposing the amendment to this individual exemption pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570 (Subpart B) 55 FR 32836, 32847(August 10, 1990).[3] In addition, the Department

[1] The term ''Underwriter Exemptions'' refers to the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91-62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); and PTE 2000–41, First Tennessee National Corporation (August, 2000).

In addition, the Department notes that it is also proposing individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); and Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62. Finally, the Department notes that it is proposing relief for Countrywide Securities Corporation (Application No. D–10863).

[2] PTE 90–24, 55 FR 20548 (May 17, 1990). Morgan Stanley & Co. Incorporated (Morgan Stanley) is an international securities firm providing through its affiliates a wide range of financial and securities services on a global basis to a large and diversified group of clients and customers, including corporations, governments, financial institutions and individuals. The businesses of Morgan Stanley and its affiliates include securities underwriting, distribution and trading; merger, acquisition, restructuring, real estate, project finance and other corporate finance advisory activities; asset management; private equity and other principal investment activities; brokerage and research services; and the trading of foreign exchange and commodities as well as derivatives on a broad range of asset categories, rates and indices. Affiliates of Morgan Stanley also provide credit and transaction services, including the operation of the Discover/Novus (trademark symbol) Network, a proprietary network of merchant and cash access locations, and the issuance of proprietary general purpose credit cards.

[3] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the

is proposing to provide the same relief on its own motion pursuant to the authority described above for many of the other Underwriter Exemptions which have substantially similar terms and conditions.[4] The Department notes that it is also proposing individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., FAN 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); and Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62. Finally, the Department notes that it is proposing relief for Countrywide Securities Corporation (Application No. D–10863).

A. The Underwriter Exemptions

The original Underwriter Exemptions permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: [5] (1) Single and multi-family residential or commercial mortgage investment trusts; [6] (2) motor vehicle receivables investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[7] Residential and commercial mortgage investment trusts may include mortgages on ground leases of real property. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the terms of such mortgages.[8]

Each trust is established under a pooling and servicing agreement or an equivalent agreement among a sponsor, a servicer, and a trustee. Prior to the closing date under the pooling and servicing agreement, the sponsor and/or the servicer selects receivables from the classes of assets described in section III.B.(1)(a)–(f) of the original Underwriter Exemptions to be included in a trust, establishes the trust and designates an independent entity as trustee for the trust. Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust. In some cases, legal title to some or all of such assets continues to be held by the originator of the receivables until the closing date. On the closing date, the sponsor and/or the originator conveys to the trust legal title to the assets, and the trustee issued certificates representing fractional undivided interests in the trust assets.

Since the receivables to be held in the trust were all transferred as of the Closing Date, no exemptive relief was requested under the Underwriter Exemptions for the trust to hold any cash, or temporary investments made therewith, other than cash representing undistributed proceeds from payments of principal and interest by obligors under the receivables. However, over time, the transactions relating to the funding of the trust changed. The 1997 Amendment to the Underwriter Exemptions: (1) Modified the definition of ''Trust'' to include a ''pre-funding account'' (PFA) and a ''capitalized interest account'' (CIA) as part of the corpus of the trust; (2) provided retroactive relief for transactions involving asset pool investment trusts containing PFAs which have occurred on or after January 1, 1992; (3) included in the definition of ''Certificate'' a debt instrument that represents an interest in a Financial Asset Securitization Investment Trust (FASIT); and (4) made certain changes to the Underwriter Exemptions that reflected the Department's current interpretation of the Underwriter Exemptions.

Under the Underwriter Exemptions as amended in 1997: (1) The rights and interests evidenced by certificates acquired by plans may not be subordinated to the rights and interests evidenced by other certificates of the same trust; (2) the certificates acquired by the plan must have received a rating from a Rating Agency at the time of such acquisition that is in one of the three highest generic rating categories; (3) the assets held by the trust must consist solely of receivables, obligations or credit instruments which are ''secured,'' (4) no interest rate swaps and no yield supplement agreements or similar yield maintenance agreements involving swap agreements or other notional principal contracts may be held by the trust and (5) the certificates must represent a beneficial ownership interest in the assets of a trust or a debt instrument issued by a REMIC or a FASIT which is a trust.

B. Proposed Amendment to the Exemptions

The proposed amendment to the Underwriter Exemptions (the Proposed Amendment) is requested in order to permit plans to invest in investment-grade [9] mortgage-backed securities (MBS) and asset-backed securities (ABS) (collectively, Securities) involving categories of transactions which are either senior or subordinated, and/or in certain cases, permit the entity issuing such Securities (Issuer) to hold receivables with loan-to-value property ratios (HLTV ratios) in excess of 100%. Specifically, the requested amendment would exempt transactions involving senior or subordinated Securities rated ''AAA,'' ''AA,'' ''A'' or ''BBB'' issued by Issuers whose assets are comprised of the following categories of receivables: (1) Automobile and other motor vehicle loans, (2) residential and home equity loans which may have HLTV ratios in excess of 100%, (3) manufactured housing loans and (4) commercial

Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[4] In this regard, the entities who received the other Underwriter Exemptions were contacted concerning their participation in this amendment process.

[5] The Department stated in the 1997 Proposed Amendment to the Underwriter Exemptions, 62 FR 28502 (May 23, 1997), that a given trust may include receivables of the type described in one or more of the categories under the definition of Trust.

[6] The Department noted that PTE 83–1, 48 FR 895 (January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. The Underwriter Exemptions provide relief for single-family residential mortgages because the applicants preferred one exemption for all trusts of similar structure. However, the applicants have stated that they may still avail themselves of the exemptive relief provided by PTE 83–1.

[7] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. Exemptive relief for trusts containing guaranteed governmental mortgage pool certificates was provided previously because the certificates in the trusts may be plan assets.

[8] The Department previously noted that Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 (involving Prudential-Bache Securities, Inc.) 55 FR 23147, at 23150 (June 6, 1990).

[9] The term ''investment grade'' refers to Securities which are rated at the time of issuance in one of the four highest generic rating categories by at least one Rating Agency. The designations ''AAA,'' ''AA,'' ''A'' and ''BBB'' are used herein to refer to the generic rating categories used by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., Fitch ICBA, Inc., and Duff & Phelps Credit Rating Co. and are deemed to include the equivalent generic category rating designations ''Aaa'' ''Aa,'' ''A'' and ''Baa'' used by Moody's Investors Service, Inc.

mortgages (the Designated Transactions).

The Applicant requests that the relief the Department granted to MBNA America Bank National Association (MBNA) in Prohibited Transaction Exemption 98–13, 63 FR 4038 (April 7, 1998) (PTE 98–13) and to Citibank South Dakota, N.A., Citibank (Nevada), N.A. and affiliates (Citibank) in Prohibited Transaction Exemption 98–14, 63 FR 4052 (April 7, 1998) (PTE 98–14) with respect to the use of Eligible Swaps (both Ratings Dependent and Non-Ratings Dependent) be extended to all securitizations which otherwise meet the conditions of the Underwriter Exemptions, provided that the swap transaction meets the requirements set forth in the requested amendment. As a corollary to such request, the Applicant also requests that yield supplement agreements which involve notional principal amounts be permitted.

Finally, the Applicant is requesting that exemptive relief also be extended to all securitization transactions which otherwise meet the conditions of the Underwriter Exemptions notwithstanding that: (1) The Issuer of the Securities is a trust (including a grantor or owner trust), REMIC, FASIT, special purpose corporation, limited liability company or partnership or that (2) the Securities issued are either debt or equity investments.[10]

The proposed amendment to the Underwriter Exemptions specifically will modify the relief previously provided in the following respects:

(i) The rights and interests evidenced by securities acquired by plans in the Designated Transactions (*i.e.*, motor vehicle, residential/home equity, manufactured housing and commercial mortgage ABS/MBS transactions) described in this application may be subordinated to the rights and interests evidenced by other securities of the same Issuer.

(ii) Securities acquired by a plan in a Designated Transaction may receive a rating from a Rating Agency at the time of such acquisition that is in one of the four highest generic rating categories.

(iii) The corpus of the Issuer in residential and home equity Designated Transactions may include mortgage loans with HLTV ratios in excess of 100%.

(iv) Eligible interest rate swaps (both ratings dependent and non-ratings dependent) and yield supplement arrangements with notional principal amounts may be included.

(v) The securitization vehicle can also be an owner trust, special purpose corporation, limited partnership or limited liability company.

(vi) The security may be either an equity or debt interest issued by any permissible type of Issuer.

The Applicant represents that the transactions associated with subordinated and/or ''BBB'' rated debt and equity ABS/MBS, issued by a variety of special purpose vehicles which may be funded with collateral with HLTV ratios in excess of 100% and may use interest rate swaps or yield supplement agreements with notional principal amounts, have been customary in the financial marketplace for many years, and all of these features and security types are taken into consideration by the Rating Agencies when they rate the securities issued by such entities. If these securities can not be sold to plans, investing plans will lose an opportunity to achieve a current market return through investment in securities that have received a rating from a Rating Agency which is as high or higher than that of comparable instruments in which such plans are clearly permitted to invest. In addition, thesetransactions are backed by diverse varieties of individual assets that a plan would be reluctant to purchase on its own, if for no other reason than the necessity to perform its own asset-by-asset credit analysis and servicing functions.

The Applicant notes that the requested relief is administratively feasible since it substantially incorporates the provisions of the Underwriter Exemptions which have already proven in practice to be administratively feasible. To the extent that the requested amendment permits additional types of securitization vehicles and the use of yield supplement arrangements with notional principal balances and interest rate swaps, the additional safeguards the Department has required can be accommodated by market practices and do not require any further action by the Department. The Applicant states that all of the features included in the amendment request are also acceptable to the Rating Agencies. The Applicant believes that the amendment is in the interest of plan participants and beneficiaries because it provides greater opportunities for plans to invest in a more diverse range of liquid, extremely creditworthy securities. Lastly, the Applicant notes that the requested amendment is protective of the rights of participants and beneficiaries of affected plans because securities with the features proposed in the request for amended relief have experienced almost no defaults in their entire market history.

II. Request for Additional Types of Issuers

A. The Applicant's Request

The Applicant is requesting that the Underwriter Exemptions be amended to expand the permissible types of securitization vehicles that may be used to offer securities to include special purpose corporations, limited partnerships and limited liability companies and owner trusts, in addition to grantor trusts, REMICs and FASITs. It is also requesting that the securities eligible for relief include those issued by all such entities whether they are debt or equity.

When the original Underwriter Exemptions were granted, relief was only requested for ABS/MBS issued by grantor trusts and REMICs since, at that time, these were the principal securitization vehicles used for asset-backed transactions. FASITs were included under PTE 97–34 in response to legislation that had been enacted during the time period when the relief requested under PTE 97–34 was being considered by the Department. Currently, ABS/MBS securitizations are structured with a variety of types of special purpose vehicles which issue both debt and equity securities. The permissible types of Issuers used to offer Securities include trusts (including grantor and owner trusts), special purpose corporations, limited partnerships and limited liability companies and may also be REMICs or FASITs. The Applicant asserts that each of these different types of securitization entities provides virtually the same legal protections to investors. At the request of the Department, the Applicant provided the following discussion that describes the legal structure, bankruptcy status and taxation of each securitization vehicle. It also explains why debt is issued in certain transactions instead of equity and the relative rights of both types of securities.

The principal factors in the choice of securitization vehicle and whether equity or debt securities are issued by the securitization vehicle are not economic but involve a combination of tax, accounting and ERISA considerations. In this regard, the Applicant notes that where the Issuer is not a Trust, equity will not be sold to plans pursuant to this exemption, if granted. In the final analysis, the choice of securitization entity or type of security does not significantly affect plan investors either from a legal rights,

[10] The Department notes that this exemption request will not preclude the Applicant (or any other parties which have previously, or may in the future, request an Underwriter Exemption) from requesting additional exemptive relief from the Department in future applications with respect to other issues relating to the Underwriter Exemptions.

credit risk or tax perspective, but it significantly affects ERISA eligibility. Accordingly, transactions are restructured solely because of ERISA considerations which have no relationship to the safety of the securities for plan investors.

Securitizations transactions are structured with a variety of types of Issuers which are special purpose vehicles which issue both debt [11] and equity Securities. Each of the different types of securitization entities provides virtually the same legal protections to investors.

B. Legal Protections and Structure of Issuers

A goal in every structured finance transaction is to remove the assets being securitized from the estate of the Sponsor so that in the event of a bankruptcy or insolvency of such Sponsor, its creditors (or regulators in the case of entities such as banks that are not eligible to be debtors under the Bankruptcy Code (11 U.S.C.)) will be unable to claim those assets or delay payments therefrom. This allows potential buyers of Securities to base their purchasing decisions solely on the creditworthiness of the assets and not the Sponsor. This transfer of assets is referred to as a ''true sale.''

The Applicant asserts that if the transfer of assets by the Sponsor is not treated as a ''true sale,'' the transaction would be deemed a borrowing by the Sponsor, with the assets serving as collateral for the financing. In a typical financing transaction, if the Sponsor were to become the subject of a proceeding under the Bankruptcy Code (or comparable regulatory provisions for entities that are not eligible to be debtors under the Bankruptcy Code), the assets may be deemed property of the Sponsor's estate. Although a secured creditor should eventually realize the benefits of its pledged collateral, several provisions of the Bankruptcy Code or comparable regulatory provisions may operate to delay payments, and such creditor may in some cases receive less than the full value of the pledged collateral. First, immediately upon filing of a bankruptcy petition, Section 362(a) of the Bankruptcy Code imposes an automatic stay on the ability of all secured creditors to exercise their rights against pledged collateral. Other sections of the Bankruptcy Code allow a bankruptcy court to permit the use of pledged collateral to aid in the debtor's reorganization (Section 363), to provide ''super priority'' liens on such assets (Section 364), or to require a secured creditor in possession of the collateral to return it to the debtor (Section 542). Thus, in a loan financing transaction, the creditworthiness of the Sponsor is a prime factor in determining whether to extend credit, as well as the value of the collateral.

Accordingly, the goal in a structured finance transaction is to insulate the collateral from the Sponsor. The usual mechanism to accomplish this goal is through the creation and use of a bankruptcy remote Issuer which issues the Securities. The assets to be securitized are transferred to the Issuer in a ''true sale'' transaction. The Issuer either issues Securities backed by those assets or transfers the Securities (in a second transaction) to a second Issuer, which then issues the Securities backed by those assets. These are known as ''one-tier'' or ''two-tier'' transactions, respectively.

An Issuer can be formed as a corporation, limited partnership, limited liability corporation or trust. Regardless of legal structure, many restrictions are placed on the Issuer's operations, including its ability to file for bankruptcy protection (either voluntarily or involuntarily). Examples of such prohibitions are severe restrictions on the Issuer's ability to borrow money or issue debt, as well as prohibitions on the Issuer's merging with another entity, reorganizing, liquidating or selling assets (outside of the permitted securitization transactions). In this regard, the Issuer can only borrow money or issue debt in connection with the securitization.

The documents which create the Issuer (articles/certificates of incorporation for corporations, deeds of partnership/partnership agreements for limited partnerships, articles of organization for limited liability corporations or deeds of trust/trust agreements for trusts) contain restrictive clauses significantly limiting the activities of the Issuer (usually to just activities relating to the securitization transactions). They also provide for the election of one or more independent directors/partners/members whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer. Independent directors are generally individuals not having significant interests in, or other relationships with, the related Sponsor or any of its affiliates. The legal documentation evidencing the securitization often contains covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding. In this way, the Issuer, Sponsor, Servicer, trustees and others are contractually prohibited from seeking such actions against the Issuer.

Once the Issuer is formed, the Sponsor will transfer the assets to the Issuer, typically in exchange for the cash (and possibly some Securities) received from the securitization transaction. This transaction will be evidenced by appropriate legal documentation. Also, a ''true sale'' opinion from counsel is obtained for Issuers subject to the Bankruptcy Code. For those Issuers not subject to the Bankruptcy Code, an opinion is obtained from counsel to the effect that in the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor.

The Applicant explains that the above procedures are generally perceived as effective in removing the assets from the Sponsor's bankruptcy estate. However, if the Sponsor were to file for bankruptcy protection, a bankruptcy court, under the provisions of Section 105 of the Bankruptcy Code, could still gain jurisdiction over the securitized assets if the Issuer could be ''substantively consolidated'' with the Sponsor. Substantive consolidation permits the bankruptcy court to treat separate but related legal entities as one and merge the assets and liabilities of two or more entities as if they belonged to one debtor. If a court determines that the Issuer has not acted as a separate legal entity but merely exists as an ''alter-ego'' of another entity, then the court may utilize the principles of ''piercing the corporate veil'' or substantive consolidation to gain control of the underlying assets even if a ''true sale'' of such assets from the Issuer to the Sponsor exists.

To prevent a court from ordering a substantive consolidation, the applicable Rating Agencies require that the organizing documents of the Issuer

[11] The Department notes that PTE 84–14, 49 FR 9494 (March 13, 1984) (as corrected at 50 FR 41430 (Oct. 10, 1985), relating to transactions determined by independent qualified professional asset managers; PTE 90–1, 55 FR 2891 (Jan. 29, 1990), relating to certain transactions involving insurance company pooled separate accounts; PTE 91–38, 56 FR 31966 (July 12, 1991) (as corrected at 56 FR 59299 (Nov. 25, 1991), relating to certain transactions involving bank collective trust funds; PTE 95–60, 60 FR 35925 (July 12, 1995), relating to certain transactions involving insurance company general accounts and PTE 96–23, 61 FR 15975 (Apr. 10, 1996), relating to transactions determined by in-house asset managers collectively (Investor-Based Exemptions), may apply to the acquisition or disposition of debt securities by plans. The Applicant requests relief for transactions meeting the conditions of the Underwriter Exemptions because it would prefer one Exemption for all Issuers of similar structures. However, the Applicant has stated that Issuers may still issue debt securities pursuant to the Investor-Based Exemptions.

contain a variety of ''separateness'' covenants. These include, among other things, requirements that the Issuer: Maintain fully separate books and records, not commingle assets with any other entity, maintain separate accounts, conduct business in its own name, prepare separate financial statements, engage only in arm's-length transactions with affiliates, pay its liabilities only from its own funds, observe all trust, corporate or partnership formalities (as applicable), not guarantee the debts or pledge its assets in support of another entity, hold itself out to be a separate legal entity and maintain adequate capital for its business operations. In certain transactions, legal opinions are delivered to the effect that adherence to these covenants would be sufficient to prevent a court from ordering the substantive consolidation of the Issuer into a debtor-parent or affiliate. The Applicant has suggested similar restrictions relating to the activities of the Issuer and the parties to an ABS/MBS transaction that would serve as conditions of the exemptive relief requested with respect to non-Trust Issuers (see section II.A.(8) of the Proposed Amendment).

The Applicant states that whether an Issuer is structured as a corporation, limited partnership, limited liability corporation or trust will have little impact on the relevant bankruptcy or insolvency protection features. They are merely different legal entities with differing structures but will produce, in the aggregate, similar types of protections for investors. A corporation will have shareholders (who benefit from limited liability protections) and debt holders (who enjoy a superior claim on assets to that of shareholders and are taxed differently). A limited partnership will have general partners (who operate the entity and are ultimately responsible for its debts) and limited partners (who will receive investment earnings but are only liable to the extent of their actual investment in the event of losses). In a limited liability corporation, ''members'' (also the holders of equity Securities) are given the limited liability protections of a corporation's equity holders (much like limited partners but with a greater degree of permitted active management abilities). In an owner trust (which is also referred to as a business trust), the trust itself is a separately existing entity that is under the day-to-day control of its trustee but whose profits are distributable to the beneficial owners. According to the Applicant, an owner trust is essentially a Delaware business trust or similar entity as organized under other local law. An owner trust may also issue debt instruments. It can also declare bankruptcy (unlike a common law trust which does not exist as a legal entity distinct and separate from its creator). As previously indicated, the specific entity chosen for a structured finance transaction is often motivated by tax considerations and less so by any legal advantage of one structural form over another.

C. Rights of Equity and Debt Holders

Equity holders have an undivided beneficial ownership interest in the issuer's assets. Debt holders do not beneficially own such assets but have a security interest in such assets which has preference over the rights of the equity holders to such collateral. The Applicant believes that, since the Underwriter Exemptions currently allow equity investments by plans, it is entirely appropriate for the Department to also provide relief for debt instruments which give their holders preferential rights to the collateral.

The equity holders, limited partners or other beneficial owners of all types of Issuers are liable on the obligations of the entity only to the extent of such holders' investment and are not personally liable on any obligations in excess thereof. In general, each type of Issuer may issue debt, and while debt holders (or note holders) of any of these entities do not own an ownership interest in the assets of the Issuer, they are entitled to preferential treatment over equity holders (*e.g.*, certificateholders) or limited partners with respect to rights to collateral. To protect equity and debt holders further, the pooled assets of any specific transaction will be placed under the control of a trustee who is independent from the Sponsor and the Servicers. This can be accomplished in different ways depending on the type of Issuer. If the Issuer is a trust and only equity Securities are issued, then the trustee of the trust would have control over the pooled assets. If instead, debt Securities are issued by any type of Issuer (trust or non-trust), then the Indenture Trustee would have control of the pooled assets. Accordingly, any requirements under the Proposed Exemption applying to the ''trustee'' will apply to both the trustee of any Issuer which is a trust and to any Indenture Trustee (each a ''Trustee'' and any Issuer which is a trust, a ''Trust''). In any transaction where debt Securities are issued, possession of the assets by the Trustee or filing a security interest would serve to perfect the debt holders' security interest in the pooled assets. In transactions involving debt Securities, the Rating Agencies require perfected security interest opinions. The Applicant agrees to make perfected security interest opinions a condition of exemptive relief for those securities issued which are debt instruments.

D. Choice of Issuer and Choice of Debt Versus Equity Securities

The principal determining factors for the choice of securitization vehicle and whether equity or debt Securities are issued are tax and accounting considerations which have no affect on plan investors as they are tax exempt.[12]

Although the decision as to whether debt or equity Securities are issued does not significantly affect the interests of the securityholders, it does affect the Sponsor of an Issuer. A Sponsor may want to be able to recognize the gain from the sale of the receivables to the Issuer for accounting purposes but not have the sale trigger gain for tax purposes. Under Statement of Financial Accounting Standards No. 125 (FASB 125) issued by the Financial Accounting Standards Board, generally a transfer of assets to an Issuer which results in the Sponsor surrendering control of the transferred assets will allow the Sponsor to book the gain for accounting purposes. However, the tax treatment to a Sponsor can be greatly affected by whether the Issuer issues debt or equity Securities. For example, if an Issuer other than a REMIC or a FASIT issues debt, the Sponsor is generally not taxed on the sale of the assets into the Trust (which is treated instead as a financing) but will be taxed on the same percentage of the economic gain on such sale as the proportion of equity interest in the Issuer which is sold by the Sponsor. By way of illustration, if an Issuer issues $100 of Securities, $6 of which are equity and $94 are debt, and the Sponsor keeps 100% of the equity and sells all of the debt, it will not be taxed on the gain from selling the assets to the Trust. However, if the Sponsor issues $100 of equity Securities and sells 94% of them, it will recognize gain of $94 on the sale of the Securities. Accordingly, if a transaction does not qualify under the REMIC or FASIT rules, the transaction may be structured to issue debt instruments.

E. Effect of Tax Rules on Choice of Issuer and Securities

The Applicant notes that the choice of Issuer and whether the Securities

[12] Although plans are subject to tax on their unrelated business taxable income under sections 511–514 of the Internal Revenue Code of 1986, as amended (UBTI), the kind of income produced in securitization transactions does not generally trigger UBTI if the plan investor holds a Security which is treated as a debt instrument for tax purposes.

offered are debt or equity is also greatly affected by the tax rules governing each type of Issuer. The tax characterization of Issuers is not necessarily the same as their characterization under local law. For example, a Trust can be taxed as a trust, a partnership, a corporation or be completely ignored for tax purposes. Conversely, any form of Issuer can be treated as a REMIC or FASIT for tax purposes if it meets the applicable requirements and so elects. However, regardless of the tax characterizations, the transaction will be structured to avoid double taxation; *i.e.*, taxation at both the Issuer level and the investor level (for investors who are tax-paying entities). The tax treatment of each type of Issuer with respect to which exemptive relief is requested is as follows.

1. Grantor Trust

Under the Federal tax rules which govern grantor trusts as set forth in Treas. Reg. section 301.7701–4(c), a grantor Trust is disregarded for tax purposes and the securityholders are generally taxed on their ratable share of the income of the Trust. There is no specific prohibition on a grantor Trust's ability to issue debt under the tax rules. However, this is usually not done because if the debt securities were ever recharacterized as equity for tax purposes, the trust could be viewed as violating Treas. Reg. section 301.7701–4(c) which generally prohibits multiple classes of equity from being issued. Although a grantor Trust is not permitted to issue multiple classes of equity with disproportionate payments or fast-pay/slow-pay structures, it may issue a senior class and a subordinated class, provided that they each receive normal distributions pro rata. Because a grantor Trust may not issue Securities with different maturity dates, real estate related securitization transactions which are intended to have these features are often structured as REMICs.

2. REMICs

REMICs can be formed as any type of Issuer; *i.e.*, Trust, corporation, partnership, limited liability company or even a segregated pool of assets. A REMIC is permitted to issue both equity and debt Securities but usually is set up as a Trust which issues equity Securities. The REMIC itself does not pay tax, but the residual equity holder instead is taxed on the REMIC's taxable income. REMIC ''regular'' interests are treated as debt instruments for tax purposes. One of the principal advantages to using a REMIC structure is that the transaction can use a fast-pay/slow-pay structure.

3. FASITs

FASITs can also be formed as any type of Issuer and can be a segregated pool of assets. FASITs are a type of statutory entity created by the Small Business Job Protection Act of 1996 (SBA) through amendments to the Code effective on September 1, 1997.[13] FASITs are designed to facilitate the securitization [14] of debt obligations, such as credit card receivables, home equity loans and auto loans, and thus allows certain features such as revolving pools of assets, Issuers containing unsecured receivables and certain hedging types of investments. A FASIT is permitted to issue both equity and debt Securities. A FASIT is not a taxable entity and debt instruments issued by such Issuers, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. The holder of the ownership interest (which may not be a pension plan) is taxed on the FASIT income. FASIT ''regular interests'' are treated as debt instruments.

Although FASITs are permitted to have revolving pools of permitted assets, exemptive relief is only currently available for FASITs that are, in fact, passive in nature which would preclude (in the absence of other exemptive relief) revolving asset pools. Thus, only FASITs with assets which were comprised of secured debt and which did not allow revolving pools of assets or hedging investments not otherwise specifically authorized by the Underwriter Exemptions would be permissible.

4. Owner Trusts

There are many situations where a securitization transaction wishes to use a Trust as the Issuer but cannot qualify as a REMIC or a grantor Trust. These include transactions that do not qualify as REMICs because they either do not involve real estate assets (*e.g.*, motor vehicle transactions) or are real estate transactions where the REMIC rules are not satisfied (*e.g.*, the LTV ratios exceed the REMIC limits or the Pre-Funding Period exceeds three months). If the parties wish to use the type of tranching which uses a fast-pay/slow-pay structure, they also cannot qualify as a grantor Trust. In such cases, the Issuer will be set up as an owner Trust which is a business Trust. State statutory and common law governs the formation and operation of owner trusts. An owner Trust with more than one equity holder is treated as a partnership with the same tax effects as the other types of Issuers described above. The ''partnership'' is not taxed; its income is taxed to its equity holders and any debt holders are taxed on the interest income they receive. If the owner Trust is wholly owned, it is disregarded for tax purposes.[15] Whoever holds the equity in the owner Trust is the beneficial owner of the trust assets. Therefore, if the equity is sold to more than one entity it could have multiple beneficial owners. The debt holder(s) would have a security interest in the owner Trust assets.

5. Limited Liability Companies, Partnerships and Special Purpose Corporations

Entities which are limited liability companies with more than one equity holder or are partnerships under local law are taxed as partnerships. If the limited liability company is wholly owned, it is also disregarded for tax purposes.[16] A special purpose corporation is taxed on its income, but it receives a deduction for interest paid to debt holders, so the tax result is similar to that of a partnership.

While the permissible types of Issuers under the requested exemption include Issuers which are not required under the tax rules to be passive entities,[17] in order for a transaction to qualify for exemptive relief, each of the applicable requirements of the Underwriter Exemptions as modified must be met. This would mean, for example, that only transactions involving Issuers holding assets which are comprised of secured debt (unless the assets are residential and home equity loans in a Designated Transaction) and which do not allow revolving pools of assets or hedging investments (unless specifically authorized) are permissible under the requested relief. Specifically, the Issuer must be maintained as an essentially passive entity, and, therefore, both the Sponsor's discretion and the Servicer's discretion with respect to assets included in an Issuer must be severely limited both as to those assets transferred on the Closing Date and

[13] Section 1621 of the SBA added sections 860H, 860I, 860J, 860K and 860L to the Internal Revenue Code of 1986, as amended.

[14] Securitization is the process of converting one type of asset into another and generally involves the use of an entity separate from the underlying assets. In the case of securitization of debt instruments, the instruments created in the securitization typically have different maturities and characteristics than the debt instruments that are securitized.

[15] Whether an entity is wholly owned or owned by more than one equity holder is determined under the tax rules.

[16] *Id.*

[17] Grantor trusts and REMICs are required under the tax rules to be passive entities with limited asset substitution rights, but other types of Issuers are not so restricted.

those acquired during any Pre-Funding Period. Pooling and Servicing Agreements provide for the substitution of Issuer receivables by the Sponsor only in the event of breaches of representations and warranties or defects in documentation discovered within a short time after the issuance of Securities (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable. In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to securityholders.

F. The Applicant's Arguments for Exemptive Relief for Different Types of Issuers and Securities

Although, as previously noted, the choice of Issuer does not significantly affect the rights of securityholders or the safety of the investments, ERISA's prohibited transaction rules affect whether plan investors can purchase these different forms of ABS/MBS. The plan asset regulation set forth at 29 CFR § 2510–3.101 (the Plan Asset Regulation) was intended to prevent an employee benefit plan subject to ERISA from retaining an asset manager indirectly through an equity investment by the plan in an investment fund in order to avoid the fiduciary responsibility and prohibited transaction provisions of ERISA. The Department made a determination that debt instruments should not be subject to the Plan Asset Regulations as they were not likely to be vehicles for the indirect provision of investment management services.[18] As a consequence of this regulation, the treatment of debt and the treatment of equity is very different under ERISA. Equity investments in ABS/MBS not only can result in the purchase and sale of the securities triggering prohibited transactions, but if the underlying assets of the Trust are deemed to include plan assets, the operation of the Trust and the servicing of its assets can also trigger prohibited transactions.

In contrast, investments in ABS/MBS which are debt securities avoid any plan asset issues with respect to the operation of the Trust. However, they can still result in one or more prohibited transactions. This is because the acquisition or disposition of the debt security itself may be a sale or exchange of property between a plan and a party in interest and also an extension of credit between such entities. The acquisition or disposition of the debt securities may be covered under PTE 75–1. However, in many ABS/MBS transactions, the conditions of PTE 75–1 may not be met, *i.e.*, where a broker-dealer is not selling the securities but is instead acting as the placement agent for securities which are being offered pursuant to a private placement exempt from registration under the Securities Act of 1933. Similarly, if a plan sold the ABS/MBS to a party in interest in the secondary market, Part V of PTE 75–1 would not apply since it is limited to extensions of credit to a plan in connection with the purchase or sale of securities (*e.g.*, extensions of credits during the three-day settlement period).

When a plan purchases an ABS/MBS which is a debt security, it is effectively viewed as an extension of credit to the Issuer for ERISA purposes. While the Issuer, as a newly formed, special purpose entity, would not be a party in interest with respect to such plan, if the Issuer is deemed to be an affiliate of an existing party in interest, this could create a prohibited extension of credit. Whenever ABS/MBS are issued as debt, some other entity will own the equity of the Issuer, either as a residual equity interest held by the Sponsor or all or part of the equity could be sold to the public. If any equity holder which owns a 50% or more interest in the Issuer is a party in interest with respect to a plan holding the debt security, the Issuer will be deemed a party in interest under 3(14)(G) of ERISA. This problem is compounded by the fact that most publicly-offered securities are held by the Depository Trust Company and Clearing Corporation so that the identity of the public equity holders may not be known either at the initial issuance of the securities or when a security is sold in the secondary market. Accordingly, there is a need for the Underwriter Exemptions to cover the acquisition, disposition and holding of debt securities which is not met by PTE 75–1.

As debt securities generally are not eligible for relief under the Underwriter Exemptions, an ABS/MBS which is a debt security may not be purchased by a plan investor from a party in interest unless another exemption is available. This is an anomalous result since the rights of debt holders in ABS/MBS transactions are senior to those of Certificateholders, and the decision to issue debt or equity ABS/MBS is not dictated by the relative rights of the investor but is made based on tax and accounting considerations which are not relevant to plan investors. In fact, purchasers make the decision to invest in ABS/MBS based on the projected return on the securities and the quality and sufficiency of the underlying obligations in the pool without regard to the characterization as debt or equity. According to the Applicant, either type of security issued in an ABS/MBS transaction is viewed by plan investment managers as a fixed income alternative to corporate bonds. The fact that ABS/MBS pass-through Certificates are equity interests under local law is completely disregarded by plan investors except to the extent that the equity characterization negatively impacts ERISA eligibility of those securities in the absence of an exemption. Thus, the Applicant asserts that allowing debt securities issued in ABS/MBS transactions to be eligible securities under the Underwriter Exemptions is beneficial to such investors in their efforts to diversify plan assets.

In this regard, the Applicant has submitted letters from the Rating Agencies which state that the legal form of the issuer does not affect the ratings given to comparable securities and that the Rating Agencies' analysis takes into account the legal and structural risks of each type of Issuer. Accordingly, the Applicant believes that, if a particular transaction has sufficient substantive safeguards to protect the interests of plan investors, the choice of Issuer or whether the particular security is debt or equity should not be determinative of whether they are eligible investments for ERISA plans.

Although the Applicant is requesting that the definition of securitization vehicle be expanded to include special purpose corporations, partnerships and limited liability companies, none of which is a Trust, the Applicant believes that any and all requirements under the Underwriter Exemptions which currently are applicable to the ''Trustee'' will continue to be applicable and are appropriate no matter what type of Issuer is used. This is because, even in transactions where the Issuer is not a Trust, ABS/MBS which are debt securities will be issued pursuant to a Trust indenture, and there will be an Indenture Trustee representing the interests of debt holders which will be independent of the Sponsor and other members of the Restricted Group. The Indenture Trustee is the trustee appointed pursuant to an indenture which provides for the pledge of collateral to secure the debt securities issued by the issuer pursuant to the

[18] See the preamble to the final Plan Asset Regulation, 51 FR 41280 (Nov. 13, 1986).

indenture and sets forth the rights of the debt holders. Accordingly, the fact that an Issuer which is not a Trust does not have a Trustee will not affect the existing requirement under the Underwriter Exemptions relating to an independent Trustee that is not an affiliate of any other member of the Restricted Group (see section III.M. of the Proposed Amendment). Thus, there will always be an Independent Trustee in transactions entered into pursuant to the requested exemption. The Applicant notes that where the Issuer is not a Trust, equity will not be sold to plans.

G. Classes of Securities

The Applicant notes that some of the Securities will be multi-class Securities. The Applicant requests exemptive relief for two types of multi-class Securities: ''strip'' Securities and ''fast-pay/slow-pay'' Securities. Strip Securities are a type of Security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of Securities are established, each representing rights to disproportionate payments of principal and interest.[19]

''Fast-pay/slow-pay'' Securities involve the issuance of classes of Securities having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying Issuer's assets are distributed first to the class of Securities having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of Securities has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of Securities. Distributions on Securities having later stated maturities will proceed in like manner until all the securityholders have been paid in full. The only difference between this multi-class arrangement and a single-class arrangement is the order in which distributions are made to securityholders. In each case, securityholders will have a beneficial ownership interest in the underlying Issuer's assets or a security interest in the collateral securing such assets. Except as permitted in a Designated Transaction, the rights of a plan purchasing Securities will not be subordinated to the rights of another securityholder in the event of default on any of the underlying obligations. In particular, unless the Securities are issued in a Designated Transaction, if the amount available for distribution to securityholders is less than the amount required to be so distributed, all senior securityholders will share in the amount distributed on a pro rata basis.[20]

III. Requested Modifications for Interest Rate Swap Agreements

A. Interest Rate Swaps

PTE 98–13 and PTE 98–14 provide exemptive relief for securitizations featuring revolving pools of secured and unsecured credit card receivables held in Trusts sponsored by MBNA and Citibank, respectively, which Trusts may also hold simple interest rate swaps as an asset. The granting of these exemptions involved extensive discussions between the Department and representatives of MBNA and Citibank as to the structure and operation of credit card securitizations, including the use of interest rate swaps, and the approach used by the Rating Agencies in rating these types of securities where the rating given by the Rating Agency is dependent upon the existence of an interest rate swap agreement.

Interest rate swaps are used in non-credit card securitization transactions in the same manner that they are used in credit card transactions; *i.e.,* where the index used to calculate interest payments on the receivables is different than the index used to calculate interest payments on the securities issued by the Trust. For example, many securities bear interest based upon the London Interbank Offered Rate for dollar deposits of a specified maturity (LIBOR). However, the assets being securitized often bear interest at fixed rates or rates based upon U.S. Treasury securities, the prime rate or other indices that may not move in tandem with LIBOR. The swap helps assure that the Trust will have sufficient funds to make full payments of interest on the securities.

The Applicant states that a class of Securities in a non-credit card securitization may have the benefit of an interest rate swap agreement entered into between the Issuer and a bank or other financial institution acting as a swap counterparty. Pursuant to the swap agreement, the swap counterparty would pay a certain rate of interest to the Issuer in return for a payment of a rate of interest by the Issuer, from collections allocable to the relevant class of Securities, to the swap counterparty. The Applicant represents that the credit rating provided to a particular class of Securities by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of the swap agreements will not affect the credit rating of the class of Securities to which the swap relates (*i.e.,* a Non-Ratings Dependent Swap).

The Applicant requests that the same exemptive relief which has been provided to MBNA and Citibank with respect to interest rate swaps be extended to all securitization transactions, otherwise meeting the conditions of the requested amendment. Thus, the Applicant is requesting relief for both ratings dependent and non-ratings dependent swaps as described in PTE 98–13 and PTE 98–14 (the Credit Card Exemptions), subject to the same terms and conditions regarding interest rate swaps contained in those exemptions. Consistent with the conditions of the Credit Card Exemptions, the Applicant has included the swap counterparty as a member of the Restricted Group. However, two revisions regarding interest rate swaps are necessary in order to make the swap provisions compatible with fixed asset pool transactions.

First, the Credit Card Exemptions require that a ratings dependent swap include as an early payout event the withdrawal or reduction by a Rating Agency of the swap counterparty's credit rating where the Servicer has failed to meet its obligations under the Pooling and Servicing Agreement relating to obtaining a replacement swap agreement or causing the swap counterparty to post collateral. The early payout causes principal to be paid out for the benefit of securityholders instead of being used to purchase additional credit card receivables. In contrast, all principal and interest payments received by the Issuer in non-revolving pool transactions are used to make payments to either the securityholders, the swap counterparty or to pay servicing fees or other expenses; none are used to purchase additional obligations for deposit into the Issuer. Accordingly, the concept of an early payout event is not relevant for

[19] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest Certificates to which this Exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in Certificates pursuant to this Proposed Exemption.

[20] If an Issuer issues subordinated Securities, holders of such subordinated Securities may not share in the amount distributed on a pro rata basis. The Department notes that the Proposed Exemption does not provide relief for plan investment in such subordinated Securities, unless the Securities are issued in a Designated Transaction.

the non-revolving pools of assets which are covered under the Underwriter Exemptions. Instead, the Applicant is proposing that if the swap counterparty's rating is downgraded, and the Servicer fails to obtain an acceptable replacement swap or to cause the swap counterparty to post collateral or make other arrangements satisfactory to the Rating Agency, the plan certificateholders would be notified in the immediately following Trustee's periodic report and would have sixty days thereafter to dispose of the Certificates before the exemptive relief under section I.C. of the Underwriter Exemptions with respect to the servicing, management and operation of the Issuer would prospectively cease to be available. The party responsible for such notification may be the Sponsor, the Trustee, a third-party administrator or any other party designated in the pooling and servicing agreement and/or servicing agreement to give periodic reports to the securityholders.

Second, the Credit Card Exemptions use the term ''Excess Finance Charge Collections'' which is not relevant to non-credit card ABS/MBS transactions. Accordingly, the Applicant has substituted the term ''Excess Spread'' which is the functionally equivalent term and best suited to the types of transactions covered by the Underwriter Exemptions. The term ''excess spread'' applies to both ratings dependent and non-ratings dependent swaps and is defined as the amount, as of any given day funds are distributed from the issuer, by which the interest allocated to the securities exceeds the amount necessary to pay interest to the securityholders, servicing fees and issuer expenses. This term is defined in section III.II. of the Proposed Amendment.

The Applicant believes that allowing the use of interest rate swaps is beneficial to plan investors as it helps to protect them from the risk of interest rate fluctuations. The conditions the Department has imposed in PTE 98–13 and PTE 98–14, which will be met with respect to any interest rate swap used in transactions covered by the requested exemption, will further protect the interest of plans. Accordingly, the Applicant represents that whether or not the credit rating of a particular class of Securities is dependent upon the terms and conditions of one or more interest rate swap agreements entered into by the Issuer (*i.e.*, a ''Ratings Dependent Swap'' or a ''Non-Ratings Dependent Swap''), each particular swap transaction will be an ''Eligible Swap'' as defined in the Proposed Amendment.

B. Conditions

In this regard, an Eligible Swap will be a swap transaction:

1. Which is denominated in U.S. Dollars;

2. Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the applicable class of Securities, a fixed rate of interest or a floating rate of interest based on a publicly available index (*e.g.* LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and being obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

3. Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B. (1), (2) and (3) of the Proposed Amendment;

4. Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in item (b) above and the difference between the products thereof, calculated on a one-to-one ratio and not on a multiplier of such difference);

5. Which has a final termination date that is the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

6. Which does not incorporate any provision which could cause a unilateral alteration in any provision described in items (1) through (5) above without the consent of the Trustee.

In addition, any Eligible Swap entered into by the Issuer will be with an ''Eligible Swap Counterparty,'' which will be a bank or other financial institution with a rating at the date of issuance of the Securities by the Issuer which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

Under any termination of a swap, the Issuer will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor.

With respect to a Rating Dependent Swap, the Servicer shall either cause the Eligible Counterparty to establish certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of such swap counterparty below a level specified by the Rating Agency (which will be no lower than the level which would make such counterparty an Eligible Counterparty), or the Servicer shall obtain a replacement swap with an Eligible Swap Counterparty acceptable to the Rating Agencies with substantially similar terms. If the Servicer fails to do so, the plan securityholders will be notified in the immediately following Trustee's periodic report to securityholders and will have a 60-day period thereafter to dispose of the Securities, at the end of which period the exemptive relief provided under section I.C. of the Underwriter Exemption (relating to the servicing, management and operation of the Issuer) would prospectively cease to be available. With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into the swap transactions with the Eligible Counterparty will not affect the rating of the Securities, even if such counterparty is no longer an Eligible Counterparty and the swap is terminated.[21]

[21] In the course of considering applications for exemptive relief under PTE 98–13 and PTE 98–14, the Department received representations from the Rating Agencies that certain classes of Securities issued by an Issuer holding receivables will have Securities ratings that are not dependent on the existence of a swap transaction entered into by the Issuer. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the Securities. These Rating Agency representations stated that in such instances, there will be more credit enhancements (*e.g.*, ''excess spread,'' letters of credit, cash collateral accounts) for the class to protect the securityholders than there would be in a comparable class where the Issuer enters into a so-called Ratings Dependent

Any class of Securities to which one or more swap agreements entered into by the Issuer applies will be acquired or held only by Qualified Plan Investors. Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction relating to the class of Securities to be purchased and the effect such swap would have upon the credit rating of the Securities to which the swap relates.

For purposes of the Underwriter Exemptions, such a qualified independent fiduciary will be either:

(a) A ''qualified professional asset manager'' (*i.e.*, QPAM), as defined under Part V(a) of PTE 84–14;

(b) An ''in-house asset manager'' (*i.e.*, INHAM), as defined under Part IV(a) of PTE 96–23; or

(c) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

C. Yield Supplement Agreements

A yield supplement agreement is a contract under which the issuer makes a single cash payment to the contract provider in return for the contract provider promising to make certain payments to the issuer in the event of market fluctuations in interest rates. For example, if a class of securities promises an interest rate which is the greater of 7% or LIBOR and LIBOR increases significantly, the yield supplement agreement might obligate the contract provider pay to the issuer the excess of LIBOR over 7%. In some circumstances, the contract provider's obligation may be capped at a certain aggregate maximum dollar liability under the contract. Alternatively, a cap could be placed on the supplemental interest that would be paid to a securityholder from monies paid under the yield supplement agreement. For example, the yield supplement agreement would provide the difference between LIBOR and 7% but only to the extent that the securityholder would be paid a total of 9%. The interest to be paid by the contract provider to the issuer under the yield supplement agreement is usually calculated based on a notional principal balance which may mirror the principal balances of those classes of securities to which the yield supplement agreement relates or some other fixed amount. This notional amount will not exceed either: (i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B. (1), (2) and (3) of the Proposed Amendment. In all cases, the issuer makes no payments other than the fixed purchase price for the yield supplement agreement and may, therefore, be distinguished from an interest rate swap agreement, notwithstanding that both types of agreements may use an ISDA form of contract. The 1997 Amendment includes within the definition of ''Trust'' cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement provided that such arrangements do not involve swap agreements or other notional principal contracts. However, the Applicant notes that the Credit Card Exemptions (PTE 98–13 and PTE 98–14) permit interest rate swaps which clearly feature notional principal amounts. In addition to requesting exemptive relief for ''plain vanilla'' interest rate swaps, the Applicant also requests relief for yield supplement arrangements that do not involve interest rate payments by the Trustee, even if they have a notional principal amount.

Accordingly, the Applicant is requesting that yield supplement agreements with notional principal amounts be permitted retroactively to April 7, 1998, which is the date that PTE 98–13 and PTE 98–14 were issued as final exemptions. The Applicant's request for relief covers only the type of interest rate cap agreements which are currently covered under the Underwriter Exemptions. The only change being requested is to clarify that agreements which have a notional principal balance and/or are set forth on International Swaps and Derivatives Association, Inc. (''ISDA'') forms will be permitted.

The Applicant notes that no ''plan assets'' within the meaning of the Plan Asset Regulation (under 29 CFR 2510–3–101) are utilized in the purchase of the cap agreement, as the Sponsor or some other third party funds such arrangement with an up-front single-sum payment. The Issuer's only obligation is to receive payments from the counterparty if interest rate fluctuations require them under the terms of the contract and to pass them through to securityholders. The Rating Agencies examine the creditworthiness of the counterparty in a ratings dependent yield supplement agreement. The Applicant suggests that the relief for yield supplement agreements should be subject to the same conditions as for interest rate swaps found in the Credit Card Exemptions (PTE 98–13 and PTE 98–14), to the extent relevant. These conditions would include that the yield supplement agreement must be denominated in U.S. dollars, the agreement must not be leveraged, any changes in these conditions must be subject to the consent of the Trustee, and the counterparty must be subject to the same eligibility requirements as an interest rate swap counterparty.

IV. Other Features of Securitizations

A. Formation of the Issuer

Each Issuer is established under a Pooling and Servicing Agreement or equivalent agreement between a Sponsor, a Servicer and a Trustee. Prior to the Closing Date under the Pooling and Servicing Agreement, the Sponsor and/or Servicer selects receivables from the classes of assets described in section III.B.(1)(a)–(f) of the Underwriter Exemptions to be included in the Issuer, establishes the Issuer and designates an independent entity as Trustee. Typically, on or prior to the Closing Date, the Sponsor acquires legal title to all assets selected for the Issuer. In some cases, legal title to some or all of such assets continue to be held by the originator until the Closing Date. On the Closing Date, the Sponsor and/or the originator conveys to the Issuer legal title to the assets, and the Issuer issues Securities representing fractional undivided interests in the Issuer's assets and/or debt obligations of the Issuer.

B. Pre-Funding Accounts

While in many cases all of the receivables to be held in the Issuer are transferred to the Issuer on or prior to the Closing Date,[22] it is also common for other transactions to be structured using a Pre-Funding Account and/or a Capitalized Interest Account as described below. If pre-funding is used, some portion of the receivables will be transferred after the Closing Date during an interim Pre-Funding Period. The Pre-Funding Period for any Issuer will be

Swap. Non-Ratings Dependent Swaps are generally used as a convenience to enable the Issuer to pay certain fixed interest rates on a class of Securities. However, the receipt of such fixed rates by the Issuer from the counterparty is not a necessity for the Issuer to be able to make its fixed rate payments to the securityholders.

[22] The Department is of the view that the term ''Issuer'' under the Underwriter Exemptions would include an Issuer: (a) The assets of which, although all specifically identified by the Sponsor or originator as of the Closing Date, are not all transferred to the Issuer on the Closing Date for administrative or other reasons but will be transferred to the Issuer shortly after the Closing Date, or (b) with respect to which Securities are not purchased by plans until after the end of the Pre-Funding Period at which time all receivables are contained in the Issuer.

defined as the period beginning on the Closing Date and ending on the earliest to occur of: (i) The date on which the amount on deposit in the Pre-Funding Account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related Pooling and Servicing Agreement [23] or (iii) the date which is the later of three months or ninety days after the Closing Date. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the Closing Date will be transferred to the Issuer by the Sponsor or originator on the Closing Date. During the Pre-Funding Period, such cash and temporary investments, if any, made therewith will be held in a Pre-Funding Account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the Issuer on the Closing Date. Certain specificity and monitoring requirements described below will be met which will be disclosed in the Pooling and Servicing Agreement and/or the prospectus [24] or private placement memorandum.

For a transaction involving an Issuer using pre-funding, on the Closing Date, a portion of the offering proceeds will be allocated to the Pre-Funding Account generally in an amount equal to the excess of: (i) The principal amount of Securities being issued over (ii) the principal balance of the receivables being transferred to the Issuer on such Closing Date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the Issuer may be larger than the total principal balance of the Securities being issued. In these cases, the cash deposited in the Pre-Funding Account will equal the excess of the principal balance of the total receivables intended to be transferred to the Issuer over the principal balance of the receivables being transferred on the Closing Date.

On the Closing Date, the Sponsor transfers the receivables to the Issuer in exchange for the Securities. The Securities are then sold to an Underwriter for cash or to the securityholders directly if the Securities are sold through a placement agent. The cash received by the Sponsor from the securityholders (or the Underwriter) from the sale of the Securities issued by the Issuer in excess of the purchase price for the receivables and certain other Issuer expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the Pre-Funding Account. Such funds are either held in the Issuer and accounted for separately, or are held in a sub-account or sub-trust. In either event, these funds are not part of assets of the Sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the Securities and the transaction fees (*i.e.*, servicing fees, Trustee fees and fees to credit support providers). In such cases, the receivables are sold to the Issuer at a discount, based on an objective, written, mechanical formula which is set forth in the Pooling and Servicing Agreement and agreed upon in advance between the Sponsor, the Rating Agency and any credit support provider or other Insurer. The proceeds payable to the Sponsor from the sale of the receivables transferred to the Issuer may also be reduced to the extent they are used to pay transaction costs. In addition, in certain cases, the Sponsor may be required by the Rating Agencies or credit support providers to set up Issuer reserve accounts to protect the securityholders against credit losses.

The exemptive relief provided under the 1997 Amendment for pre-funding is limited so that the percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered (the Pre-Funding Limit), does not exceed 25% effective for transactions occurring on or after May 23, 1997 and did not exceed 40% effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997. The Pre-Funding Limit (which may be expressed as a ratio or as a stated percentage or as a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the Pre-Funding Account are used solely to purchase receivables and to support the interest rate payable on the Securities (as explained below). Amounts used to support the interest rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the Issuer, any funds remain in the Pre-Funding Account, such funds will be paid to the securityholders as principal prepayments. Upon termination of the Issuer, if no receivables remain in the Issuer and all amounts payable to the securityholders have been distributed, any amounts remaining in the Issuer would be returned to the Sponsor.

A dramatic change in interest rates on the receivables held in an Issuer using a Pre-Funding Account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the Closing Date, no action would be required as the fluctuations in market interest rates would not affect the receivables transferred to the Issuer after the Closing Date. In contrast, if interest rates fall after the Closing Date, receivables originated after the Closing Date will tend to be originated at lower rates, with the possible result that the receivables will not support the interest rate payable on the Securities. In such situations, the Sponsor could sell the receivables into the Issuer at a discount and more receivables will be used to fund the Issuer in order to support the interest rate. In a situation where interest rates drop dramatically and the Sponsor is unable to provide sufficient loans at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the Pooling and Servicing Agreement, the securityholders would receive a repayment of principal from the unused cash held in the Pre-Funding Account. In transactions where the interest rates payable on the Securities are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivables affect the interest rate payable on fixed rate Securities.

The cash deposited into the Issuer and allocated to the Pre-Funding Account is invested in certain permitted investments (see below), which may be commingled with other accounts of the Issuer. The allocation of investment earnings to each Issuer account is made periodically as earned in proportion to each account's allocable share of the investment returns. As Pre-Funding Account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the amounts of interest payable to the securityholders with respect to a periodic distribution date, the Trustee is necessarily required to make periodic, separate allocations of

[23] The minimum dollar amount is generally the dollar amount below which it becomes too uneconomical to administer the Pre-Funding Account. An event of default under the Pooling and Servicing Agreement generally occurs when: (i) A breach of a covenant or a breach of a representation and warranty concerning the Sponsor, the Servicer or certain other parties occurs which is not cured, (ii) there occurs a failure to make required payments to securityholders or (iii) the Servicer becomes insolvent.

[24] References to the term ''prospectus'' herein shall include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

the Issuer's earnings to each Issuer account, thus ensuring that all allocable commingled investment earnings are properly credited to the Pre-Funding Account on a timely basis.

C. The Capitalized Interest Account

In certain transactions where a Pre-Funding Account is used, the Sponsor and/or originator may also transfer to the Issuer additional cash on the Closing Date, which is deposited in a Capitalized Interest Account and used during the Pre-Funding Period to compensate the securityholders for any shortfall between the investment earnings on the Pre-Funding Account and the interest rate payable on the Securities.

The Capitalized Interest Account is needed in certain transactions since the Securities are supported by the receivables and the earnings on the Pre-Funding Account, and it is unlikely that the investment earnings on the Pre-Funding Account will equal the interest rates payable on the Securities (although such investment earnings will be available to pay interest on the Securities). The Capitalized Interest Account funds are paid out periodically to the securityholders as needed on distribution dates to support the interest rate. In addition, a portion of such funds may be returned to the Sponsor from time to time as the receivables are transferred into the Issuer and the need for the Capitalized Interest Account diminishes. Any amounts held in the Capitalized Interest Account generally will be returned to the Sponsor and/or originator either at the end of the Pre-Funding Period or periodically as receivables are transferred and the proportionate amount of funds in the Capitalized Interest Account can be reduced. Generally, the Capitalized Interest Account terminates no later than the end of the Pre-Funding Period. However, there may be some cases where the Capitalized Interest Account remains open until the first date distributions are made to securityholders following the end of the Pre-Funding Period.

In other transactions, a Capitalized Interest Account is not necessary because the interest paid on the receivables exceeds the interest payable on the Securities at the applicable interest rate and the fees payable by the Issuer. Such excess is sufficient to make up any shortfall resulting from the Pre-Funding Account earning less than the interest rate payable on the Securities. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of Securities.

D. Pre-Funding Account and Capitalized Interest Account Payments and Investments

Pending the acquisition of additional receivables during the Pre-Funding Period, it is expected that amounts in the Pre-Funding Account and the Capitalized Interest Account will be invested in certain permitted investments or will be held uninvested. Pursuant to the Pooling and Servicing Agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the Pre-Funding Account and Capitalized Interest Account are investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the Obligor on the investment has been rated) in one of the three highest generic rating categories by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D&P), Fitch ICBA, Inc. (Fitch) or any successors thereto (each a Rating Agency or collectively, the Rating Agencies) as set forth in the Pooling and Servicing Agreement and as required by the Rating Agencies. The credit grade quality of the permitted investments is generally no lower than that of the Securities. The types of permitted investments will be described in the Pooling and Servicing Agreement.

The ordering of interest payments to be made from the Pre-Funding Account and Capitalized Interest Accounts is pre-established and set forth in the Pooling and Servicing Agreement. The only principal payments which will be made from the Pre-Funding Account are those made to acquire the receivables during the Pre-Funding Period and those distributed to the securityholders in the event that the entire amount in the Pre-Funding Account is not used to acquire receivables. The only principal payments which will be made from the Capitalized Interest Account are those made to securityholders if necessary to support the Security interest rate or those made to the Sponsor either periodically as they are no longer needed or at the end of the Pre-Funding Period when the Capitalized Interest Account is no longer necessary.

E. The Characteristics of the Receivables Transferred During the Pre-Funding Period

In order to ensure that there is sufficient specificity as to the representations and warranties of the Sponsor regarding the characteristics of the receivables to be transferred after the Closing Date during the Pre-Funding Period:

1. All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency; [25]

2. The transfer of the receivables acquired during the Pre-Funding Period will not result in the Securities receiving a lower credit rating from the Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

3. The weighted average annual percentage interest rate (the average interest rate) for all of the receivables in the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points (''bps'') lower than the average interest rate for the receivables which were transferred to the Issuer on the Closing Date;

4. The Trustee of the Trust (or any agent with which the Trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in Issuer activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the receivables in the Issuer or the holder of a security interest in the receivables, will enforce all the

[25] In some transactions, the Insurer and/or credit support provider may have the right to veto the inclusion of receivables, even if such receivables otherwise satisfy the underwriting criteria. This right usually takes the form of a requirement that the Sponsor obtain the consent of these parties before the receivables can be included in the Issuer. The Insurer and/or credit support provider may, therefore, reject certain receivables or require that the Sponsor establish certain Issuer reserve accounts as a condition of including these receivables. Virtually all Issuers which have Insurers or other credit support providers are structured to give such veto rights to these parties. The percentage of Issuers that have Insurers and/or credit support providers, and accordingly feature such veto rights, varies.

rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to receivables that were acquired as of the Closing Date, the Applicant represents that for transactions occurring on or after May 23, 1997,[26] the characteristics of the subsequently acquired receivables will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agencies, the Underwriter and the Trustee) stating whether or not the characteristics of the additional receivables acquired after the Closing Date conform to the characteristics of the receivables described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the receivables which were transferred as of the Closing Date.

Each prospectus, private placement memorandum and/or Pooling and Servicing Agreement will set forth the terms and conditions for eligibility of the receivables to be held by the Issuer as of the related Closing Date, as well as those to be acquired during the Pre-Funding Period, which terms and conditions will have been agreed to by the Rating Agencies which are rating the applicable Securities as of the Closing Date. Also included among these conditions is the requirement that the Trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the Pre-Funding Account and will describe the Pre-Funding Period for the Issuer.

F. Parties to Transactions

The originator of a receivable is the entity that initially lends money to a borrower (Obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a Sponsor.

[26] May 23, 1997, was the date the proposed 1997 Amendment to the Underwriter Exemption was published in the **Federal Register**.

Originators of receivables held by the Issuer will be entities that originate receivables in the ordinary course of their business including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each Issuer may hold assets of one or more originators. The originator of the receivables may also function as the Sponsor or Servicer.

The Sponsor will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the Servicer, (ii) a special-purpose or other corporation affiliated with the Servicer, or (iii) the Servicer itself. Where the Sponsor is not also the Servicer, the Sponsor's role will generally be limited to acquiring the receivables to be held by the Issuer, establishing the Issuer, designating the Trustee, and assigning the receivables to the Issuer.

The Trustee of a Trust (or the Issuer, if it is not a Trust) is the legal owner of the obligations held by the Issuer and would hold a security interest in the collateral securing such obligations. The Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of securityholders, including those rights arising in the event of default by the servicer.

The Trustee will be an independent entity, and therefore will be unrelated to the Underwriter, the Sponsor or the Servicer or any other member of the Restricted Group. The Applicant represents that the Trustee will be a substantial financial institution or trust company experienced in trust activities. The Trustee receives a fee for its services, which will be paid by the Servicer, Sponsor or out of the Issuer's assets. The method of compensating the Trustee will be specified in the Pooling and Servicing Agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the Securities.

The rights and obligations of the Indenture Trustee are no different than those of the Trustee of an Issuer which is a Trust. The Indenture Trustee is obligated to oversee and administer the activities of all of the ongoing parties to the transaction and possesses the authority to replace those entities, sue them, liquidate the collateral and perform all necessary acts to protect the interests of the debt holders. If debt is issued in a transaction, there may not be a pooling and servicing agreement. Instead, there is a sales agreement and servicing agreement (or these two agreements are sometimes combined into a single agreement). The agreement(s) set(s) forth, among other things, the duties and responsibilities of the parties to the transaction relating to the administration of the Issuer. The Indenture Trustee is often a party to these agreements. At a minimum, the Indenture Trustee acknowledges its rights and responsibilities in these agreements or they are contractually set forth in the indenture agreement pursuant to which the Indenture Trustee is appointed.

The Servicer of an Issuer administers the receivables on behalf of the securityholders. The Servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and transferred to an Issuer, it is common for the receivables to be ''subserviced'' by their respective originators and for a single entity to ''master service'' the pool of receivables on behalf of the owners of the related series of Securities. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local Subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central Master Servicer who collects payments from the local Subservicers and pays them to securityholders.

A Servicer's default is treated in the same manner whether or not the Issuer is a Trust. The original Servicer is replaced. The entity replacing the Servicer varies from transaction to transaction. In certain cases, it may be the Trustee (or Indenture Trustee if the Issuer is not a Trust) or may be a third party satisfactory to the Rating Agencies. In addition, there are transactions where the Trustee or Indenture Trustee will assume the Servicer's responsibilities on a temporary basis until the permanent replacement takes over. In all cases, the replacement entity must be capable of satisfying all of the duties and responsibilities of the original Servicer and must be an entity that is satisfactory to the Rating Agencies.

As noted above, the Underwriter Exemptions currently require that the Trustee not be an Affiliate of any

member of the Restricted Group. Thus, if a Servicer of receivables held by an Issuer which has issued Securities in reliance upon the Underwriter Exemptions (or an Affiliate thereof) merges with or is acquired by (or acquires) the Trustee of such Trust (or an Affiliate thereof), exemptive relief would cease to be available under the Underwriter Exemptions. The Applicant states that, as the result of legal constraints applicable to such merger and acquisition transactions (*e.g.,* confidentiality requirements), the entities involved in the transaction are unable before the transaction is consummated to cross check all relationships between the often numerous Affiliates of the entities involved in the transaction in order to determine whether or not any of the new affiliations resulting from the transaction will violate this non-affiliation condition of the Underwriter Exemptions. In response to this issue, the Department proposes to revise subsection II.A.(4) of the Underwriter Exemptions to provide that this condition will not be considered to be violated for transactions occurring on or after January 1, 1998, merely by reason of a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition between or among the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that: (i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the later of August 23, 2000, or the date such Servicer became an Affiliate of the Trustee; and (ii) such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee. The Department proposes to make this revision retroactive to January 1, 1998 in response to the Applicant's representations that recent merger and acquisition transactions occurring within the financial services industry have resulted in an unknown but potentially significant number of inadvertent violations of this condition.

The Underwriter will be a registered broker-dealer that acts as Underwriter or placement agent with respect to the sale of Securities. Public offerings of Securities are generally made on a firm commitment or agency basis. Private placement of Securities may be made on a firm commitment or agency basis. It is anticipated that the lead or co-managing Underwriters will make a market in Securities offered to the public.

In some cases, the originator and Servicer of receivables to be held by an Issuer and the Sponsor of the Issuer (though they themselves may be related) will be unrelated to the Underwriter. In other cases however, Affiliates of the Underwriter may originate or service receivables held by an Issuer or may sponsor an Issuer.

G. Security Price, Interest Rate and Fees

In some cases, the Sponsor will obtain the receivables from various originators or other secondary market participants pursuant to existing contracts with such originators or other secondary market participants under which the Sponsor continually buys receivables. In other cases, the Sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of Securities. In other cases, the Sponsor will originate the receivables itself.

As compensation for the receivables transferred to the Issuer, the Sponsor receives Securities representing the entire beneficial interest in the Issuer and/or debt Securities representing the Issuer's obligations to debt securityholders, or the cash proceeds of the sale of such Securities. If the Sponsor receives Securities from the Issuer, the Sponsor sells some or all of these Securities for cash to investors or securities underwriters.

The price of the Securities, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the interest rate payable on the Securities in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of the underlying receivables, and expectations as to the likelihood of timely payment.

The interest rate payable on the Securities is equal to the interest rate on receivables included in the Issuer minus a specified servicing fee.[27] This rate is generally determined by the same market forces that determine the price of a Security. The price of a Security and its interest, or coupon, rate, together determine the yield to investors. If an investor purchases a Security at less than par, that discount augments the stated interest rate; conversely, a Security purchased at a premium yields less than the stated coupon.

As compensation for performing its servicing duties, the Servicer (who may also be the Sponsor or an Affiliate thereof, and receive fees for acting as Sponsor) will retain the difference between payments received on the receivables held by the Issuer and payments (payable at the interest rate) to securityholders, except that in some cases a portion of the payments on the receivables may be paid to a third party, such as a fee paid to a provider of credit support. The Servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the Servicer and the time they are due to the Issuer (which time is set forth in the Pooling and Servicing Agreement). The Servicer typically will be required to pay the administrative expenses of servicing the Issuer, including in some cases the Trustee's fee, out of its servicing compensation.

The Servicer is also compensated to the extent it may provide credit enhancement to the Issuer or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the income received on the receivables in the Issuer in excess of the interest rate or paid in a lump sum at the time the Issuer is established.

The Servicer may be entitled to retain certain administrative fees paid by a third party, usually the Obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the Servicer will be set forth or referred to in the Pooling and Servicing Agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the Securities.

Payments on receivables held by the Issuer may be made by Obligors to the Servicer at various times during the period preceding any date on which interest payments to the Issuer are due. In some cases, the Pooling and Servicing Agreement may permit the Servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the Servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the

[27] The interest rate payable on Securities representing interests in Issuers holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

payment date on the Securities. Commingled payments may not be protected from the creditors of the Servicer in the event of the Servicer's bankruptcy or receivership. In those instances when payments from receivables are held in non-interest bearing accounts or are commingled with the Servicer's own funds, the Servicer is required to deposit these payments by a date specified in the Pooling and Servicing Agreement into an account from which the Issuer makes payments to securityholders.

The Underwriter will receive a fee in connection with the underwriting or private placement of Securities. In a firm commitment underwriting, this fee would normally consist of the difference between what the Underwriter receives for the Securities that it distributes and what it pays the Sponsor for those Securities. In a private placement, the fee normally takes the form of an agency commission paid by the Sponsor. In a best efforts underwriting in which the Underwriter would sell Securities in a public offering on an agency basis, the Underwriter would receive an agency commission rather than a fee based on the difference between the price at which the Securities are sold to the public and what it pays the Sponsor. In some private placements, the Underwriter may buy Securities as principal, in which case its compensation would be the difference between what the Underwriter receives for the Securities and what it pays the Sponsor for these Securities.

H. Purchase of Receivables by the Servicer

The Applicant represents that as the principal amount of the receivables held by an Issuer is reduced by payments, the cost of administering the Issuer generally increases, making the servicing of the receivables prohibitively expensive at some point. Consequently, the Pooling and Servicing Agreement generally provides that the Servicer may purchase the receivables remaining in the Issuer when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the Pooling and Servicing Agreement and will be at least equal to either: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the Servicer, or (2) the greater of the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of an Issuer which is not a REMIC.

V. Requested Modifications for Motor Vehicles, Residential/Home Equity, Manufactured Housing and Commercial Mortgage-Backed Securities Transactions

A. The Applicant's Request

The Applicant requests an amendment to the 1997 Amendment to provide relief for the offering of investment-grade mortgage-backed securities (MBS) and asset-backed securities (ABS) which are either senior or subordinated, and/or in certain cases, permit the Issuer to hold receivables with loan-to-value property ratios (LTV ratios) in excess of 100%. Specifically, this request relates to Securities issued by Issuers for a limited number of asset categories: (1) Automobile and other motor vehicle ABS which are senior or subordinated securities rated ''AAA,'' ''AA,'' ''A'' or ''BBB''; (2) residential and home equity ABS/MBS with senior or subordinated securities rated either ''AAA,'' ''AA,'' ''A'' or ''BBB,'' which are issued by Issuers whose assets may include mortgage loans with LTV ratios in excess of 100%; (3) manufactured housing ABS/MBS with senior or subordinated securities rated either ''AAA,'' ''AA,'' ''A'' or ''BBB'' and (4) commercial mortgage-backed securities (CMBS) which are senior or subordinated securities rated ''AAA,'' ''AA,'' ''A'' or ''BBB.''

The Applicant requests that the Department include high LTV loans as acceptable assets of the Issuer only in residential and/or home equity transactions, as long as such loans are secured by collateral whose fair market value on the Closing Date of the securitization transaction is at least equal to 80% of the sum of the outstanding principal balance due under the loan which is held as an asset of the Issuer and that of other loans if any, of higher priority (whether or not held by the Issuer) which are secured by the same collateral. This modification would also address the situation where a residential or home equity pool of assets contains a de minimis number of undercollateralized loans. According to TBMA, a pool could have, for example, 400 loans, 399 of which are fully secured and one of which is 99% secured, but the transaction would not qualify for the Underwriter Exemptions. The situation cannot always be cured by removing even a small number of loans from the pool because replacement loans may not be available by closing, and pre-funding may not be feasible. The Applicant has suggested as additional safeguards, that: (i) the rights and interests evidenced by the Securities issued in such Designated Transactions involving residential and/or home equity transactions with high LTV loans are not subordinated to the rights and interests evidenced by Securities of the same Issuer, and (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories.

The Applicant believes that it is appropriate for the Department to provide relief for Designated Transactions for three principal reasons.

First, such ABS/MBS have proven to be extremely safe investments with superior credit performance and investment return. Defaults on investment-grade ABS/MBS have occurred in only isolated instances, despite significant down-market cycles experienced during the financial history of such securities. In addition, comparably rated corporate bonds have historically experienced more downgrades and a much greater number of defaults. Even during extreme credit market conditions, such as those of the late summer and early fall of 1998 which put severe cash flow stress on securitization Sponsors, ABS/MBS securitization structures maintained their integrity and continued to perform in accordance with their terms.

Second, allowing a broader range of ABS/MBS to be purchased by plan investors as an alternative to corporate bonds is beneficial to plan participants and their beneficiaries because it allows greater diversification of investments by plans without sacrificing the safety and credit quality of those investments. It also gives plan investors the flexibility of being able to structure a portfolio of fixed income securities with varying maturities and cash flow characteristics that can be tailored to the unique requirements of each plan.

Third, most ABS/MBS, unlike corporate bonds whose performance is dependent on the financial condition of one Obligor, constitute interests in a discrete pool of financial assets which can be evaluated by plan fiduciaries who have available to them a large body of historical data as to the performance of various types of ABS/MBS issued by many different issuers. Fiduciaries are also able to monitor the performance of the pool of assets supporting payments on the ABS/MBS on a contemporaneous basis, as investors are given monthly reports on collections, account balances, credit support levels and the status of the receivables. All of these points are discussed in greater detail below.

B. Reliance on Ratings

1. Background

The Applicant notes that when the Underwriter Exemptions originally were applied for in the mid-1980s, public and private offerings of ABS and MBS by private sector originators had only recently been introduced in the United States capital markets. The Applicant states that the Department, in granting exemptive relief under the original Underwriter Exemptions, was cognitive of the relative infancy of private sector ABS/MBS transactions when it originally considered the extent to which reliance should be placed on the determinations of the Rating Agencies in establishing the boundaries of exemptive relief. For example, in the Notice of Proposed Exemption relating to Application D–6555 made by First Boston Corporation, 53 FR 52851 at 52857 (December 29, 1988) the Department stated:

After consideration of the representations of the applicant and the information provided by S&P's, Moody's and D&P, the Department has decided to condition exemptive relief upon the certificates in which a plan invests having attained a rating in one of the three highest generic rating categories from S&P's, Moody's or, in the case of certificates representing interests in trust containing multi-family residential mortgages or commercial mortgages, D&P.

The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables, while ensuring that the interests of plans holding certificates are adequately protected. In particular, in rating certificates, S&P's, Moody's and D&P take into account such factors as commingling of funds and conflicts of interest of the trust sponsor and servicer.

However, the Department is not prepared to rely solely on determinations made by these rating agencies in providing exemptive relief. In this regard, the applicant originally requested that exemptive relief apply to trusts containing any type of receivable—secured or unsecured—provided that the rating condition is met.

The Department is not prepared at this time to grant such broad exemptive relief. The Department believes that the rating agencies currently have more expertise in rating certificates representing interests in secured, as opposed to unsecured, receivable trusts. Consequently, the Department believes that the ratings are more indicative of the relative safety of the investment when applied to trusts containing secured receivables.

Moreover, First Boston has represented that trusts containing different types of receivables are continuously being developed and rated. While the Department would generally prefer to be more specific as to the types of assets contained in the trusts, the Department recognizes the applicant's need for flexibility. At the same time, the Department believes that it is appropriate to ensure that the rating agencies have developed expertise in rating a particular type of asset-backed security and that such security has been tested in the marketplace prior to plan investment pursuant to this exemption. Consequently, the Department has further conditioned the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.

2. Rating Agency Expertise

The Applicant asserts that since the time of the First Boston Corporation application, the Rating Agencies have developed an enormous depth of experience in rating ABS/MBS due to the extensive growth of these markets. Since that time, investment-grade ratings have been assigned to a broad range of asset classes and transaction structures in the ABS/MBS markets. The Applicant notes that those ratings, and the credit quality of underlying collateral, have been the subject of continuing surveillance and active scrutiny by the Rating Agencies and that the historical performance record of these offerings clearly demonstrates that the Rating Agencies have developed the expertise necessary for the Department to conclude that ratings are extremely reliable indicators of the relative safety of the securities and the transactions with respect to which exemptive relief is requested.

3. Growth in the ABS/MBS Markets

According to the Applicant, ABS/MBS now constitute a major segment of the fixed-income marketplace. This growth, which is manifested in a rapid increase in issuance levels and the continuing entry and acceptance of new issuers, asset types and transaction structures into the market, has generated an accompanying growth in market depth, liquidity and efficiency.

The first pass-through security was issued in 1970, with a guarantee by Ginnie Mae. Soon, Freddie Mac and Fannie Mae began issuing mortgage securities as well. The development of the collateralized mortgage obligation (CMO) in 1983 expanded the market for mortgage securities by establishing a product appealing to a broad range of investors with various investment time frames and cash-flow needs. As a result of tremendous growth in the primary housing credit market and an increasing level of investor interest and comfort in these investments, the mortgage securities market is now one of the largest financial markets in the world. Total volume of outstanding agency mortgage securities exceeded $2.0 trillion at the end of 1998, as compared to the $372.1 billion outstanding level at year-end 1985. New issuance of agency pass-throughs totaled $726.9 billion in 1998, while agency CMO issuance reached $225.1 billion for the year. This compares to the $111.1 billion in agency pass-throughs issued in 1985. Private label CMO issuance was $135 billion in 1998. In contrast, total issuance in the corporate bond market was $678 billion in 1998.

Asset-backed securities constitute a relatively newer but fast-growing segment of the debt markets. The first ABS were issued in 1985, with the new issue dollar volume reaching $1.2 billion in that year. In comparison, $197.6 billion in ABS were issued in 1998, while the outstanding level of ABS was an estimated $630 billion at the end of the year. The ABS market has grown dramatically since its inception in the mid-1980s and has become a basic financing mechanism in the debt capital markets, with rapid domestic and international growth. Strong investor demand and the diversity of securities available have helped to fuel the growth in the ABS market.

The home equity, credit card and auto loan sectors are the mainstays of the ABS market. However, the strength in home equity-backed issuance has been the driving force behind the growth in ABS issuance in the past few years. This sector maintained its dominance in 1998, with volume representing 41.9% of total issuance in the period. Issuance in the home equity sector totaled $82.8 billion in 1998, a 28.7% increase over the $64.4 billion sold in 1997. Issuance in the credit card sector was relatively flat in 1998, with volume totaling $37.1 billion, essentially unchanged from 1997's $37.5 billion. Auto loan ABS issuance rose by 6.0% in 1998, totaling $35.1 billion, as compared to the $33.1 billion issued in 1997.

Commercial mortgage-backed securities (CMBS) issuance has grown sharply in recent years. Approximately 20% of all real estate debt is now securitized and held in the hands of investors in the form of CMBS. Standardization of loan structures, growing investor acceptance and the changing regulatory environment have all contributed to the market's growth. Issuance in the CMBS market increased by more than tenfold over the past eight years. CMBS issuance jumped sharply in 1998 with volume increasing to a record $78.3 billion in 1998, a 78.0% increase over the $44.3 billion reported in 1997 and 162.8% greater than the $29.8 billion issued in 1996. In

comparison, CMBS issuance totaled just $6.0 billion in 1990.

4. Congressional and Agency Reliance on Ratings

The Applicant states that Congress and governmental regulatory agencies rely on the efficacy of the rating process for many purposes. The United States Securities and Exchange Commission (the ''SEC'') has relied frequently on ratings assigned by a ''nationally recognized statistical rating organization'' (NRSRO). Two prime reasons that the ABS/MBS market has grown dramatically over the past five years are the ability to offer investment-grade asset-backed securities to the public on a shelf registration statement and changes to the Investment Company Act of 1940. With a shelf registration, the SEC review and comment period occurs prior to effectiveness of the registration statement. Thereafter, an issuer can sell securities on an expedited basis. No additional SEC review is necessary. However, each security offered on a shelf must be rated by at least one NRSRO in one of its four highest generic rating categories. The Investment Company Act of 1940 was a major impediment in developing the ABS/MBS markets. Absent an exemption, substantially all of the Trusts and other vehicles issuing ABS would be required to register as an ''investment company'' under this Act. Congress and the SEC realized that the securitization markets could not function as regulated investment companies. As a result, Rule 3a–7 under the Investment Company Act was enacted in 1992. If the conditions of this rule are satisfied, an issuer of ABS/MBS is not deemed to be an investment company. One requirement of the rule is that any security sold to investors (other than accredited investors or qualified institutional buyers) be rated, at the time of sale, in one of the four highest generic categories by at least one NRSRO.

5. Securities Ratings

The Securities in transactions which are not Designated Transactions (as described below) will have received one of the three highest generic ratings available from a Rating Agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees or overcollateralization) will be obtained by the Sponsor to the extent necessary for the Securities to attain the desired rating. The amount of this credit support is set by the Rating Agencies at a level that is typically a multiple of the worst historical net credit loss experience for the types of obligations included in the Issuer.

6. The Rating Process

Ratings on a class of Securities are an evaluation by the Rating Agency of the credit, structural and legal risks of a transaction, which is made to help predict the probability of an investor receiving timely payment of interest and payment of principal by the maturity date of the Securities. Ratings generally do not address risks arising from interest rate fluctuations or prepayments of the underlying obligations by borrowers. In order to make their assessment of a class of Securities, the Rating Agencies perform sophisticated analyses of the predicted frequency and severity of losses on the pool of obligations by conducting extensive investigative due diligence reviews of both the originator and assets to be securitized, sampling the asset pool or performing a review of the entire asset pool, comparing the expected performance of that particular pool against historical performance of pools containing similar assets (either from the same originator or based upon industry standards) and making determinations of the adequate levels of credit enhancement required to support each rating level. For all investment-grade ratings, including ''BBB,'' the credit support levels are set to require the transaction to withstand not just expected losses on the pool of assets but a multiple of such projected losses (or, in some cases, a more severe economic default model). Regression analysis is continually performed whereby the Rating Agencies determine how factors such as LTV ratios, geographic diversity, strength of borrower's credit history, type of loan and other factors correlate positively or negatively with both loss frequency and severity in order to predict how a pool will perform. The particular asset type is of primary importance in determining the nature and scope of the diligence review. Also, the type of asset will determine the type of legal and structural safeguards that must be implemented to safeguard the interests of the related securityholders and permit the issuance of the applicable rating.

The Rating Agencies differ slightly in what they consider their ratings to represent. Specifically, Moody's ratings express an opinion of the amount by which the internal rate of return in a diversified portfolio of similarly rated Securities would be reduced as a result of defaults on the Securities. For example, ''Aaa'' rated Securities held to maturity without any changes in rating are expected to suffer a reduction in realized yield over a ten-year period of less than one basis point (*i.e.*, 1/100th of a percent); 1–3 bps for an ''Aa'' rating; 5–13 bps for an ''A'' rating; 20–50 bps for a ''Baa'' rating; 75–150 bps for a ''Ba'' rating and 175–325 bps for a ''B'' rating. Accordingly, the expected reduction in yield for all investment-grade Securities, whether or not subordinated, is 0.5% or less, and as indicated below, for Securities has turned out to be virtually zero. The ratings of the three other Rating Agencies express an opinion on the probability that no losses will be experienced on the Securities in different rating categories. However, any slight differences in the technical meaning of a rating are not considered to be of any material significance in the capital markets.

The rating process generally rates to the ''weakest link'' in that if credit support is provided for by a third party, the rating given to the Securities cannot exceed that of the credit support provider. In addition, the Rating Agencies may also require minimum credit ratings of other parties to the transactions such as the Servicer, back-up Servicers and pool Insurers and, at a minimum, the credit strength of such parties is factored into the analysis of the pool when projecting losses.

7. Reasons to Extend Relief to Subordinated ABS/MBS and High LTV Receivables

As support for the requested modifications, the Applicant notes that the Department already has permitted securities with ratings of ''A'' or better to be eligible for relief under the Underwriter Exemptions, although, in particular transactions, the credit quality of the borrowers who are obligated on the loans held as Trust assets may be less than A.[28] Many securities issued in securitization transactions receive ''AAA'' ratings even if the borrowers on the loans have B and C credit. This risk is addressed by requiring greater credit support using conservative stress tests.

The Applicant asserts that subordinated securities and higher LTV ratio collateral for transactions in those rating and asset categories already approved by the Department would be equally as protective of plan investors as those transactions currently permitted with non-subordinated and lower LTV ratios. Granting this relief would also address the anomaly which now exists

[28] The applicant notes that borrowers are frequently categorized by originators as being of A, B, C or D credit quality, although other designations may be used.

where an ''A'' rated senior security is currently eligible for exemptive relief, but an ''AAA'' rated subordinated security or a senior security issued by a Trust with less than fully secured loans is not. While this anomaly developed because of the Department's concerns as to whether the Rating Agencies had the requisite experience to rate certain types of ABS/MBS, the market has developed to a point where this distinction is no longer necessary to protect plan investors. The ratings quantify the credit risk of a transaction at various rating levels, and any deficiencies in the credit quality of the assets, the credit of the borrowers, the strength of the parties to the transaction or the structure are factored into the credit support requirements, with the result that every rating of the same letter designation represents the same credit quality of a security without regard to the particular features of any single transaction. In this regard, at the request of the Department, the Applicant has provided letters from the Rating Agencies confirming their view to this effect.

The Applicant states that the need for flexibility is nowhere better exemplified than in the inclusion of subordinated securities in the type of securities eligible for exemptive relief. Transactions in the 1980s typically did not feature investment-grade subordinated securities. In contrast, the market has now evolved to the point where ABS/MBS offerings typically include multiple tranches of senior and subordinated investment-grade securities. In common market terminology, in transactions where there are two or more subordinated classes of securities, ''AAA'' rated ABS/MBS classes are described as ''senior'' classes, ''AA'' through ''BBB'' subordinated classes are described as ''mezzanine'' classes, and sub-investment-grade classes are described as ''subordinated'' classes. In other transactions, the ''AAA'' and ''AA'' classes may be referred to as senior, and the ''BBB'' class or classes may be referred to as either mezzanine or subordinated, depending on the number of classes and the structure. In contrast, under the current Underwriter Exemptions, all classes of ABS/MBS below the most senior ''AAA'' class are regarded as subordinated.

The Applicant believes that Rating Agencies can rate subordinated classes of securities with a high level of expertise, thereby ensuring the safety of these investments for plans through the use of other credit support (including increased levels of non-investment-grade securities). The subordination of a security, while factored into the evaluation made by the Rating Agencies in their assessment of credit risk, is not indicative of whether a security is more or less safe for investors. In fact, there are ''AAA'' rated subordinated securities.[29] Subordination is simply another form of credit support. The Rating Agencies, after determining the level of credit support required to achieve a given rating level, are essentially indifferent as to how these credit support requirements are implemented—whether through subordination or other means. If subordination is used, however, the subordinated class will have no greater credit risks or fewer legal protections in comparison with other credit-supported classes that possesses the same rating.

According to the Applicant, there is much benefit to plan investors in having subordinated securities eligible for exemptive relief. First, credit support provided through third-party credit providers is more expensive than an equal amount of credit support provided through subordination. As a result, the ability to use subordinated tranches to provide credit support for the more senior classes (which may or may not themselves be subordinated) creates economic savings for all the parties to the transaction which, in turn, can allow greater returns to investors. In addition, if the credit rating of a third-party credit support provider is downgraded, the rating of the securities is also downgraded. Second, the yields available on subordinated securities are often higher than those paid on comparably rated non-subordinated securities because investors expect to receive higher returns for subordinated securities. Third, subordinated securities are usually paid after other more senior securities, which results in their having longer terms to maturity. This is appealing to many investors who are looking for medium-term fixed income investments to diversify their portfolios. The combination of these factors benefits investors by making available securities which can provide higher yields for longer periods. It should be noted that as the rating of a security generally addresses the probability of all interest being timely paid and all principal being paid by maturity under various stress scenarios, the Rating Agencies are particularly concerned with the ability of the pool to generate sufficient cash flow to pay all amounts due on subordinated tranches, and several features of the credit support mechanisms discussed below are designed to protect subordinated classes of securities.

8. Performance of Investment-Grade ABS/MBS

The Applicant asserts that the arguments articulated for the safety of subordinated securities or securities issued by entities holding loans with high LTV ratios are supported by the statistics. Ratings have proven to be a remarkably accurate prognosticator of the probability of default on ABS/MBS and also support the appropriateness of extending exemptive relief to ''BBB'' rated securities. Accompanying the tremendous growth of the asset-backed and mortgage-backed markets has been a stellar record of repayment of principal and interest. After extensive investigative efforts and interviews with Rating Agencies, bond insurance companies and the TBMA dealer membership, the Applicant has concluded that, to the best of its knowledge, there have been only isolated instances of defaults on any investment-grade ABS/MBS.

During the three-year period from 1995–1997, 139 corporate issues representing $22 billion in corporate bonds defaulted. Yet, corporate bonds may be purchased by benefit plan investors without triggering prohibited transactions pursuant to a number of prohibited transaction class exemptions based on the identity of the plan investor or the fiduciary making the investment decision on behalf of the plan (''Investor-Based Exemptions'').[30] Equity investments in any type of corporate stocks (which can be highly speculative and have certainly experienced significant losses) are also not restricted by the prohibited transaction rules because of the operating company exception under the Plan Asset Regulation, set forth at 29 CFR § 2510–3.101(c). Similarly, plans can invest in a commercial mortgage loan, yet may not be able to invest in any investment-grade collateralized MBS which carries far less credit risk. In addition, while there have been rating downgrades of ABS/MBS, the ABS/MBS downgrade statistics are vastly superior to the comparable statistics for corporate debt instruments.

[29] For example, a transaction may have two classes of ''AAA'' rated securities and one is subordinated to the other. The subordinated class would be required to have more credit support to qualify for the ''AAA'' rating than the more senior ''AAA'' rated class.

[30] These exemptions include (a) PTE 84–14, regarding transactions negotiated by qualified professional asset managers; (b) PTE 90–1, regarding investments by insurance company pooled separate accounts; (c) PTE 91–38, regarding investments by bank collective investment funds; (d) PTE 95–60, regarding investments by insurance company general accounts; and (e) PTE 96–23, regarding investments determined by in-house asset managers.

The Applicant states that the purpose in drawing these comparisons is not to suggest that corporate bonds, commercial mortgage loans or any other instruments are unsafe plan investments. Rather, the point is that investment-grade ABS/MBS are equally as safe, if not safer, investments than other alternatives presently available to plans under various existing exemptions.

The Applicant believes that investment-grade ABS/MBS are an attractive investment alternative to plan fiduciaries. This is because in most ABS/MBS transactions, credit risk is spread across many Obligors instead of just one corporate borrower as would be the case with the issuance of a corporate bond. At least one reason for this is that if the Obligor on a corporate bond defaults, the bond holder will not be paid in full, whereas in a securitization, even if a number of the underlying obligations go into default, the holder of an investment-grade security is still likely to receive payment because of the size of the asset pool and/or credit support features of the transaction. In addition, the returns on ABS/MBS are generally higher than those paid on corporate debt instruments in comparable rating categories in order to compensate investors for prepayment risk (*i.e.*, the risk that an investor may receive a return of the principal it invested earlier than anticipated).

The Applicant believes that allowing a greater proportion of ABS/MBS to be eligible for relief under the Underwriter Exemptions is of considerable benefit to plan participants and their beneficiaries because it increases the access plans have to fixed income investments with high credit quality as an alternative to corporate bonds and other forms of investments. Plan fiduciaries have available to them a significant amount of statistical data as to the historical performance of ABS/MBS by asset type, investment rating and originator which can assist them in evaluating the pool of assets being securitized. Plan investors are also able to contemporaneously monitor the performance of ABS/MBS because they are provided periodic reports in which they receive, in general, the following information: the amount of principal and source of principal (*e.g.*, from regular loan principal payments, prepayments or reserve accounts), the amount of interest, the status of the payments on the underlying mortgages (*e.g.*, are any 30, 60 or 90 days in arrears) and the status of the credit support (*e.g.*, overcollateralization levels and reserve account balances).

C. Description of Rating Agencies' Due Diligence With Respect to Parties Involved in Transactions

The Applicant states that the due diligence performed by the Rating Agencies with respect to the parties to the transaction, such as the Sponsor, Servicer, Trustee and Insurer, and their requirements regarding these parties which are described below, are generally common to all securitizations.

1. The Sponsor

The Rating Agencies do not have minimum credit rating requirements for the Sponsor if it is not also acting as a Servicer because its assets are not subject to the claims of the Issuer. However, the Rating Agencies do apply a factor to the expected loss estimate for a pool of mortgages or other assets based upon the quality of the Sponsor, and they evaluate the Sponsor's underwriting standards and operations in order to determine the general financial stability of the Sponsor. Such an evaluation provides an indication of the credit quality of the assets being securitized. An on-site investigation may be made, including meetings with management. This will generally include a review of the operations, policies and procedures of the Sponsor, including the quality and completeness of loan documentation. For example, the historic and current lending criteria of the Sponsor, including the Sponsor's policies regarding allowing extensions of payment schedules, renegotiating contracts, granting grace or cure periods and loan liquidation procedures, will be reviewed. Its manner of competing in the market for borrowers is also examined (*e.g.*, to see whether borrowers are sought without conducting adequate review of their finances and whether the Sponsor has adequate capital to support a growing loan portfolio and its access to bank financing or other sources of liquidity). Historic delinquency rates with respect to the Sponsor's receivables will generally also be examined, as will the underwriting standards of the Sponsor (*i.e.*, evaluating the credit of potential borrowers within stated lending guidelines and the use of credit checks). If such guidelines are applied consistently, the Sponsor's historical record may be helpful in predicting future performance of the loan portfolios. The information presented by the Sponsor will also be evaluated in order to determine the overall stability of the Sponsor, including its historic and expected financial performance, its organizational strengths and weaknesses and its competitive position. The importance of the financial stability of the Sponsor in determining the overall rating of the securitization transaction will depend on determination of the correlation between the performance of the receivables and any fundamental risks inherent in the Sponsor's business operations. The process by which the receivables are chosen for a transaction is also reviewed in order to ensure that the pool represents either a random sampling or quality-oriented sampling of the Sponsor's receivables and not predominately lower-quality receivables.

2. The Servicer

(a) Review of Servicer's Operations—The Servicer is required to service the receivables held by an Issuer. The Rating Agencies, therefore, perform a thorough evaluation of the Servicer as part of their evaluation of the general credit risk of a particular transaction. A complete review of the Servicer is conducted beginning with its formation. If it has been in business for less than three to five years or has shown weak portfolio performance, bond insurance for the Securities offered may be required providing full coverage against borrower defaults. The management of the Servicer is reviewed to assess the experience, character and integrity of management. The Rating Agencies will also conduct a review of the Servicer's operations and capabilities, such as the degree to which the recordkeeping and collection process is automated, the internal audit and review systems, capacity constraints, fraud prevention procedures and collection methods. The evaluation of the Servicer usually involves an on-site visit, including a meeting with management to discuss procedures, methodology, past history and future financial outlook. High-quality servicing provides investor protection which is required in order for a high rating of the Securities and, conversely, low-quality servicing could lower a rating.

(b) Collection and Handling of Funds—The Servicer will usually be in the asset servicing business and may, therefore, have responsibility for the assets of many securitization transactions. Often operating efficiencies require that payments be made to one source and then be allocated to the individual Issuers. This central collection feature causes short-term commingling of assets. Accordingly, unless the Servicer is highly rated, the Rating Agencies will require the servicer to transfer all collections it receives in the course of its acting as a servicer for different issuers to segregated accounts for each

issuer which are held at highly rated banks within two to three days of receipt. The Rating Agencies also examine the effect that bankruptcy or other insolvency would have on the Servicer's ability to service the loans or advance funds to pay securityholders or pay other required fees.

(c) Payment Support Features—As part of its servicing responsibilities, the Servicer may also be required to provide two payment support features to the securityholders. The first is a liquidity facility or monthly advance requirement, and the second is a ''compensating interest'' feature. The overall credit quality of the Servicer affects the Servicer's ability to perform these functions. Accordingly, if a Servicer provides financial support, the Rating Agencies prefer that such Servicer have a rating which is not lower than the rating to be assigned to the Securities. If the Servicer's rating is lower, additional protections may be required, such as requiring the Servicer to obtain a surety bond, letter of credit or other rated credit support for its financial support.

(i) Servicer Advances—Where advancing is required, the Servicer is generally required to advance funds to the Issuer in an amount equal to delinquent payments of interest and, in some transactions principal, to the extent that the Servicer believes that these amounts may be recovered from subsequent payments and collections. If an Obligor is late in making payments, the Servicer will advance the funds to the Issuer. The Servicer is entitled to a return of these funds from future collections. The Servicer is essentially making an interest-free loan to the Issuer, but it is the Issuer that bears the ultimate risk of loss. An alternative to Servicer advancing is an advance claims payment provision. An advance claims payment provision is an insurance policy that guarantees timeliness of payments to the securityholders. In addition, the Rating Agencies require errors and omissions insurance in at least the amount of the maximum cash balance anticipated to be in the Issuer's accounts held by the Servicer, Issuer, paying agent or other agent covering potential losses arising from errors and omissions of officers, directors and employees of such transaction participants to the extent they have access to Issuer funds.

(ii) Servicer Compensating Interest—When an Obligor on a mortgage loan or other prepayable asset makes a prepayment (either full or partial) on the obligation, interest is only required to be paid that month up until the date of the prepayment, but the securityholder is entitled to a full month's interest on that loan. The Servicer may be required to fund the difference between a full month's interest on such prepaid loan and the interest actually received from the Obligor. The Servicer is generally only required to make such compensating interest payments in amounts that will not exceed its servicing compensation for that month.

(d) Successor Servicers and Subservicers—Transaction documents will provide for the appointment of a successor Servicer if the original Servicer is deemed unable to perform its required duties. Typically, a Trustee with an acceptable rating may act as a back-up Servicer by assuming an obligation to perform the servicing function in the event of a default by the Servicer. However, a Servicer is not permitted to resign voluntarily until a replacement is appointed. Servicing compensation is also set at a level so that a successor Servicer will be adequately compensated for assuming such servicing responsibilities. Transaction documentation may also allow the Servicer to subcontract some or all of its servicing obligations to qualified Subservicers. While these Subservicers may perform the actual servicing work on a selected portion of the pool of assets, the Servicer remains responsible for the ultimate performance of the servicing activities and is liable for any failure to adequately perform the required servicing duties.

Prior to the transfer of servicing responsibilities to a successor Servicer and prior to a merger or consolidation affecting the Servicer, the parties to the transaction must obtain the Rating Agency's written confirmation that the rating of the rated Securities in effect immediately prior to the transfer of servicing responsibilities will not be qualified, downgraded or withdrawn as a result of such resignation, merger or other transfer. Typically, a Servicer may voluntarily resign only upon a determination that the performance of its servicing duties under the servicing agreement is no longer permissible under applicable law and appointment by the Trustee or securityholders of, and acceptance by, a successor Servicer. A Servicer may be forced to resign by the Trustee or securityholders if the continuation of the Servicer's servicing responsibilities would result in the qualification, downgrade or withdrawal of the rating assigned to the Securities or in the event of a default of the Servicer's obligations under the Pooling and Servicing Agreement.

(e) Reports to Investors—The Servicer will be responsible for preparing periodic reports on the performance of the pool of assets containing such information as: beginning principal balance, ending principal balance, the allocation of payments received between interest and principal, scheduled principal payments, prepayments received, delinquencies and status of various categories of delinquent accounts (e.g., number of accounts 30–59 days, 60–89 days and 90 or more days delinquent), defaults, foreclosures, if any, and other relevant information for the related Trustee. The Trustee will utilize this data in preparing the reports to securityholders.

3. The Trustee

The Trustee is also examined by the Rating Agencies to ensure that credit problems of the Trustee do not affect the Issuer. Monies received by the Issuer from the Servicer must be immediately deposited into segregated accounts earmarked for the Issuer so that no commingling occurs in the hands of the Trustee. If these funds are to be invested, they only may be invested in instruments that have been rated at a level specified by the Rating Agency as acceptable for the rating given to such Securities (a ''Rating Condition''). Transaction documentation will specify a list of permitted investments acceptable to the applicable Rating Agencies. Typical examples of permitted investments include the following: (a) Direct obligations or obligations guaranteed by the United States or an agency or instrumentality thereof; (b) demand or time deposits, federal funds or bankers' acceptances issued by banks or trust companies that are subject to federal and/or state banking authorities (subject to the Rating Condition or FDIC insurance); (c) repurchase obligations with respect to (a) and (b) above; (d) discount or interest-bearing Securities issued by United States corporations that meet the applicable Rating Condition; (e) commercial paper meeting the applicable Rating Condition; and (f) money market funds or common trust funds that meet the applicable Rating Condition.

The Trustee must be capable of performing the duties of the Servicer in case the Servicer cannot perform its duties and a successor has not been appointed. Transaction documentation will usually specify minimum capital and surplus requirements for a Trustee and any successor. As with the Servicer, adequate compensation for the services performed by the Trustee will be provided for in the governing documents. The Trustee is examined for its ability to administer transactions; its

ability to assume successor Servicer responsibilities (or hire another entity to do so); its plan to assume successor servicing, if necessary, and whether its computer systems are compatible with the Servicer's systems.

4. The Insurer

In transactions using third-party credit support, the rating of Securities normally can be no higher than that of the claims-paying ratings of the credit support provider. For this reason, selection of an insurance company to provide advance claims payment insurance, Security or bond insurance, pool insurance, mortgage insurance or special hazard insurance is an important element in the structuring of a securitization transaction. In assessing the credit of mortgage insurance companies, the Rating Agencies make a number of determinations as part of their review. The review includes a determination of standing with the applicable state insurance commission, adequacy of surplus and contingency reserves, historic underwriting performance and operating profitability, quality of investment portfolio, quality in management and internal control and secondary support, such as reinsurance policies. Similar factors are considered in the assessment of the claims-paying ability of Security or bond insurance providers.

D. Types of Credit Support

Credit support consists of two general varieties: external credit support and internal credit support. The Applicant notes that the choice of the type of credit support depends on many factors. Internal credit support which is generated by the operation of the Issuer is preferred because it is less expensive than external credit support which must be purchased from outside third parties. In addition, there is a limited number of appropriately rated third-party credit support providers available. Further, certain types of credit support are not relevant to certain asset types. For example, there is generally little or no excess spread available in residential or CMBS transactions because the interest rates on the obligations being securitized are relatively low. Third, the Ratings Agencies may require certain types of credit support in a particular transaction. In this regard, the selection of the types and amounts of the various kinds of credit support for any given transaction are usually a product of negotiations between the Underwriter of the securities and the Ratings Agencies. For example, the Underwriter might propose using excess spread and subordination as the types of credit support for a particular transaction and the Rating Agency might require cash reserve accounts funded up front by the Sponsor, excess spread and a smaller sized subordinated tranche than that proposed by the Underwriter. In addition, market forces can affect the types of credit support. For example, there may not be a market for subordinated tranches because the transaction cannot generate sufficient cash flow to pay a high enough interest rate to compensate investors for the subordination feature, or the market may demand an insurance wrap on a class of securities before it will purchase certain classes of securities. All of these considerations interact to dictate which particular combination of credit support will be used in a particular transaction.

1. External Credit Support

In the case of external credit support, credit enhancement for principal and interest repayments is provided by a third party so that if required collections on the pooled receivables fall short due to greater than anticipated delinquencies or losses, the credit enhancement provider will pay the securityholders the shortfall. Examples of such external credit support features include: insurance policies from ''AAA'' rated monoline [31] insurance companies (referred to as ''wrapped'' transactions), corporate guarantees, letters of credit and cash collateral accounts. In the case of wrapped or other credit supported transactions, the Insurer or other credit provider will usually take a lead role in negotiating with the Sponsor concerning levels of overcollateralization and selection of receivables for inclusion into the pool as it is the Insurer or credit provider that will bear the ultimate risk of loss. As mentioned above, one disadvantage of insurance, corporate guarantees and letters of credit is that they are relatively expensive in comparison with other types of credit support. Also, if the credit rating of the insurance company or other credit provider is downgraded, the rating of the Securities is correspondingly downgraded because the Rating Agencies will only rate the Securities as highly as the credit rating of the credit support provider. In any event, credit support providers require that each class of Securities they insure be ''shadow rated'' no lower than ''BBB.'' A shadow rating is the rating that the Securities would have received from the Rating Agency if the class of Securities had not been wrapped, and the Rating Agency will provide a letter addressed solely to the credit support provider verifying such rating. However, there are only a handful of ''AAA'' monoline insurance providers, and investors do not want to have too high a concentration of Securities which are backed by such Insurers. There are also few providers of letters of credit or corporate guarantees that have sufficiently high long-term debt credit ratings. These disadvantages are some of the reasons why subordination is often used as an alternative form of credit support. Cash collateral accounts include reserve accounts which are funded, usually by the Sponsor, on the Closing Date and are available to cover principal and/or interest shortfalls as provided in the documents.

2. Internal Credit Support

Internal credit support relies upon some combination of utilization of excess interest generated by the receivables, specified levels of overcollateralization and/or subordination of junior classes of Securities. Transactions that look almost exclusively to the underlying pooled assets for cash payments (or ''senior/subordinated'' transactions) will contain multiple classes of Securities, some of which bear losses prior to others and, therefore, support more senior Securities. A subordinate Security will absorb realized losses from the asset pool, and have its principal amount ''written down'' to zero, before any losses will be allocated to the more senior classes. In this way, the more senior classes will receive higher rating classifications than the more subordinate classes. However, the Rating Agencies require cash flow modeling of all senior/subordinated structures. These cash flows must be sufficient so that all rated classes, including the subordinated classes, will receive timely payment of interest and ultimate repayment of principal by the maturity date. The cash flow models are tested assuming a variety of stressed prepayment speeds, declining weighted average interest payments and loss assumptions. Other structural mechanisms to assure payment to subordinated classes are to allow collections held in the reserve account for the next payment date to be used if necessary to pay current interest to the subordinated class or to create a separate interest liquidity reserve. The collections held in the reserve account are from principal and interest paid on the underlying mortgages or other receivables held in the Issuer and are not from the securities issued by the

[31] The term ''monoline'' is used to describe such insurance companies because writing these types of insurance policies is their sole business activity.

Issuer.[32] Also, some structures allow both principal and interest to be applied to all payments to securityholders, and in others, principal can be used to pay interest to the subordinate tranches.

Interest which is received but is not required to make monthly payments to securityholders (or to pay servicing or other administrative fees or expenses) can be used as credit support. This excess interest is known as ''excess spread'' or ''excess servicing'' (''Excess Spread'') and may be paid out to holders of certain Securities, returned to the Sponsor or used to build up overcollateralization or a loss reserve. The credit given to Excess Spread is conservatively evaluated to ensure sufficient cash flow at any one point in time to cover losses. The Rating Agencies reduce the credit given to Excess Spread as credit support to take into account the risk of higher coupon loans prepaying first, higher than expected total prepayments, timing mismatching of losses with Excess Spread collections and the amounts allowed to be returned to the Sponsor once minimum overcollateralization targets are met (thereby reducing the amounts available for credit support).

''Overcollateralization'' is the difference between the outstanding principal balance of the pool of assets and the outstanding principal balance of the Securities backed by such pool of assets. This results in a larger principal balance of underlying assets than the amount needed to make all required payments of principal to investors. In all senior/subordinated transactions, the requisite level of overcollateralization and the amount of principal that may be paid to holders of the more subordinated Securities before the more senior Securities are retired (since once such amounts are paid, they are unavailable to absorb future losses) is determined by the Rating Agencies and varies from transaction to transaction, depending on the type of assets, quality of the assets, the term of the Securities and other factors.

The senior/subordinated structure often combines the use of subordinated tranches with overcollateralization that builds over time from the application of excess interest to pay principal on more senior classes. This is often referred to as a ''turbo'' structure. The credit enhancement for each more senior class is provided by the aggregate dollar amount of the respective subordinated classes, plus overcollateralization that results from the payment of principal to the more senior classes using excess spread prior to payment of any principal to the more subordinated classes. As overcollateralization grows, the pool of loans can withstand a larger dollar amount of losses without resulting in losses on the senior Securities. This also has the effect of increasing the amount of funds available to pay the more subordinated classes as an ever-decreasing portion of the principal cash flow is needed to pay the more senior classes. Excess interest is used to pay down the more senior Security balances until a specific dollar amount of overcollateralization is achieved. This is referred to as the overcollateralization target amount required by the Rating Agencies. Typically, the targeted amount is set to ensure that even in a worst-case loss scenario commensurate with the assigned rating level, all securityholders, including holders of subordinated classes, will receive timely payment of interest and ultimate payment of principal by the applicable maturity date. In these transactions, the targeted amount is usually set as a percentage of the original pool balance. It may be reduced after a fixed number of years after the Closing Date, subject to the satisfaction of certain loss and delinquency triggers. These triggers ensure that overcollateralization continues to be available if pool performance begins to deteriorate. In a senior/subordinated structure, every investment-grade class (whether or not subordinated) is protected by either a lower rated subordinated class or classes or other credit support.

E. Provision of Credit Support Through Servicer Advancing

In some cases, the Master Servicer, or an Affiliate of the Servicer, may provide credit support to the Issuer (*i.e.*, act as an Insurer). In these cases, the Servicer will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the Obligors, (b) from the credit support provider (which may be the Master Servicer or an Affiliate Servicer) or, (c) in the case of an Issuer that issues subordinated Securities, from amounts otherwise distributable to holders of subordinated Securities, and the Master Servicer will advance such funds in a timely manner. When the Servicer is a provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the Trustee, or on its own initiative on behalf of the Trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the Servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as Insurer. Moreover, a Master Servicer typically can recover advances either from the provider of credit support or from the future payments on the affected receivables.

If the Master Servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the Trustee would be required and would be able to enforce the securityholders' rights as both a party to the Pooling and Servicing Agreement and the owner of the Trust estate where the Issuer is a Trust (or as the holder of the security interest in the receivables), including rights under the credit support mechanism. Therefore, the Trustee, who is independent of the Servicer, will have the ultimate right to enforce the credit support arrangement.

When a Master Servicer advances funds, the amount so advanced is recoverable by the Master Servicer out of future payments on receivables held by the Issuer to the extent not covered by credit support. However, where the Master Servicer provides credit support to the Issuer, there are protections, including those described below, in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations held by the Issuer as payments on receivables are passed through to investors. These protective safeguards include:

1. There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

[32] A collections reserve account is established for almost all transactions to hold interest and principal payments on the mortgages or receivables as they are collected until the necessary amounts are paid to securityholders on the next periodic distribution date. In some transactions, the Rating Agencies or other interested parties may require, in order to protect the interests of the securityholders, that excess interest in amount(s) equal to a specified number of future period anticipated collections be retained in the collection account. This protects both senior and subordinated securityholders in situations where there are shortfalls in collections on the underlying obligations because it provides an additional source of funds from which these securityholders can be paid their current distributions before the holders of the residual or more subordinated securities receive their periodic distributions, if any. Accordingly, any reference to ''collections'' from principal and interest paid on the mortgages is intended to describe such excess interest or principal not required to cover current payments to the senior and subordinated class eligible to be purchased by plans. Thus, this mechanism is not harmful to the interests of senior securityholders.

2. The Master Servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The Pooling and Servicing Agreement will require the Master Servicer to follow its normal servicing guidelines and will set forth the Master Servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

3. As frequently as payments are due on the receivables held by the Issuer, as set forth in the Pooling and Servicing Agreement (typically monthly, quarterly or semi-annually), the Master Servicer is required to report to the independent Trustee the amount of all payments which are past due more than a specified number of days and the amount of all Servicer advances, along with other current information as to collections on the assets and draws upon the credit support. Further, the Master Servicer is required to deliver to the Trustee annually a certificate of an executive officer of the Master Servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the Servicer has fulfilled all of its obligations under the Pooling and Servicing Agreement or, if the Master Servicer has defaulted under any of its obligations, specifying any such default. The Master Servicer's reports are reviewed at least annually by independent accountants to ensure that the Master Servicer is following its normal servicing standards and that the Master Servicer's reports conform to the Master Servicer's internal accounting records. The results of the independent accountant's review are delivered to the Trustee; and

4. The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the Issuer, whether due to Servicer advances or any other cause. Once the floor amount has been reached, the Servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed-dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the Issuer, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed-dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

F. Description of Designated Transactions

The Applicant requests relief for senior and/or subordinated investment-grade securities issued by Issuers with respect to a limited number of asset categories: Motor vehicles, residential/home equity, manufactured housing and CMBS. Accordingly, the Applicant has provided the Department with detailed, separate profiles of a typical transaction for each asset category. Each profile describes specifically how each type of transaction generally is structured, the due diligence that the Rating Agencies conduct before assigning a rating to a particular class of such securities, the calculations that are performed to determine projected cash flows, loss frequency and loss severity and the manner in which credit support requirements are determined for each rating class. The motor vehicle, residential/home equity, manufactured housing and commercial ABS/MBS transactions, as described in this section will collectively be referred to as ''Designated Transactions.'' [33]

Each of the four types of Designated Transactions is already encompassed within the existing asset categories. Specifically:

(i). Automobile and other motor vehicle ABS would principally fall within category III.B.(1)(d) obligations that are secured by motor vehicles or equipment but could also be covered under category III.B.(1)(a) secured consumer receivables or III.B.(1)(b) secured credit investments between business entities, depending on the factual situation.

(ii). Home equity and residential ABS/MBS would fall within categories III.B.(1)(a) which specifically refers to home equity loans and III.B.(1)(c) which specifically refers to single-family residential real property.

(iii). Manufactured housing would fall within category III.B.(1)(a) if the manufactured housing is considered to be personal property under local law, or within category III.B.(1)(c) if the manufactured housing is considered real property under local law.

(iv). CMBS would fall within category III.B.(1)(c) which specifically refers to multi-family residential and commercial real property.

1. Motor Vehicle Loan Transactions

The Applicant asserts that many motor vehicle loan securitizations are currently ineligible for exemptive relief under the Underwriter Exemptions if such transactions have subordinated tranches, notwithstanding being rated ''A'' or better. The Applicant notes that in a typical motor vehicle transaction, ''AAA'' rated senior Securities are issued that might represent approximately 90% or more of the principal balances of the Securities, with ''A'' rated subordinated Securities issued that might represent the remaining 10% or less of the principal balance of the Securities. The total level of credit enhancement from all sources, including Excess Spread, typically averages approximately 7% of the initial principal balance of Securities issued by prime issuers and 14% for subprime Issuers in order to obtain an ''AAA'' rated Security. Credit support equaling 3% for prime Issuers is usually required in order to obtain an ''A'' or better rating on the subordinated Securities. Typical types of credit support used in auto transactions are subordination, reserve accounts, Excess Spread and financial guarantees from ''AAA'' rated monoline insurance companies. Transactions with subprime Sponsors generally use surety bonds as credit enhancement, so there is no subordinated class.

The Applicant states that as 70% of the motor vehicle securitization market is attributable to automobile loans, the following discussion principally relates to automobiles. (The term ''automobile'' as used herein also is intended to include light trucks.) Other types of motor vehicles include boat loans, agricultural equipment, construction equipment and recreation vehicles (RVs). The Applicant is not requesting additional exemptive relief at this time for motor vehicle leasing transactions or dealer floor plan financing.

The Applicant provided the following description of the analysis performed by the Rating Agencies in their consideration of automobile securitizations and their determination of appropriate credit support requirements:

(a) Motor Vehicles—General Considerations—The credit rating of the borrower in auto loan securitizations is much more important than in real estate mortgage loan securitizations, where the value of the collateral is one of the principal considerations. LTV ratios in auto transactions increase over time due to the depreciation in value of the automobiles over the term of the loan.

[33] The modifications requested with respect to the type of securitization vehicle (*i.e.*, both Trust and non-Trust) and type of security (both debt and equity securities) or the use of interest rate swaps or yield supplement agreements with notional principal amounts would be applicable to both Designated Transactions and all other types of asset categories currently permitted under the Underwriter Exemptions.

This makes it much more likely that borrowers will default if they fall behind in their payments because they cannot pay off the loan with the proceeds realized from selling the automobile. Accordingly, a particularly intensive review of the underwriting policies and procedures of the loan originators and the loss histories of each originator is conducted in order to evaluate the predicted strength of the borrowers. In addition, in order to insure timely payment to the securityholders, the financial strength of the Sponsor/Servicer and its operations and procedures, particularly with respect to how diligently and timely it acts to monitor and correct late monthly payments and/or to declare a default on the loan and repossess the collateral, are closely scrutinized.

(b) Motor Vehicles—Due Diligence—The particular aspects of the Rating Agencies' due diligence that are specific to motor vehicle transactions are as follows. The originator's dealer network is examined to determine the presence of any significant dealer concentration, the composition of business across manufacturer franchised new and used car dealerships, the selection process for new dealerships, management tools to track performance by dealers, how business is solicited and the methods used to prevent and detect dealer fraud. Because the automobile sales market is extremely competitive, companies are under pressure to meet certain growth targets. Therefore, the Rating Agencies conduct an extensive review of the originator's underwriting (loan approval) standards and monitoring controls. Both the originator's underwriting criteria and the nature and frequency of updates are examined. Factors included in this review are: how many years of the borrower's credit history are considered; stability of the borrower in job and residence; income levels; payment-to-income and debt-to-income ratios; approval rates of origination; presence of first-time buyers and whether and what type of credit scoring of borrowers is performed.

(c) Motor Vehicles—Determination of Expected Losses—In order to determine the correct amount of credit support which will be required to support a particular rating for a class of auto loan Securities, a base-case securitized pool loss assumption is calculated using the following factors. Static pool data, if available, is compiled by taking a discrete period of originations of the originator, such as a financial quarter, and that pool's performance is tracked on a monthly basis as the loans amortize, particularly focusing on loans which have been outstanding (seasoned) 18–24 months and have been substantially paid down. This allows a determination of the shape of the loss curve and project timing of losses to be made. The cumulative net loss on the less seasoned pools can then be extrapolated from the older pools. Static pool data is preferred over active pool data, which can mask losses during periods when the originator's pool of loans is rapidly growing.

In creating the base-case expected loss amount, a detailed breakdown of originations, delinquencies, repossessions, gross and net losses and recoveries are examined. Any understatement of portfolio losses are isolated and all originators are placed on a comparable basis by dividing net annual losses by the outstanding principal balance of a prior period, which creates a growth adjustment factor. Once expected losses are estimated, the expected cumulative losses are derived by multiplying these expected losses by the weighted average life of the collateral, using conservative assumptions regarding losses and prepayments.

The pool of loans selected for the securitization is examined in order to assure that it is representative of the base-line loss assumption for that originator and has not been selected from lesser-quality receivables. The selection process used by the originator is monitored by checking the annual percentage rate on the loans, the principal amount of the loan, the LTV ratios, original maturity date of the loans and remaining maturity, the new and used mix, the model year and mileage of the vehicles, the amortization methods and geographic concentrations. The characteristics of the borrowers are also examined to monitor representative creditworthiness and stability by looking at gross income, monthly debt service, debt-to-gross income ratio, down payment-to-value ratio, years of credit history, credit scores, length of time at the borrower's residence, employment term and past credit problems to make sure that these criteria are representative of the originator's broader portfolio. Credit scoring is a relatively new method used by lending facilities to assess a borrower's likelihood of repaying a loan. The Rating Agencies monitor the correlation between such scores and actual losses to refine the appropriate weighting to be given to credit scores.

Delinquency data is broken out over 30-day, 60-day and 90-day groups, and delinquencies are examined based on the loan contract terms. In order to make sure that default data is not misleading, the Rating Agencies examine whether all loans that are not performing and are not charged off (even if the debtor is in bankruptcy or where the automobile has been repossessed) are considered to be in default. The originator's charge-off policy and accounting method used to calculate losses are examined, as the timing of the charge-off is important because it affects loss statistics, and delays in charge-offs put stress on liquidity.

(d) Special Factors Applicable to Motor Vehicles other than Automobile—(i) Recreational Vehicles—The methodology used in evaluating the credit quality of a pool of RV loans is very similar to that used to assess auto loan pools but takes into account the fact that the average RV Obligor is of higher credit quality than the average auto loan Obligor. However, as RVs are generally regarded as luxury items, buyers tend to default on them before debt obligations on necessities. The characteristics of the RV Obligor base can vary widely across pools, depending on such factors as the specific types of vehicles in the pools and whether they are new or used, and therefore must be evaluated on a case-by-case basis.

(ii) Boat Loans—Boat loan pools are similar in many ways to RV loan pools as the underlying assets are luxury goods purchased by persons who are generally more affluent than the average consumer. However, there are some significant differences. There is an extremely wide range of boats that can be purchased with costs ranging from a few thousand dollars to more than $1 million. Consequently, the characteristics of the obligations also span a wide range. Boat buyers, especially those of small boats, tend to be younger than the typical RV purchaser and are slightly higher credit risks. The resale value of boats is highly seasonal, causing the recovery values on defaulted loans to be highly variable. Finally, boats are produced by a large number of generally small manufacturers. Accordingly, if a manufacturer goes out of business, the resale value of its boats can decline sharply since parts may be hard to replace; this increases the expected pool losses and the variability of those losses. Second, there is an increased risk of pool losses resulting from the bankruptcy of a manufacturer; if the manufacturer has received the purchase price and becomes bankrupt before delivery of the boat, the buyer may default on the loan.

(iii) Agricultural Equipment—Special factors which are taken into account in agricultural equipment (tractors and combines) (''AG'') securitizations include the following. These loan

portfolios are particularly affected by commodity prices, weather, financial stability of the borrower's business operations and governmental price supports. Extensions granted for late payments are also common in cases of floods, crop failures, etc., and for this reason, geographic diversity in AG pools is especially desirable because of varying weather patterns across the United States. Expected losses are lower than those experienced in automobile transactions because changes in the general economy do not affect frequency of AG losses as much, and the equipment has a relatively stable value over the life of the loans. However, the loss curve for AG securitizations peaks much earlier than for auto loans, with 70% of defaults occurring by 18 months, which is a significant factor in analyzing cash flows. The size of the average AG loan is significantly higher than for other motor vehicles, and the terms are longer (five to seven years). It is not unusual for loan payments to be made only once per year to coincide with income from annual harvests so the Rating Agencies are concerned with an inability of Servicers to ascertain whether a borrower is in financial difficulty as quickly. Because the condition of the equipment is crucial to generating farm income, the strength of the dealer's service department is also considered. On the other hand, companies providing financing for AG dealers require such dealers to maintain significant cash reserves against potential losses.

(iv) Construction Equipment Loans—The particular factors which relate to construction equipment (''CE'') are as follows. CE includes heavy equipment used in highway construction, forestry and mining and includes, for example, back-hoes, bulldozers, excavators, truck loaders and asphalt pavers. Unlike farm equipment, the health of the general economy (and specifically housing starts, interest rates and public and private project financing) impacts construction starts which directly affects the Obligor's cash flow and thus loss frequency. In addition, CE depreciates in value during the loan terms, and the amounts borrowed are relatively large, which increases loss severity. Like AG equipment loans, the equipment is needed to produce revenue so the Obligor has a strong incentive to repay the loan. The cash flow of Obligors is often seasonal, and although these loans pay monthly, losses can be sudden. On the other hand, loans typically are structured to suspend payments during winter months which lessens the frequency of defaults. Most loans are serviced by rural businesses which negatively impacts on the efficiency of the collection process. The loss curve for CE is also early, with 70% of defaults occurring in the first 18 months. The terms of a CE may not require any payments in the first six months of the loan, depending on the time of year the loan was initiated, so seasoning statistics need to be adjusted for this factor.

(e) Motor Vehicles—Determining Required Credit Support—The total credit support required by the Rating Agencies for the desired ratings of each class of Securities being offered must be sufficient to cover certain pre-established loss multiples which are applied to a base-case loss model. For example, a Rating Agency might require sufficient credit support from all sources to be able to withstand five times the base-case losses for an 'AAA' rating and to cover three times the base-case losses for an 'A' rating (whether or not the Security is subordinated).

Cash flow modeling is performed so that the minimum credit support levels required on the Closing Date which, when combined with structural features that trap Excess Spread, are sufficient to cover losses at various levels. The cash flow modeling also allows the liquidity of a proposed structure to be tested, using worst-case scenarios regarding repossession, recovery periods and amounts, prepayments and reinvestment rates for investment and cash on deposit. The amount of scheduled principal payments available to retire these Securities under various stress scenarios; *e.g.,* higher than expected prepayments, delinquencies and losses or less than expected Excess Spread is also considered. In addition, the sufficiency of liquidity (funds on deposit in reserve accounts) to pay the principal balances by the legal final maturity date is examined.

A loss curve showing the timing of losses is then determined in order to decide which types of credit support are necessary. For example, auto loan loss curves are significantly front-loaded with peak losses occurring between 6 to 18 months for most five-year collateral pools. Credit is given to Excess Spread on a discounted, conservative basis. The presence of triggers (see below), which raise the level of the reserve account as a percentage of current outstanding Securities or collateral if performance begins to deteriorate, is also given credit. A conservative estimate of investment return on any cash held pending distribution in reserve/spread accounts is made; *e.g.,* 2.5%, unless a guaranteed investment contract issued by an entity with a rating at least equal to the desired transaction rating is used.

Greater credit support is required if there is insufficient geographic loan distribution or disproportionate amounts in states which are not economically diverse or which have onerous repossession requirements. Greater credit support may also be required to address liquidity risks as the rating addresses the likelihood of timely payment of interest. The common liquidity risks addressed in motor vehicle loan transactions include the following: early maturity, differences in how borrowers are credited with having made interest and principal payments under the terms of the loan and how interest and principal are paid to securityholders. Interest rate risk where the motor vehicle loans are fixed rate but the Securities have a variable interest rate is also considered.

In auto transactions which feature declining credit support requirements over the life of the transaction, credit support floor coverage, which provides a minimum percentage of credit support at the end of a securitization, may be required. This is because even though most losses occur between 6–18 months and borrowers are less likely to default once they have built up equity, losses may increase as a transaction enters its final stages. In general, for an ''AAA'' rated auto transaction, a reserve account floor is required when the pool has amortized down to 20% of its original total balance. Auto loan securitizations may use overcollateralization and subordination as credit support.

Excess spread in automobile transactions usually ranges between 2%–3% for prime issues and 7%–14% for subprime issues and can be used to absorb credit losses and/or to build up reserve/spread accounts or to create overcollateralization. Spread and reserve accounts protect against disruptions in cash flows for delinquencies and payment disruptions (e.g., bankruptcy of the Sponsor/Servicer). The amount of cash available in these accounts is a very important rating consideration. However, a reserve or spread account which is funded on the Closing Date is more favorably regarded than Excess Spread. This is because if the amounts are set aside on the Closing Date, they are immediately available; whereas, if they are to be funded over time from projected Excess Spread, their availability is less certain. Accordingly, if losses are projected such that credit support equaling 8% of the transaction were to be required, the entire 8% could not be provided solely through Excess Spread.

Automobile securitizations often feature credit support triggers, which allow initial credit enhancement levels to be maintained until certain levels of pool loan delinquencies or losses occur, at which point higher credit enhancement levels are ''triggered.'' If the performance of the securitized pool of loans deteriorates beyond the specified levels, the cash flow mechanics of the transaction will divert the flow of funds (typically Excess Spread is captured to enhance the spread account to a particular level) to provide additional protection for the Securities. Conversely, because the quality of an auto loan pool increases over time, credit support levels are generally permitted to decline proportionately as a tranche amortizes, provided that losses and delinquencies are within expectations. However, once delinquency and loss triggers are reached, the dollar amount of credit support either stops declining or increases to a higher specified level, in both cases by retaining some or all Excess Spread. The effectiveness of the triggers and the incremental amount of Excess Spread that must be retained as performance deteriorates are considered, as is the timing of the trigger being reached.

2. Residential/Home Equity Mortgage Transactions

The Applicant provided the following information on typical transactions. In a typical residential mortgage transaction, ''AAA'' rated senior Securities might be issued which represent approximately 95% of the principal balances of the Securities; ''AA'' rated subordinated Securities might comprise 2%; ''A'' rated subordinated 1%; ''BBB'' rated subordinated 1% and junior subordinated Securities might constitute 1%. The total level of credit enhancement from all sources averages about 4% in order to obtain ''AAA'' rated Securities, 2% for an ''AA'' rating, 1.5% for an ''A'' rating and 1% for a ''BBB'' rating. Subordination is the predominant type of credit support used in traditional residential mortgage transactions.

In a typical ''B&C home/equity loan'' transaction (see description below), ''AAA'' rated senior Securities might be issued which represent 80% of the principal balances of the Securities; ''AA'' rated subordinated Securities might comprise 11%; ''A'' rated subordinated 6%; ''BBB'' or lower rated subordinated Securities might constitute 3%. The total level of credit enhancement from all sources averages about 13% in order to obtain ''AAA'' rated Securities, 10% for an ''AA'' rating, 7% for an ''A'' rating and 3% for a ''BBB'' rating.

In a typical high LTV ratio (i.e., above 100%) second-lien loan transaction, ''AAA'' rated senior Securities might be issued which represent approximately 76% of the principal balances of the Securities; ''AA'' rated subordinated Securities might comprise 10%; ''A'' rated subordinated 3%; ''BBB'' rated subordinated 4% and junior subordinated Securities might constitute 7%. The total level of credit enhancement from all sources averages about 24% in order to obtain ''AAA'' rated Securities, 14% for an ''AA'' rating, 10% for an ''A'' rating and 7% for a ''BBB'' rating.

Typical types of credit support used in home equity transactions are subordination, reserve accounts, Excess Spread, overcollateralization and in transactions which do not use subordination, financial guarantees from ''AAA'' rated monoline insurance companies or highly rated Sponsors. The Applicant provided the following description of the analysis performed by the Rating Agencies in their consideration of residential/home equity securitizations and their determination of appropriate credit support requirements.

(a) Residential/Home Equity—General Considerations—The non-commercial mortgage securitization market can generally be divided into two basic types of assets: ''residential mortgages,'' the majority of whose Obligors have ''prime'' credit ratings, and all other securitizations of residential real estate which are collectively referred to as ''sub-prime'' or ''home equity'' loans (manufactured housing is treated as a separate type of asset and is discussed below). The term ''home equity'' loan includes second mortgages taken out to finance home improvements as well as first and second-lien loans where the purpose of the loan is either for refinancing an existing loan, a source of credit in lieu of using credit cards or for debt consolidation. In addition, it includes first-lien and second-lien loans used to purchase a residence where the borrower does not have an A credit rating.

The dollar volume of home equity loan Securities is now the largest segment of the securitization market, surpassing credit cards. The primary reason for this is that borrowers are increasingly turning to first and second-lien home equity loans instead of other forms of consumer borrowing (i.e., credit cards), as the interest rates on the loans are lower, and the interest payments may be tax deductible. These types of loans have a higher credit risk than traditional first-lien mortgages. However, the Rating Agencies adjust for the additional risk by requiring additional credit support for each tranche of Securities in order to achieve the same rating as would be given to a comparably rated tranche in a residential mortgage securitization.

Another significant feature of home equity loans is that they may have higher LTV ratios than residential mortgages, often higher than 100%. In transactions where LTV ratios are in excess of 100%, little or no credit is given to the collateral in determining necessary credit support, which instead must be supplied from other sources. In the traditional rating analysis for residential mortgage securitizations, the single most significant factor historically was the loan-to-value ratios of the mortgages in the pool. However, statistical information has clearly shown that LTV's on both residential and home equity mortgages are much less important as a predictor of risk than the quality of the borrowers and their capacity to make loan payments. This is due to a borrower's reluctance to default on his residence, without regard to the amount of equity that is built up. There is an increased ability to assess borrower credit risk through the use of credit/mortgage scoring systems. In order for an originator's credit scoring system to be incorporated into the rating process, however, the system is tested against a blind pool of loans with known default rates to verify the validity of the scoring system to predict losses. Capacity to pay is indicated by the borrower's monthly debt-to-income ratio. The Rating Agencies test the predictability of such scoring systems before relying upon them in their credit analysis.

Home equity loans can be subdivided into different categories. The first category, known as ''B & C home equity loans,'' are made primarily to B & C quality borrowers for consolidating credit card and other consumer debt or refinancing existing mortgage loans. The second category, known as ''home equity lines'' of credit,[34] are usually made to A quality buyers for large specific purchases, such as a car or their children's college education expenses. The third category, known as home improvement loans, include loans which are guaranteed by governmental

[34] While this group of transactions may include pools where some portion of the mortgages may be substituted throughout the life of the transaction to provide additional credit support, substitution is currently permitted under the Underwriter Exemptions only for defects in documentation. The Underwriter is not requesting relief for transactions with this feature.

agencies such as the U.S. Department of Housing and Urban Development (''HUD'') but have borrowers with poor credit quality (below B & C) or are non-guaranteed home improvement loans with B & C credit borrowers. The fourth category refers to high LTV ratio loans with borrowers of mixed credit quality but on average above B & C quality.

In transactions where the credit quality of the borrower is lower and LTV ratios are higher, the interest rates charged on the loans are significantly greater than those on traditional residential loans. This results in Excess Spread of typically 450–550 bps which can be used as credit support. The home equity market has had a sufficient track record to provide the Rating Agencies with a depth of expertise and statistical information to rate these Securities with a high degree of reliability. The Securities have been well received by investors as they have tended to offer higher returns than comparably rated residential mortgage Securities in all rating categories other than 'AAA.' In addition, although the prepayment rates are higher for home/equity Securities than for traditional residential Securities, these prepayment rates are more constant and thus more predictable.

(b) Residential/Home Equity—Determination of Expected Losses and Amount of Credit Support—The basic approach used by all of the Rating Agencies to determine the level of credit support necessary for each tranche of a residential/home equity securitization is similar. Historical data is used to predict loss frequency and severity of loss in arriving at the necessary amount of credit support for each rating level. Essentially, the process may be described as follows.

The appropriate credit enhancement for a residential/home equity Security is determined by evaluating the individual characteristics of the mortgages supporting the Security, the aggregate characteristics of the mortgages considered as a pool and the structure of the Securities offered. The model identifies the characteristics of the mortgage that contribute to the likelihood of default and loss (i.e., loss frequency) and the size of the mortgage loss in the event of default (i.e., the loss severity). Among the characteristics examined are the LTV ratio of the mortgage, the type and term of the mortgage, the type of mortgaged property, the guidelines used in approving the mortgage and the quality of the borrower. The credit enhancement required for a mortgage is calculated by multiplying the loss frequency for the mortgage by its loss severity. In assessing potential severity, the calculated severity is compared to a minimum loss percentage, using the larger of the two figures to calculate the credit enhancement for the mortgage.

The sum of the credit enhancements for the individual mortgages represents the initial credit enhancement requirement for the mortgage pool. This figure is then adjusted for mortgage pool characteristics and for originator and Servicer quality. Pool characteristics, including the number of mortgages and the geographic concentration of the mortgaged properties, are important because they impact the statistical independence of the mortgage level credit enhancement calculations. The originator adjustment reflects an assessment of the originator's ability to generate mortgages that perform better or worse than otherwise similar mortgages. The Servicer adjustment reflects an assessment of the Servicer's ability to keep mortgagors paying and to mitigate losses in the event of default. The credit enhancement requirement established after these adjustments reflects a full assessment of the credit risk of the entire mortgage pool. Additional adjustments may be necessary in response to structural aspects of the transaction. Among the transaction characteristics that can have a significant impact on credit enhancement levels are the sequence of payments among different classes of Securities, the allocation of mortgage principal prepayments, the form of credit enhancement and its provider and the relative size of the classes offered. An analysis of the cash flow necessary to make timely payments of principal and interest is performed, and the last step in determining the amount of credit support necessary for each rated Securities tranche is to test the ability of a pool of mortgages to withstand certain stress tests and still be able to generate timely payments of interest and pay principal on or before maturity.

In developing a stress model, conservative assumptions are made as to real estate market conditions, economic factors and expenses associated with events of loss, applying a worst-case scenario incorporating high unemployment, deflation and sharply falling real estate values. The worst-case model considered by S&P to be appropriate for its highest rating categories incorporates the foreclosure frequencies and loss severity experienced during the Great Depression of the 1930s, whereas other Rating Agencies use those experienced in the Houston, Texas disastrous housing market in the mid-1980s. The choice of economic model is selected based on the severity of the stress to be applied. Generally, ''AAA'' and ''AA'' rated Securities have to withstand so-called national depression models based on the Great Depression/Houston, Texas models. For ''A'' and ''BBB'' rating categories, other geographic severe depression models, such as Boston in the 1980s or New York and Los Angeles in the early 1990s, might be used as the basis for the stress model. Alternatively, a system of local forecasting models or some other statistically derived stress models may be created for these purposes. ''BB'' rated Securities or lower would have to withstand less severe recession models.

The initial frequency and severity of loss analysis on each mortgage in the pool may be described as follows. A computer model is used to analyze the expected losses on a mortgage pool backing Securities. The model examines (i) characteristics of each underlying mortgage to determine the probability of it defaulting and (ii) the default performance of several million mortgages originated or serviced by established originators. A housing price index may be used which combines housing price and other economic data and refines the analysis to the smallest geographic unit for which reliable information can be found (usually a metropolitan statistical area). This approach enables the Rating Agencies to analyze variations in losses arising from differences in real estate markets with separate housing price histories, regional economic conditions and foreclosure experience. Through an analysis of adverse economic conditions for discrete geographic areas, the localized impact of regional business cycles and economic restructuring can be factored into the process.

Mortgages in a pool must have certain preferred characteristics to qualify as prime mortgages. In the absence of other mitigating factors, additional loss coverage will be required for pools failing to meet prime pool criteria. The following are the basic criteria for mortgages in a prime pool: first liens on single-family detached properties located in the United States; fixed-rate loans; level payment, fully amortizing loans on the mortgagor's primary residence; mortgages not in excess of a dollar-ceiling amount; a loan-to-value ratio of 80% or less; mortgage documentation and underwriting consistent with Fannie Mae/Freddie Mac guidelines, including minimum underwriting criteria of a fixed percent ratio of borrower's monthly housing expense (*e.g.*, 28%) to gross monthly income and a fixed ratio of borrower's

total monthly debt obligations to gross monthly income (*e.g.*, 36%); whether properties securing mortgages in the pool are well dispersed throughout an area having a strong and diversified economic base and whether there is a minimum number of loans in the pool (*e.g.*, 300). Because most mortgage loan pools do not meet prime pool criteria in each category, rating a portfolio involves assessing the additional credit enhancement required owing to the deviation from prime pool criteria.

Other factors may have a bearing on default rates and could counterbalance negative characteristics of a pool. Thus, a portfolio of well-seasoned mortgage loans would be expected to experience a lower default rate than newly originated loans due to both the history of the creditworthiness of the borrowers and the lower loan-to-value ratio associated with seasoned loans. (For example, default rates are highest in the 3–8 year period of a loan.) The marketability of the underlying mortgages is also an important factor in determining required loss coverage because collateral underlying a defaulted loan needs to be liquidated as quickly as possible. Another significant factor is the availability and type of insurance in connection with the pooled mortgages and their underlying properties. Mortgage insurance, hazard insurance, special hazard insurance, pool insurance on the underlying properties and bankruptcy insurance covering mortgagor bankruptcy and insolvency all may be relevant to the rating of the Security. Primary mortgage insurance (PMI) also can reduce the loss coverage required on a mortgage pool. The credit of the PMI issuer and the quality of its underwriting standards are considered by the Rating Agencies. However, the full benefit of a reduced loss coverage requirement will be available only if the PMI issuer meets Rating Agency standards.

The rating of a residential mortgage loan pool will also vary depending upon the purpose for which the mortgage loans have been made. The most desirable loan is a purchase money mortgage loan for the financing of the mortgagor's single-family detached primary residence. In contrast, home equity loans and apartments, condos, coops, non-owner occupied or vacation homes are projected to have higher losses. The type of loan is also considered. For example, adjustable rate, balloon payment and negative amortization of principal features are all negative factors. The loss severity analysis assumes that the potential for loss upon foreclosure of a second mortgage is greater than for loss upon foreclosure of a comparable first mortgage. The foreclosure frequency analysis for second mortgage loans focuses on the increased credit risk generally associated with second mortgage loans, which frequently are not subject to standard underwriting criteria based upon Fannie Mae and Freddie Mac standards and generally have lower combined LTV ratios than is the case for first mortgages. Geographic diversification of the properties securing mortgages in the pool is important to spread the risk of loss, and higher loss coverage is required for pools of fewer than 300 loans.

As many insurable risks as possible are reduced or eliminated, which is generally accomplished by requiring various types of insurance or bonding expressly covering such risks. Because costs of insurance premiums are in some cases prohibitive, Issuers over the years have devised alternative forms of credit enhancement to avoid the purchase of third-party insurance. Frequent substitutes include lines of credit from large commercial banks, self insurance (available only to Issuers with high credit ratings) and overcollateralization. Hazard insurance must be in place with respect to all properties securing the mortgages that constitute the pool.

(c) Residential/Home Equity—Selecting the Type of Credit Support—The most prevalent forms of credit support for residential/home equity Securities are the senior/subordinated tranched structure, overcollateralization, Excess Spread, reserve funds and surety bonds. In addition, as described above, pool insurance may be obtained for credit losses on the mortgages.

3. Manufactured Housing Transactions

The Applicant states that, in a typical manufactured housing transaction, ''AAA'' rated senior Securities might be issued which represent approximately 80% of the principal balances of the Securities; ''AA'' rated subordinated Securities might comprise 6%; ''A'' rated subordinated 5%; ''BBB'' rated subordinated 5% and junior subordinated Securities might constitute 4%. The total level of credit enhancement from all sources including Excess Spread averages about 15%–16% in order to obtain ''AAA'' rated Securities, 10%–11% for an ''AA'' rating, 7.5%–8.5% for an ''A'' rating and 3.5%–9% for a ''BBB'' rating. Typical types of credit support used in manufactured housing transactions are subordination, reserve accounts, Excess Spread, overcollateralization and financial guarantees from ''AAA'' rated monoline insurance companies or highly rated Sponsors. The Applicant provided the following description of the analysis performed by the Rating Agencies in their consideration of manufactured housing securitizations and their determination of appropriate credit support requirements.

(a) Manufactured Housing—General Considerations—There has been a general growth in the sale of manufactured housing and an improvement in the construction of the units. Transactions with a greater percentage of multi-wide units, customized units and units financed with land privately purchased (as opposed to being placed in trailer park rental spaces) are being securitized which results in less loss severity, as such units have greater resale value, and these types of units are increasingly being purchased by owners with better credit histories. There has also been an increased public market for manufactured housing-backed Securities since the 1980s due to a trend toward lower repossessions and lower losses on such mortgages as a result of improved underwriting and servicing throughout the industry, strong investor interest in medium-term structured investments with loan terms typically between 15–20 years (versus 5 for autos and 30 for residential mortgages) and the inclusion of manufactured housing contracts as qualifying assets for REMICs, which facilitates the issuance of multi-class Securities.

(b) Manufactured Housing—Determination of Expected Losses—LTV ratios are not considered as significant a factor in predicting loss frequency in manufactured housing securitizations as they are for conventional home mortgages because the loan amounts are lower and significant equity is not built up. Instead, the Rating Agencies assign a frequency of default and loss severity factor to the pool of loans (in some cases, on a loan-by-loan basis) to project losses.

An analysis of the credit quality of the underlying pool of manufactured housing contracts in a particular securitization transaction is performed by developing static pool data based on the historical performance of the specific originator of the contracts. This information (which is continuously updated) is then used to predict expected cumulative net losses for the particular pool which takes into account both foreclosure frequency and loss severity. The historical data is adjusted depending on the Servicer's capacity to service the loans, the type of collateral being financed, LTV ratios, loan seasoning, underwriting of loan

standards, experience of management and the quality and quantity of the historical information provided by the originator. As a result, the expected cumulative losses will vary from originator to originator.

An analysis of the actual pool is also performed to predict loss frequency based on collateral characteristics such as type of unit (single versus multi-wide) and real property type (trailer park, private rental or private owned) and loan attributes such as whether the LTV ratios, loan interest rates, loan terms and monthly payments are high (which is a negative factor) and how long the loan has been outstanding (as the risk of default is higher in the earlier years of the loan). Also considered are borrower demographics. The elements regarding borrower demographics which have the greatest impact on default frequency are the originator's borrowing credit scoring methodology, debt-to-income ratios, purchase versus refinance status, employment period, employment status, borrower's age, existing versus first-time home buyer and presence of a co-signer. The specific impact of geographic distribution is forecasted using a mortgage default model which divides the United States in a myriad of counties, standard metropolitan statistical loan areas and state and multi-state regions. This model is used to forecast foreclosure rates and home price trends by projecting economic conditions over a fixed number of years.

Loss severity is determined by predicting the expected recovery rate in case of loan default (*i.e.,* the percentage of the outstanding balance realized upon liquidation of the unit). For example, recovery rates are high (typically 70%) during the first two years after origination and thereafter drop to a lower constant level. The most significant factors affecting loss severity are the age of the unit and the delay time in repossessing and recovering on the unit. Here LTV ratios are a significant indicator of loss severity as repossession costs are usually fixed and, therefore, the lower the net equity the lower the percentage recovery. Also, whether the originator/Servicer has good access to retail distribution for repossessed units significantly affects recoveries. Dealer/manufacturer recourse is also a very important factor in determining both frequency and severity of loss expectancies. Some originators have recourse programs under which dealers or manufacturers will repurchase a defaulted contract at the time of default or cover any loss associated with liquidation of the repossessed unit. The recourse obligation can vary from six months to five years. The amount of credit given to dealer recourse is affected by whether the dealers have historically honored their recourse commitments. The use of dealer recourse is also scrutinized to determine whether a repossession is treated as a default, and if dealer recourse is applicable, to make sure that the originator is not understating its default rates.

(c) Manufactured Housing—Determining Required Amount of Credit Support—In order to determine how much credit support is required, a determination is made as to how much principal liquidation losses can be covered by Excess Spread collection, as opposed to other credit support. Through various cash flow tests, an amount of credit support is calculated that, when combined with Excess Spread, is sufficient to cover all losses under the various rating stress scenarios, while still paying timely interest and principal by the final maturity date for all tranches of Securities issued. Various cash flow runs are reviewed assuming multiples of expected repossession, losses and prepayments to value the amount of Excess Spread that would be generated over the life of the transaction. In a typical manufactured housing securitization, the cumulative net losses on the pool of loans are expected to represent approximately 6%–8% of the original pool balance. Various minimum standards for cash flows at each rating category level are then fixed. For example, in order to merit an ''AAA'' rating, the Rating Agency might require the cash flows sufficient to pay all interest and principal while withstanding a 44% cumulative default frequency, a recovery of 37% (assuming a recovery time lag of six months) and 28% in cumulative net losses. For a ''BBB'' rated tranche, cash flows might be required to withstand a 28% cumulative default frequency, a recovery upon default of 50% and 44% in cumulative losses. The originator's expected loss curve, i.e., how soon defaults occur in the life of the securitization are factored into the cash flow runs, which are then subjected to additional stress (e.g., if the originator's expected loss curve is such that 65% of all anticipated defaults will occur by year five after origination, the Rating Agency will assume 75% will occur in this time period). Finally, if such information is available, prepayments are presumed to occur first on the highest coupon-bearing loans, which maximizes the stress put on the cash flow runs. The final credit support is determined by setting the final loss coverage level required which represents some multiple of the cumulative credit losses expected over the life of the transaction.

At the time the original Underwriter Exemptions were requested, manufactured housing securitizations were structured to offer only ''AAA'' rated senior Securities using third-party letters of credit (LOC) as security, with spread accounts and Issuer recourse protecting the LOC. However, since that time, such transactions are typically structured using a senior/subordinated structure. All subordinated Securities which receive ''A'' or ''BBB'' ratings themselves have other forms of credit support. A typical transaction would have a large percentage of subordinated classes, representing 20% of the principal balances of the Securities, and such subordinated classes could range from ''AA'' to ''B'' rated tranches. These subordinated Securities have longer lives than the single tranche senior-only securitization transactions structured with credit support solely from third-party LOC and spread accounts.

Overcollateralization is also used as credit support for the subordinated Securities once the seniors have been paid. Because the coupon rate on manufactured housing loans is substantially higher than that charged on traditional residential mortgages, there is a large amount of Excess Spread (typically more than 300 bps) that can be used for credit support of both senior and subordinated tranches. In other structures, the Excess Spread is trapped into a reserve fund which provides the credit support for the subordinated tranches. In still other cases, credit support is provided to an investment-grade subordinated tranche through a junior subordinated tranche which receives principal only after the more senior subordinated tranches are paid. Sponsor guarantees are also used as credit support.

4. Commercial Mortgage-Backed Securities (CMBS)

The Applicant states that in a typical CMBS transaction, two classes of ''AAA'' rated Securities might be issued which represent approximately 78% of the principal balances of the Securities (one such ''AAA'' class will be issued with a shorter, and the other ''AAA'' class with a longer, expected maturity); ''AA'' rated subordinated Securities might represent 5%; ''A'' rated subordinated 5%; ''BBB'' rated subordinated 5% and junior subordinated Securities 7%. The total level of credit enhancement from all sources averages about 23% in order to

obtain ''AAA'' rated Securities, 18% for an ''AA'' rating, 13% for an ''A'' rating and 7% for a ''BBB'' rating. Subordination is generally the only type of credit support used in CMBS transactions. The Applicant provided the following description of the analysis performed by the Rating Agencies in their consideration of CMBS securitizations and their determination of appropriate credit support requirements.

(a) CMBS—General Considerations—CMBS transactions securitize pools of commercial mortgage loans which generally represent a mix of asset types, principally retail, multi-family, office, hotel/motel and industrial. While most CMBS transactions have pools with multiple Obligors on the loans, the term also includes securitizations which are ''property specific'' and represent either a single or small number of high-quality properties with respect to which there is one Obligor. While property specific CMBS securitizations do not represent a pool of mortgages with different Obligors, the LTV ratios are much lower, and the credit quality of the single Obligor is much higher, than would be the case in a CMBS securitization of a pool of assets. In property specific CMBS transactions, Securities are generally not issued with a rating lower than ''BBB'' which is an indication of the superior credit quality of the Obligors. Another category of CMBS transactions is the credit (or net) lease transaction where a loan is made to the ground lessor of the real estate and the securitization rating is based on the credit quality of the underlying lessee instead of the lessor/Obligor on the note. In a net lease transaction, the obligor on the note which is being securitized is the lessor of the property, and the lessee of the property is the party actually involved in the management of the property.[35] Accordingly, the true source of payment on the note is the cash flow generated by the lease payments. As a result, the ratings agencies look to the credit quality of the lessee and not that of the lessor/note obligor. However, the rating process for all three types of CMBS transactions is generally similar.

(b) CMBS—Due Diligence—Due diligence for CMBS is performed by multiple parties, at multiple levels. Every CMBS pool is sampled and analyzed by the originator, the Rating Agencies, the Underwriter and the purchasers of subordinated classes. Every mortgage pool is sampled for underwriting and site inspection due diligence. A representative sample of the collateral by loan size, geographic location, property type, originator and other common features is reviewed in conjunction with the assets that pose the largest risks to the transaction, such as loans with the largest balance or related borrowers. The asset summaries and files are reviewed to assure that the sample selection is representative of the pool. If the initial sample is insufficient, further sampling will be required until the Rating Agency is comfortable extrapolating the findings to the remainder of the pool. In property specific transactions, due diligence is performed for each property. Site inspections and file reviews are performed to determine the quality of the real estate and the integrity of the asset files. A quality grade may be assigned to each visited property. The quality grade will reflect the property location, condition, tenancy, management, amenities, competitive market position and other relevant information that may affect the underwriting of the asset. Asset summaries and loan files are reviewed to obtain more detailed information about pool assets and the quality of the underwriting.

The originator's mortgage loan systems are examined, as well as their actual execution through meetings with management and extensive file reviews. The number of years of the originator's real estate experience, whether it escrows taxes and insurance, whether it is able to provide several years of operating statements verified by source documents and whether there is recourse to a third party in case of fraud are considered. Audit checks and legal searches may also be performed on the originators.

The Servicer function in a CMBS transaction is particularly important because not only does the Servicer or Servicers fulfill the normal functions of collecting and remitting loan payments from borrowers to securityholders and advancing funds for such purposes, but the Servicer may also become responsible for activities relating to defaulted or potentially defaulting loans (which are more likely to be restructured than in non-commercial transactions where the loans are usually liquidated). If a Servicer advances funds, its credit rating cannot be more than one rating category below the highest rated tranche in the securitization and no less than ''BBB'' unless it has a qualifying back-up advancer. All entities servicing CMBS transactions must be approved by the Rating Agencies.

An additional responsibility of the Servicer is ensuring that insurance is maintained by each borrower covering each mortgaged property in accordance with the applicable mortgage documents. Insurance coverage typically includes, at a minimum, fire and casualty, general liability and rental interruption insurance but may include flood and earthquake coverage depending on the location of a particular mortgaged property. If a borrower fails to maintain the required insurance coverage or the mortgaged property defaults and becomes an asset of the Issuer, the Servicer is obligated to obtain insurance which, in pool transactions, may be provided by a blanket policy covering all pool properties. Generally, the blanket policy must be provided by an insurance provider with a rating of at least ''BBB.''

Each Servicer, special Servicer and Subservicer is required to maintain a fidelity bond and a policy of insurance covering loss occasioned by the errors and omissions of its officers and employees in connection with its servicing obligations unless the Rating Agency allows self-insurance. All fidelity bonds and policies of errors and omissions insurance must be issued in favor of the Trustee or the Issuer by insurance carriers which are rated by the Rating Agency with a claims-paying ability rating no lower than two categories below the highest rated Securities in the transaction but no less than ''BBB.'' Subservicers may not make important servicing decisions (such as modifications of the mortgage loans or the decision to foreclose) without the involvement of the Master Servicer or special Servicer, and the Trustee or any successor Servicer may be permitted to terminate the subservicing agreement without cause and without cost or further obligation to the Issuer or the holders of the rated Securities.

Loans secured by credit tenant leases require special analysis. Credit enhancement for credit tenant loans is based on an analysis of the probability that the lessee will file bankruptcy, and the likelihood that the lessee will disaffirm the lease and loan structures that may present a risk other than that of the lessee filing bankruptcy.

(c) CMBS—Determination of Expected Losses and Required Credit Support—The approach to rating CMBS transactions is not that different from other asset types, as it is based on the concept of estimating default frequency and loss severity for the loans being securitized, applying adjustments for

[35] In the case where the landlord owns the land and retains ownership of the building, the lessor would be both the ground lessor and the building lessor. In other cases, where the tenant owns the building, the landlord would be only the ground lessor. The obligation held by the Issuer would be secured by either the ground lease or the real estate.

various factors relating to the pool as a whole and stressing the pool projected performance at various levels to determine the credit support necessary for particular rating categories. However, the methodology differs from that used for other asset types because the payments on the loans are being made from the cash flow from the property's operations and not a borrower's personal funds. Accordingly, the focus of the rating process is on the ability of each property in the pool to generate sufficient net operating income to comfortably carry the debt service on a loan and to project the value of the business operation based on capitalization of such projected income. This allows the Rating Agencies to predict both default frequency and loss severity in case of a borrower defaulting on a loan and is accomplished by an in-depth evaluation of the properties that are being sampled in order to essentially ''reunderwrite'' the loans in the pool. An analysis is done to determine the ''debt service coverage ratio'' (DSCR) for each loan which is similar in concept to the due diligence performed by the original lender on the loan in deciding whether to make the loan and in what amount. However, the estimates given by the borrower are not used other than for informational purposes. Instead, the numbers are reconfigured by increasing projected expenses and decreasing projected income to take into account various contingencies using a worst-case scenario. The Rating Agencies differ somewhat in how they perform these calculations, but the analysis is intended to predict loss frequency and loss severity in order to make informed decisions about the credit support they will require at the different rating levels.

For example, the basic approach used by S&P to rate CMBS is to analyze the cash flow generated by each loan, the loan's DSCR based on stabilized net cash flow and its LTV ratio based on estimated property values, which value is determined by capitalization of the net cash flow generated by the property. These analyses are then used to determine whether that loan is likely to default under various stress scenarios, and if so, what the loss of principal might be. Further adjustments are made for a presumed percentage decline in the value of the property upon default and a lag time with an accompanying loss of income before the defaulted loan is actually liquidated. Each stress scenario is related to a particular rating category, so the aggregate estimated losses of all loans in the pool under a given scenario determine the amount of credit support required at each rating category. A matrix model is used to generate estimated losses under a variety of default scenarios which assume that the mortgage loans have a 100% probability of defaulting at specific DSCR and LTV thresholds and that the thresholds vary by property type and rating category. For example, in an ''AAA'' rating category, all multi-family loans with a DSCR below 1.65 and LTV ratios above 50% are presumed to default, and for a ''BBB'' rating, all such loans with DSCR below 1.30 and LTV ratios above 70% will default.

Fitch has a somewhat different approach to rating CMBS transactions. The Fitch performing loan model is based on research indicating that DSCR is the best indicator of loan default and that a loan with a high DSCR is less likely to default than a loan with a DSCR below 1.00. The modeling analysis is performed by calculating each DSCR assuming an ''A'' stress environment. After reunderwriting asset cash flows and stressing debt service, the DSCR is calculated. Based on the stressed DSCR, a default probability and loss severity is assigned. The expected loss on each loan is its percentage of the pool times its default probability times its loss severity. The default probability and loss severity assumptions based on the DSCR for each loan are then adjusted based on certain property and loan features to determine the necessary credit enhancement based on the individual loan characteristics. Next, the composition of the pool is analyzed to identify any concentration risks. Finally, the transaction structure is evaluated and incorporated into the ratings. The results are further adjusted to reflect various stresses from ''AAA'' to ''B.'' The final credit enhancement levels for a transaction equal the sum of the loan-by-loan expected losses based on the DSCR analysis plus or minus adjustments for particular asset characteristics, pool concentration issues and structural requirements.

Factors that are considered in determining cash flows are extensive and may differ among Rating Agencies but could include the following items. Management's budget for the property for the next year is reviewed taking into consideration economic and demographic information about the market in which a property is located. Trends in population growth, household formation and composition, employment, income, existing competition, the vacancy rate, trends in building permits and proposed construction are examined. In arriving at a stabilized income figure for all types of commercial properties, rents are adjusted to reflect market rates, and any seasonal changes in the income stream are factored into the analysis. Gross potential rental income and income from other sources are reduced by vacancy and collection losses. Assumptions based on property type of combined vacancy and credit losses are made, even if the historical vacancy and credit loss has been lower. All normal expenses for the property are accounted for whether currently incurred or not. If the property is subject to a ground lease, ground rent must also be included in expenses. If the ground rent payments increase significantly over time, the amount of the payment is stabilized by taking an average or calculating a level annual equivalent at an appropriate yield. Revenue is marked to the lower of market or actual rent and occupancy. Consideration is given for future conditions, such as new construction, that could affect rents and/or occupancy. Reserves are taken for normalized tenant improvement, leasing commissions and capital repair and maintenance. Care is taken to incorporate all material facts with respect to the property, such as lease rollover risk, credit tenants, ground lease payments, recent capital improvements, market conditions and collateral quality.

Debt service analysis estimates debt service payments required in the event a loan must be refinanced under a stress environment. A specific interest rate and amortization terms based on property types is assumed to determine a hypothetical constant payment rate. The refinance rate is not based on the prevailing interest rate or the highest historical rate but, rather, on rates generally available over a fixed period of years using a designated environment. For fixed-rate loans, the interest rate is reduced by a specified number of basis points if the loan is fully amortizing over its term, and the actual interest rate (the greater of pay or accrual rate) is used if it is higher than the assumed interest rate. Because floating-rate loans may be affected by rising interest rates, the lesser of the ceiling rate, if any, and a stress rate is used for floating-rate loans. In a pool transaction, each borrower may or may not be required to fund a replacement reserve for capital expenditures, depending on the practice of the loan originator. Regardless of whether replacement reserves are required, it is assumed that each borrower in a pool will find it necessary to make some amount of capital expenditures each year to preserve the value of its investment. Third-party appraisals of the underlying real estate assets are

considered, but they generally use such reports only for the information that they contain regarding conditions in local markets rather than for their specific property value conclusions.

Estimates of loss frequency and loss severity are further adjusted for the following types of qualitative factors: certain types of property will tend to lose tenants in economic stress periods (*e.g.*, hotels and restaurants) and will have more volatile cash flows (*e.g.*, seasonal industries); environmental risks, such as asbestos; climate risks (*e.g.*, earthquakes and floods) and economic trends (*e.g.*, some states are slow in paying nursing home reimbursements). Extensive default regression analysis has also been performed to isolate which asset types have higher default rates and higher loss severity percentages. The more geographically diversified the loans are, the lower the loss frequency. Loan size does not clearly correlate to loss frequency so is it minimized as a factor, but loan size can affect severity as the larger the loan the more severe its effect can be on the pool as a whole. Fixed interest rate loans have lower default and severity rates than floating, and the lower the interest rate, the lower the default rate. Balloon mortgage loans have a higher rate of default than amortizing loans. Loans with subordinated liens, loans underwritten by lenders with non-typical underwriting standards and loans characterized by prior defaults or workouts all require greater credit support.

Environmental reports for each property are generally required. A reserve is usually required for any reported remediation costs, and any actions covenanted must be completed within a specified period. Risks that cannot be quantified or that have not been mitigated through either remediation or reserves are assumed to pose a risk to the Trust and are reflected in the credit enhancement requirements. Properties with certain types of asbestos problems, or those that are assumed to have such problems given their date of construction, are assumed to have higher losses due to the clean-up costs and increased difficulty or cost in leasing or selling the asset. Seasoned or acquired pools that may not have current reports for each property are also assumed to have higher environmental losses.

(d) CMBS—Selecting the Type of Credit Support—In general, although there are other types of credit support available, subordination is the only type of credit support used in CMBS. However, protection is also provided to subordinated classes through the concept of a ''directing class'' which has evolved to give those holders of rated subordinated Securities in the first loss position some control over the servicing and realization on defaulted mortgage loans. In a typical transaction, the Servicer might be required to obtain the consent of the directing class before proceeding with any of the following: any modification, consent or forgiveness of principal or interest with respect to a defaulted mortgage loan; any proposed foreclosure or acquisition of a mortgaged property by deed-in-lieu of foreclosure; any proposed sale of a defaulted mortgage loan and any decision to conduct environmental clean up or remediation. The directing class might also have the right to remove a Servicer, with or without cause, subject to the Rating Agency's confirmation that appointment of the successor Servicer would not result in a qualification, withdrawal or downgrade of the then-applicable rating assigned to the rated Securities, compliance with the terms and conditions of the Pooling and Servicing Agreement and payment by the directing class of any and all termination or other fees relating to such removal. Holders of CMBS enjoy additional protection, in that the Master Servicer or Servicer occupies a first-loss position and usually holds an equity stake in the offering, which gives it an incentive to maximize recoveries on defaulted loans. The Master Servicer and Servicer are in a first loss position because they hold the most subordinated equity position interest(s) in the Issuer. Accordingly, they absorb losses before any other classes of securityholders.

Additional cash flow stability is created through call protection features on the commercial mortgages held in the Issuer. Call protection prevents the borrowers from prepaying the mortgage loans during a fixed ''lock-out period.'' In certain transactions, under the terms of the mortgage agreement, the borrower is only allowed to prepay the loan at the end of the lock-out period if it provides ''yield maintenance'' [36] whereby it is required to contribute a cash payment derived from a formula which is calculated based on current interest rates and is intended to offset the borrower's refinancing incentive. This amount also effectively compensates the Issuer for the loss of interest payable on the mortgage loan.

[36] The Applicant represents that the yield maintenance provision in the mortgage agreement would meet the definition of a ''yield supplement agreement'' currently permitted under section III.B.(3)(b) of the Underwriter Exemptions.

Another mechanism, referred to as ''defeasance'', assures stability of cash flow and operates as follows. If a borrower wishes to have the mortgage lien released on the property (for example, where it is being sold), the original obligation either remains an asset of the Issuer and is assumed by a third party, or a new obligation with the same outstanding principal balance, interest rate, periodic payment dates, maturity date and default provisions is entered into with such third party. The new obligation replicates the cash flows over the remaining term of the original obligor's obligation. In either case, the property or assets originally collateralizing the obligation are replaced by collateral consisting of United States Treasury securities or any other security guaranteed as to principal and interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States; for any of the foregoing (Government Securities). Defeasance generally operates so that, pursuant to an assumption and release or similar arrangement valid under applicable state law, the original obligor is replaced with a new obligor.

The new obligor is generally a bankruptcy-remote special purpose entity (SPE), the assets of which consist of Government Securities. In the defeasance of a mortgage loan held in a CMBS pool, a new entity must be created (the SPE) which becomes the obligor on the mortgage loan and holds the Government Securities being substituted for the original collateral securing the mortgage loan. This newly formed entity is required by the Rating Agencies to be an SPE in order to assure that the owner of the securities to be pledged has no liabilities or creditors other than the CMBS pool trustee, has no assets or business other than the ownership of the Government Securities and is not susceptible to substantive consolidation with the original mortgage borrower in the event of the original mortgage borrower's bankruptcy. Such an SPE is purely passive and does not engage in any activities other than the ownership of securities. Although there is no prescribed market requirement as to ownership of the SPE, the securitization sponsor (*e.g.*, the original mortgage lender) is usually its owner, except that in certain circumstances the original mortgage borrower may own the SPE for a variety of reasons; *e.g.*, to be entitled to any excess value of securities pledged as collateral at maturity of the new defeasance note over the amount due at such time. As a condition to

defeasance, all fees and expenses are paid at the substitution of the Government Securities for the mortgage lien. Mechanically, the Government Securities are transferred to a custodian which holds then as collateral for the securitization trust. The payments on the Government Securities are actually made directly to the Issuer so that the SPE does not receive any payments or make any payments.

Whether the original mortgage obligation is replaced with a new securitized obligation or the original obligation remains an asset of the Issuer, is usually dictated by how the transaction is treated for mortgage recording tax purposes under state law. Both call protection and defeasance are intended to protect investors from the risk of prepayments of the loans.

5. Corollary Effects of Requesting Relief for Subordinated and Investment Grade-Securities.

The Applicant wishes to note that the extension of exemptive relief to the Designated Transactions described in this Section V. has a corollary effect on other provisions of the Underwriter Exemptions which will be discussed here.

First, the current ''seasoning requirement'' contained in the last paragraph of section III.B. of the text of the current Underwriter Exemptions provides that Certificates which have been issued in other pools containing the same asset types must have been rated in one of the three highest generic rating categories for at least one year prior to the plan's acquisition of securities pursuant to the Underwriter Exemptions. The Applicant believes that it is consistent with the extension of exemptive relief to Designated Transactions to have this seasoning requirement expanded to cover securities issued in Designated Transactions which have been rated in one of the highest four generic rating categories.

Second, the current Underwriter Exemptions provide in footnote 9 that the term ''Trust'' includes a two-tier structure, provided that the securities held by the second Trust are not subordinated to the rights and interests evidenced by the first Trust. This restriction was based on the premise that the Underwriter Exemptions did not afford relief for any subordinated securities. The Applicant believes that it would be appropriate and consistent with the relief requested in Section I. of this application for this non-subordination restriction to be removed where the securities of the first Trust are issued in Designated Transactions, even if they are subordinated to other classes of securities issued by the first Trust.

VI. Remaining Provisions

A. Disclosure

In connection with the original issuance of Securities, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the Securities, including:

1. Information concerning the payment terms of the Securities, the rating of the Securities, any material risk factors with respect to the Securities and the fact that principal amounts left in the Pre-Funding Account at the end of the Pre-Funding Period will be paid to securityholders as a repayment of principal.

2. A description of the Issuer as a legal entity and a description of how the Issuer was formed by the seller/Servicer or other Sponsor of the transaction;

3. Identification of the independent Trustee;

4. A description of the receivables contained in the Issuer, including the types of receivables, the diversification of the receivables, their principal terms and their material legal aspects, and a description of any Pre-Funding Account used or Capitalized Interest Account used in connection with a Pre-Funding Account;

5. A description of the Sponsor and Servicer;

6. A description of the Pooling and Servicing Agreement, including a description of the Sponsor's principal representations and warranties as to the Issuer's assets, including the terms and conditions for eligibility of any receivables transferred during the Pre-Funding Period and the Trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any Pre-Funding Account or Capitalized Interest Account; identification of the servicing compensation and a description of any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the Trustee, and provided or made available to investors by the Issuer; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the Trustee's and the investors' remedies incident thereto;

7. A description of the credit support;

8. A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the Securities by a typical investor;

9. A description of the Underwriter's plan for distributing the Securities to investors;

10. Information about the scope and nature of the secondary market, if any, for the Securities; and

11. A statement as to the duration of any Pre-Funding Period and the Pre-Funding Limit for the Issuer.

Reports indicating the amount of payments of principal and interest are provided to securityholders at least as frequently as distributions are made to securityholders. Securityholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

In the case of an Issuer that offers and sells Securities in a registered public offering, the Issuer, the Servicer or the Sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some Issuers that offer Securities in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many Issuers obtain, by application to the Securities and Exchange Commission, relief from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such relief is obtained, these Issuers normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the Issuer and the Securities and copies of the statements sent to securityholders. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning an Issuer will be filed to the extent required under the Securities Exchange Act of 1934.

At or about the time distributions are made to securityholders, a report will be delivered to the Trustee as to the status of the Issuer and its assets, including underlying obligations. Such report will typically contain information regarding the Issuer's assets (including those purchased by the Issuer from any Pre-Funding Account), payments received or collected by the Servicer, the amount

of prepayments, delinquencies, Servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the Servicer. Such report also will be delivered to or made available to the Rating Agency or Agencies that have rated the Securities.

In addition, promptly after each distribution date, securityholders will receive a statement prepared by the Servicer, paying agent or Trustee summarizing information regarding the Issuer and its assets. Such statement will include information regarding the Issuer and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

B. Secondary Market Transactions

It is the Applicant's normal policy to attempt to make a market for Securities for which it is lead or co-managing Underwriter, and it is the Applicant's intention to make a market for any Securities for which the Applicant is a lead or co-managing Underwriter. At times the Applicant will facilitate sales by investors who purchase Securities if the Applicant has acted as agent or principal in the original private placement of the Securities and if such investors request the Applicant's assistance.

VII. Summary

In summary, the Applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

A. The Issuers contain ''fixed pools'' of assets. There is little discretion on the part of the Sponsor to substitute receivables contained in the Issuer once the Issuer has been formed;

B. In the case where a Pre-Funding Account is used, the characteristics of the receivables to be transferred to the Issuer during the Pre-Funding Period must be substantially similar to the characteristics of those transferred to the Issuer on the Closing Date thereby giving the Sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the amended exemptive relief proposed. In addition, certain cash accounts will be established to support the Security interest rate and such cash accounts will be invested in short-term, conservative investments; the Pre-Funding Period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the Issuer will be met. The fiduciary of the plans making the decision to invest in Securities is thus fully apprised of the nature of the receivables which will be held in the Issuer and has sufficient information to make a prudent investment decision;

C. Securities in which plans invest will have been rated in one of the three highest generic rating categories (or four in the case of Designated Transactions) by a Rating Agency. The Rating Agency, in assigning a rating to such Securities, will take into account the fact that Issuers may hold interest rate swaps or yield supplement agreements with notional principal amounts or, in Designated Transactions, Securities may be issued by Issuers holding residential and home equity loans with LTV ratios in excess of 100%. Credit support will be obtained to the extent necessary to attain the desired rating;

D. Securities will be issued by Issuers whose assets will be protected from the claims of the Sponsor's creditors in the event of bankruptcy or other insolvency of the Sponsor, and both equity and debt securityholders will have a beneficial or security interest in the receivables held by the Issuer. In addition, an independent Trustee will represent the securityholders' interests in dealing with other parties to the transaction;

E. All transactions for which the Underwriter seeks exemptive relief will be governed by the Pooling and Servicing Agreement, the principal provisions of which are described in the prospectus or private placement memorandum and which is made available to plan fiduciaries for their review prior to the plan's investment in Securities;

F. Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

G. The Underwriter has made, and anticipates that it will continue to make, a secondary market in Securities.

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

2. Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of the plans;

3. The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

4. The proposed amendment, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed amendment to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing

should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); and PTE 2000–41, First Tennessee National Corporation (August, 2000).

In addition, the Department notes that it is also proposing individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., FAN 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); and Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999). They have received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62. Finally, the Department notes that it is proposing relief for Countrywide Securities Corporation (Application No. D–10863).

I. Transactions

A. Effective for transactions occurring on or after the date of publication of this notice in the **Federal Register**, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[37]

B. Effective for transactions occurring on or after the date of publication of this notice in the **Federal Register**, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[38] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in a Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transaction occurring on or after the date of publication of this notice in the **Federal Register**, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of

[37] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

[38] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap Transaction; or, effective January 1, 1999, the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer; [39] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring on or after the date of publication of this notice in the **Federal Register**, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

[39] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to ''prospectus'' include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Effective for transactions occurring on or after January 1, 1998, subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) such Servicer ceases to be an Affiliate of the Trustee no later than six months after the later of August 23, 2000, or the date such Servicer became an Affiliate of the Trustee; and

(ii) such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations

held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A ''true sale'' of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities,

provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. ''Issuer'' means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2);[40] and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this subsection B.(1).[41]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) the rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) the outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)-(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term ''permitted investments'' means investments which: (i) Are either: (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''Issuer'' does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)-(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter

[40] In Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation (''Farmer Mac'') meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[41] The Department wishes to take the opportunity to clarify its view that the definition of Issuer contained in subsection III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemption generally provides relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. ''Underwriter'' means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this proposed exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc, Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc. and Ironwood Capital Partners Ltd. (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; or

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. ''Sponsor'' means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. ''Master Servicer'' means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. ''Servicer'' means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. ''Trust'' means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. ''Trustee'' means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. ''Indenture Trustee'' means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the servicer.

J. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. ''Obligor'' means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, ''Obligor'' shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

M. ''Restricted Group'' with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)-(7).

N. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be ''independent'' of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. ''Pooling and Servicing Agreement'' means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. ''Pooling and Servicing Agreement'' also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. ''Rating Agency'' means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., Fitch ICBA, Inc. or any successors thereto.

Y. ''Capitalized Interest Account'' means an Issuer account:

(i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. ''Closing Date'' means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. ''Pre-Funding Account'' means an Issuer account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to: (i) 40 percent, effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997; and (ii) 25 percent, for transactions occurring on or after May 23, 1997.

CC. ''Pre-Funding Period'' means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. ''Designated Transaction'' means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. ''Ratings Dependent Swap'' means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap''. With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. ''Eligible Swap'' means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (*e.g.,* LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (*i.e.,* payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. ''Eligible Swap Counterparty'' means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. ''Qualified Plan Investor'' means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand

the terms and conditions of any swap transaction or Eligible Yield Supplement Agreement used by the Issuer and the effect such swap or Agreement would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM),[42] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984);

(2) An ''in-house asset manager'' (INHAM),[43] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. ''Excess Spread'' means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. ''Eligible Yield Supplement Agreement'' means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Effective for transactions occurring on or after April 7, 1998, such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not ''leveraged'' as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

[42] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[43] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

IV. Modifications

For the Underwriter Exemptions provided to Residential Funding Corporation, Residential Funding Mortgage Securities, Inc., *et al.* and GE Capital Mortgage Services, Inc. and GECC Capital Markets (the Applicants) (PTEs 94–29 and 94–73, respectively);

A. Section III.A. of this proposed exemption is modified to read as follows:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which (i) one of the Applicants or any of its Affiliates is the Sponsor, [and] an entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this proposed exemption, is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants or any of its Affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

B. Section III.C. of this proposed exemption is modified to read as follows:

C. Underwriter means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this proposed exemption. In addition, the term Underwriter includes Ironwood Capital Partners Ltd., Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc.; ABN AMRO and Credit Lyonnais Securities, Inc. (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity;

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) above is a manger or co-manager with respect to the Securities; or

(4) Any entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this proposed exemption.

V. Effective Date

If adopted, this proposed exemption would be effective for transactions occurring on or after the date the proposed exemption is published in the **Federal Register**, except as otherwise provided in section I.C., subsection II.A.(4)(b), and section III.JJ. of the proposed exemption. Section I.C., relating to the defeasance of mortgage obligations, would be applicable to transactions occurring on or after January 1, 1999; subsection II.A.(4)(b) would be applicable to transactions occurring on or after January 1, 1998; and section III.JJ., relating to Eligible Yield Supplement Agreements involving notional principal contracts, would be applicable to transactions occurring on or after April 7, 1998.

Signed at Washington, DC this 16th day of August, 2000.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

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Federal Register

Wednesday,
August 23, 2000

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AG08

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which the States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2000–01 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

DATES: This rule takes effect on August 23, 2000.

ADDRESSES: States and Territories should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours in room 634, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2000

On April 25, 2000, we published in the **Federal Register** (65 FR 24260) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 20, 2000, we published in the **Federal Register** (65 FR 38400) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2000–01 duck hunting season. The June 20 supplement also provided detailed information on the 2000–01 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 21–22, we held meetings that reviewed information on the current status of migratory shore and upland game birds and developed 2000–01 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2000–01 regular waterfowl seasons. On July 31, we published in the **Federal Register** (65 FR 46840) a third document specifically dealing with the proposed frameworks for early-season regulations for the 2000–01 duck hunting season. This document is the fourth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2000–01 season.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the April 25 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The public comment period for early-season issues ended on August 10, 2000. We have considered all pertinent comments received in developing this document. Early-season comments are summarized below and numbered in the order used in the April 25 **Federal Register** document. Only the numbered items pertaining to early-seasons issues for which written comments were received are included. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the Councils' annual review of the frameworks, we assume support for continuation of last year's frameworks for items for which we received no recommendation. Council recommendations for changes in the frameworks are summarized below.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

D. Special Seasons/Species Management

iii. September Teal Seasons

Council Recommendations: The Central Flyway Council recommended that Nebraska be allowed to have an experimental 9-day teal season in the nonproduction area of the State.

Service Response: We concur with the Central Flyway Council's recommendation for an experimental 9-day special September teal season in the nonproduction area of Nebraska. The State is required to evaluate the impacts to nontarget waterfowl species by conducting hunter performance surveys. This season will be experimental for a 3-year period but must include a pre-sunrise evaluation in order to have shooting hours begin one-half hour before sunrise.

iv. September Teal/Wood Duck Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service and the Council's Wood Duck Technical Committee move forward during the current year (2000) to allow for implementation of a wood duck Flyway harvest management strategy by the year 2001 as scheduled. The Committee further recommended that September seasons remain an option for delineated wood duck reference areas (population units), provided that specified data-collection requirements are met. The Committee also recommended that beginning in 2001, the September duck seasons in Kentucky and Tennessee be grandfathered and given operational status in their current format.

Written Comments: Four individuals questioned the rationale for the Service's decision to terminate September teal/wood duck seasons when information indicating that such seasons are detrimental to wood duck populations seems to be lacking.

Service Response: September teal/wood duck seasons in Florida, Kentucky, and Tennessee have been in an experimental status since their inception in 1981. We have consistently requested that States collect information

to evaluate these special seasons, including hunter and harvest surveys, banding, and population surveys. In 1986, due to decreases in wood duck survival rates in Kentucky and Tennessee, we restricted the bag limit during experimental September teal/wood duck seasons to include no more than two wood ducks. At that time, we also noted that preseason wood duck banding in Florida was not sufficient to allow assessment of the impacts associated with the experimental September season (51 FR 24418). On March 13, 1987 (52 FR 7997), we indicated that although September teal/wood duck seasons are in principle a feasible harvest management strategy, the situation with regard to their evaluation, including flyway-wide aspects of the management of target species, and their suitability for widespread application was under review. At that time, we also reaffirmed the need for cooperative studies that are flyway-oriented in scope to better understand and manage wood ducks. On June 6, 1990 (55 FR 23179), we noted that preseason banding programs were not meeting the regional requirements for sample size and distribution necessary to evaluate special seasons for wood ducks on a State-by-State basis. We stated that unless arrangements could be made to initiate regional banding programs and facilitate widespread data collection, experimental seasons may be modified or suspended (55 FR 23179). During 1991–96, a cooperative Wood Duck Population Monitoring-Initiative (Initiative) was undertaken by the Atlantic and Mississippi Flyway Councils and the Service to improve population-monitoring programs. We agreed not to discontinue or expand experimental September teal/wood duck seasons until the initiative was completed. Results from the initiative indicated that wood duck population-monitoring programs at geographic scales below the flyway level were not meeting requisite sample sizes. Our evaluation of September teal/wood duck seasons in Florida, Kentucky, and Tennessee indicated that estimates of population parameters for individual States are usually imprecise, which precludes drawing meaningful conclusions about State or regional wood duck harvest-management experiments (63 FR 13751).

On August 28, 1998 (63 FR 46126), we stated our intent to discontinue September teal/wood duck seasons in Florida, Kentucky, and Tennessee after September 2000, due to our inability to adequately evaluate such seasons. We also stated that, without adequate regional population monitoring, wood duck harvest management should be approached at the flyway level during the regular season. No additional information is available that would prompt us to reconsider this decision. Therefore, September teal/wood duck seasons in Kentucky and Tennessee, as well as Florida, will not be grandfathered and granted operational status.

In 1998, we requested that a Flyway-wide wood duck harvest strategy be developed and ready for implementation during the 2001–02 regular season (63 FR 46126). In September 1999, we met with representatives from the Atlantic and Mississippi Flyway Council Technical Sections to discuss technical aspects of flyway wood duck harvest strategies. Development of the technical foundation for the strategy commenced following this meeting. A progress report on this work was made at the July 2000 Flyway Council meetings. Several Technical Section representatives have been asked to attend a follow-up meeting this fall to address Council concerns and suggestions for a flyway wood duck harvest strategy. A draft harvest strategy will be distributed to Technical Sections prior to their February 2001 meetings. A final harvest strategy will be forwarded to the Flyway Councils for their consideration prior to their March 2001 meeting.

September wood duck seasons remain an option for delineated southern wood duck population units, provided that regional data-collection requirements are met. Such seasons should not be approached on a State-by-State basis. The final report of the Initiative outlined many of the sample size requirements for regional monitoring programs. We point out that the Initiative represented a period when Federal and State cooperators made special efforts to improve regional wood duck monitoring programs. The final report of the Initiative indicated that this goal was not achieved. Before a proposal for regional September wood duck seasons is considered in the future, we request that the Flyway Councils review the results of the Initiative and indicate how failure to achieve requisite regional sample sizes in the past will be avoided in the future.

v. Youth Hunt

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council and the Central and Pacific Flyway Councils recommended expanding the special youth waterfowl hunt to 2 days.

Written Comments: The Delaware Division of Fish and Wildlife and the Maryland Department of Natural Resources opposed the current requirement that days must be held on a weekend, holidays, or other non-school days. Both Maryland and Delaware prohibit Sunday hunting by State law. Delaware proposes that States be allowed to substitute either a Friday and Saturday or that they be allowed to hold the special hunt on consecutive Saturdays. Maryland proposes that only one of the 2 youth hunting days be required to be either a weekend day or holiday.

The Georgia Wildlife Resources Division supported the proposed increase in the youth waterfowl hunt from 1 day to 2 days.

Service Response: In light of the continuing interest from the Flyway Councils, we decided to expand the special youth waterfowl hunt to 2 consecutive days. Anecdotal data suggest that the special hunt has proven to be very popular and has provided an excellent opportunity to introduce youth hunters to the sport of waterfowling and waterfowl and wetland conservation. Expansion of the special hunt to 2 consecutive days should reduce travel difficulties and scheduling conflicts inherent with the current 1 day hunt. Based on the limited number of youths participating, we do not expect any significant increase in harvest due to the expansion of the opportunity, and thus no significant impact on waterfowl populations.

Relaxation of the requirement to hold the special 2 day youth hunt on either a weekend, holidays, or other non-school days would defeat one of the most significant aspects of the special opportunity, i.e., a time when youth have the maximum opportunity to participate. Further, relaxation of this requirement would not meet Flyway-identified goals and objectives of expanding the special hunt to 2 days by reducing travel difficulties and scheduling conflicts inherent with the current 1 day hunt. Therefore, we do not support Maryland and Delaware's requests.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Huron, Saginaw, and Tuscola Counties near Saginaw Bay, Michigan, which are currently closed in the special early Canada goose season, be allowed an experimental early season with a 2 bird daily bag limit. The Lower-

Region Regulations Committee of the Mississippi Flyway Council urged caution in changing or expanding special goose seasons.

The Central Flyway Council recommended that the framework closing date for operational September Canada goose seasons in the Central Flyway be extended to September 30 with no additional evaluation required.

The Pacific Flyway Council recommended that Wyoming's daily bag and season limits be increased from 2 and 4, to 3 and 6 birds, respectively, and that the bag and possession limits for Washington's September season increase from 3 and 6, to 5 and 10, respectively.

Written Comments: The Michigan Department of Natural Resources expressed disappointment that their experimental special September Canada goose season in Huron, Saginaw, and Tuscola Counties was proposed for only 10 days (September 1–10) instead of the requested 15 days. They presented an estimate of migrant Canada geese in the three county area which they believe indicates that the proportion of migrant geese in the harvest during the first half is likely to be within the special season criteria.

Service Response: The history of special early Canada goose seasons in the Saginaw Bay area suggests a cautious approach to additional experimentation. Results of the previous experimental season in the three Saginaw-Bay Counties in Michigan indicated a substantial proportion of migrant Canada geese in the special-season harvest. The current proposal for a repetition of the experiment documents a significant increase in the number of resident Canada geese in the area since that time, but information concerning the population composition during the first half of September is sketchy. We agree that the change in resident Canada goose numbers warrants another experiment, but because of the small amount of information about the proportion of migrants in early September, we feel that the season should not extend beyond September 10.

We do not support the Central Flyway recommendation to remove evaluation requirements (August 29, 1995 **Federal Register**) for Special September Canada goose seasons for the period between September 16–30. Past experience with these special seasons has shown seasons during September 1–15 generally achieve the objective of targeting resident Canada geese and this period has been designated as operational. In contrast, harvests during the period of September 16–30 has indicated an increasing proportional take of migrant stocks of geese. We have no experience with special seasons in the Central Flyway during September 16–30, and the impacts on nontarget populations of Canada geese have not been determined. Although impacts to nontarget populations of Canada geese that are over objective levels may not be of immediate concern, we believe that evaluation during this period is necessary to insure that the objective of targeting resident geese is maintained. According to established special season guidelines, Central Flyway States have the option to conduct an experimental hunt during the late-September period with an appropriate evaluation. Although collection of neck collar data may not be possible due to low numbers of marked geese, current guidelines allow for the use of morphological information of harvested geese to access the proportion of migrant geese during this period. Because migrant Canada geese are limited to small subspecies of the Tall Grass Prairie Population in the East-Tier States and the Short Grass Prairie Population in the West-Tier States, we believe that tail fan measurements of harvested geese will be sufficient to determine the proportion of harvested migrant geese in this area. Based on the use of the morphological information available from the Service's Parts Collection Harvest Survey, we have subsequently received proposals, including target sample sizes, for experimental seasons in North Dakota, South Dakota, and Oklahoma, which we believe will be adequate to guide evaluation during the 3-year experimental period beginning with the 2000–01 hunting season.

Regarding the Lower-Region Regulation Committee's concern for cumulative impacts of special-season harvests on migrant Canada goose populations of concern, we are aware of the Committee's concern and are monitoring the harvests occurring during these seasons.

We concur with the Pacific Flyway Council recommendation.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the 1999 regular-goose-season opening date be as early as September 16 in Michigan and Wisconsin. The Committee further recommended that the framework opening date for regular goose seasons in the Mississippi Flyway be September 16.

The Central Flyway Council recommended that the framework opening date for regular dark-goose seasons in the East and West Tiers be fixed at September 1, rather than the current opening date of the Saturday nearest October 1.

Service Response: We do not support the Central Flyway's recommendation for changing the dark-goose framework opening dates from the Saturday nearest October 1 to September 1 or the Mississippi Flyway's light- and dark-goose seasons from the Saturday nearest October 1 to September 16. We have minimal experience with regular goose seasons that begin prior to the Saturday nearest October 1 and believe that management of several migratory goose populations would require complex spacial and temporal considerations within this period to address needs of various populations. The change in the framework opening date to earlier in September would require the movement of goose frameworks from the late- to the early-season process and, for some populations, would result in a serious timing problem in that decisions would have to be made prior to having breeding-ground information. We are also developing a management strategy for resident Canada geese that will allow for States to have more flexibility in addressing human/goose conflicts caused by growing populations of resident geese, and we believe that changes such as this may impede progress.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended a 95-day season with the option for a two-way split season for the hunting of Mid-Continent sandhill cranes. This change would result in a 37-day season length increase in North Dakota, South Dakota, Nebraska, Kansas, Montana, Wyoming, and Colorado and a 2-day season length increase in Oklahoma, Texas, and New Mexico. The Council further recommended that the open area for the hunting of Mid-Continent sandhill cranes be extended eastward to the Mississippi/Central Flyway boundary. The Council recommended a season length of 37 days with outside framework dates of September 1 and February 28, and a daily bag limit of three for this expanded area.

The Pacific Flyway Council recommended a boundary modification in Box Elder County, Utah, to exclude that portion of the County known to be used by greater sandhill cranes affiliated with the Lower Colorado River Population.

Written Comments: The Texas Parks and Wildlife Department (TPW) supported the Central Flyway Council's

recommendation for an eastward expansion of the open area for the hunting of Mid-Continent sandhill cranes. TPW took exception to statements (65 FR 46845) that changes in the hunting frameworks should be delayed until the ongoing satellite transmitter studies are completed pointing out that the 1997–99 3-year index from surveys on the Nebraska's Central Platte River Valley should not be used for regulatory purposes, as large numbers of cranes were recorded outside the surveyed area. TPW believes that recent genetics studies have cast doubt on the validity of the existence of the subspecies, and furthermore, TPW's current population estimates of greater sandhill cranes in Texas indicate a population of 36,000, a number three times higher than other estimates. Lastly, TPW corrected the Council's recommendation to be for a daily bag limit of three and a possession limit of six, not nine, as indicated by the Service.

The Oklahoma Department of Wildlife Conservation (ODWC) also supported the Central Flyway Council recommendations for expanding the frameworks for Mid-Continent sandhill cranes. ODWC believed that the Mid-Continent Population has increased in recent years to record high levels rather than stabilizing. They also believed that changes in the frameworks should not be delayed until research findings from the ongoing satellite transmitter and genetics studies are completed, believing such research will never be completed.

Service Response: We do not support the Central Flyway Council's recommendation to liberalize hunting seasons on the Mid-Continent Population of sandhill cranes. While we incorrectly stated that the recommendation included a proposed possession limit of nine, we reiterate our belief that substantive changes in the frameworks for the hunting of Mid-Continent sandhill cranes should not occur until the ongoing satellite-transmitter and genetics studies are completed. Recent genetic information on subspecies composition has further complicated management of the two identified subpopulations of Mid-Continent sandhill cranes, the Western and Gulf Coast subpopulations. Based on these findings, it may be appropriate to reconsider harvest approaches, including hunting framework changes, according to subpopulation delineation including improved knowledge of the status of recognized subspecies in this population. Although, there are no current surveys of the status of the Gulf Coast subpopulation, current genetics studies may provide important insight into the future of subpopulation management. In the long term, we believe that consideration should be given to the development of an annual operational survey of the Gulf Coast subpopulation.

We concur with the Pacific Flyway Council recommendation.

12. Rails

Council Recommendations: The Pacific Flyway Council recommended that those States divided between the Central and Pacific Flyways be allowed to select rail-season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

Service Response: We concur.

13. Snipe

Council Recommendations: The Pacific Flyway Council recommended that those States divided between the Central and Pacific Flyways be allowed to select snipe-season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

Service Response: We concur.

14. Woodcock

Written Comments: An individual from Minnesota felt that the daily bag limit for woodcock should be four birds, and that the framework opening date for the Mississippi Flyway should be September 1, rather than the Saturday nearest September 22.

Service Response: In 1997, in response to long-term population declines, we implemented several framework changes to reduce woodcock harvest. In the Central Region, we reduced the bag limit from five to three birds and the season length from 65 to 45 days, and changed the framework opening date to the Saturday nearest September 22 (rather than September 1). Based on harvest information for various bag limits, we determined that a reduction from five to three birds was necessary to achieve a meaningful reduction in harvest. Furthermore, a framework opening date of the Saturday nearest September 22 was contained in an interim woodcock harvest strategy proposed by the Mississippi Flyway Council in 1997 (62 FR 44232). The framework date we adopted reflected the opening date proposed in the Flyway Council strategy.

15. Band-tailed Pigeons

Council Recommendations: The Pacific Flyway Council recommended increasing the possession limit for Pacific Coast band-tailed pigeons from two to four birds.

Service Response: We concur.

16. Mourning Doves

Council Recommendations: The Pacific Flyway Council recommended that those States divided between the Central and Pacific Flyways be allowed to select dove season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

Written Comments: An individual from Wisconsin objected to dove hunting.

Service Response: We concur with the Pacific Flyway Council's recommendation.

Regarding objections to dove hunting in Wisconsin, Federal frameworks currently, and have in the past, allowed the State of Wisconsin the option of selecting a mourning dove season. While Wisconsin has chosen not to select such a season in the past, this does not preclude them from selecting a season in the future. We further note that Wisconsin tentatively plans to hold a dove season during the 2001–02 season.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended a reduction in sandhill crane bag limits from three to two in that portion of the State associated with the Pacific Flyway Population of lesser sandhill cranes.

Written Comments: A law firm wrote to request reconsideration of the proposed lesser sandhill crane bag limit for southern and southeastern Alaska.

An individual from Alaska requested the Service reconsider appropriate harvest regulations for sea ducks in Alaska and reviewed their population characteristics and life history strategies.

Service Response: We concur with the Pacific Flyway Council and have reduced the daily bag limit from three to two sandhill cranes in that portion of the State associated with the Pacific Flyway Population of lesser sandhill cranes. We note that the current best estimates of the number of lesser sandhill cranes in the Pacific Population is between 20,000–25,000. Further, the best evidence suggests that the total harvest of these cranes in Alaska (the only State in which they are hunted) averages 200 cranes per year. We do not believe this level of harvest to be excessive. We have reviewed the documentation regarding the existence of a ''coastal segment'' of lesser sandhill cranes, however, at present we do not find compelling evidence in this material that would lead us to believe that such a group exists as a separate and manageable entity. Therefore, we believe the current proposal provides

adequate protection for the Pacific Population of lesser sandhill cranes. During the next year, we will continue to review the data available for the Pacific Population of lesser sandhill cranes. Additionally, the Service and the State of Alaska have instituted a new study (using satellite telemetry) to investigate the temporal and geographic distribution of these birds throughout their annual cycle. We will evaluate harvest management for this population of cranes based on this new information as it becomes available and in light of the concerns expressed.

Regarding sea ducks, we recently reviewed Alaska sea duck regulations and imposed restrictions by reducing daily bag limits and restricting species eligible for this opportunity. We believe that these recent restrictions, coupled with the fact that sea duck harvest by sport hunters in Alaska is very low (< 10,000) in comparison to population levels, supports our season structure and bag limits on this group of ducks.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

We have considered provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the action is consistent with conservation programs for those species.

Executive Order (E.O.) 12866

This rule was reviewed by the Office of Management and Budget. The migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 7/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform-Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this rule does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in

accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season and option selections from these officials, we will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2000–01 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2000–01 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 15, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2000–01 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select for certain migratory game birds between September 1, 2000, and March 10, 2001.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways:

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units:

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions:

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, and West Virginia. All seasons are experimental.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas. The season in Nebraska is experimental.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days in the Atlantic Flyway and 16 consecutive days in the Mississippi and Central Flyways, except in Nebraska where the season is not to exceed 9 consecutive days. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset, if evaluated; otherwise sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset,

except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida: A 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 23). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limit may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Montezuma Region of New York, the Lake Champlain Region of New York and Vermont, the Eastern Unit of Maryland, and Delaware. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons not to exceed 30 days during September 1–30 may be selected by New Jersey. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway, except Georgia and Florida, where the season is closed. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 20 days during September 1–20 may be selected by New York (Montezuma Region). Experimental seasons of up to 30 days during September 1–30 may be selected by New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season of up to 7 consecutive days during September 16–22 may be selected by Minnesota, except in the Northwest Goose Zone. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 2 Canada geese.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season of up to 14 consecutive days during September 16–29 may be selected by South Dakota. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 2 consecutive days during September 16–17 may be selected by Oklahoma. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 7 consecutive days during September 16–22 may be selected by

North Dakota. The daily bag limit may not exceed 5 Canada geese.

Pacific Flyway

General Seasons

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. All participants must have a valid State permit for the special season.

3. A daily bag limit of 3, with season and possession limits of 6 will apply to the special season.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone, a 15-day season may be selected during the period September 1–20. Any portion of the season selected between September 16 and 20 will be considered experimental. Daily bag limits may not exceed 5 Canada geese. In the NW goose zone, at a minimum, Oregon must provide an annual evaluation of the number of dusky Canada geese present in the hunt zone during the period September 16–20 and agree to adjust seasons as necessary to avoid any potential harvest of dusky Canada geese.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 15-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit, and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting, in their possession while hunting.

Special Seasons in the Central and Pacific Flyways: Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

(1) In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

(2) In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years; and

(3) In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 21) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 6 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 23) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the

Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 4 band-tailed pigeons, respectively.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 4.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits: Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged and White-tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession.

In addition to the basic duck limits, there is a sea duck daily bag limit of 10, with a possession limit of 20, scoter, common and king eiders, and common and red-breasted mergansers, singly or in the aggregate. Alaska may choose to allow these sea duck limits in addition to regular duck bag limits. However, the

total daily bag limit for any duck species may not exceed 10.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check-in and check-out. Bag limit of 1 daily and 1 in possession. Season to close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limit of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, Aleutian, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 18, no more than 500 swans may be harvested during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

4. In GMU 22, no more than 300 swans may be harvested during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 23, no more than 300 swans may be harvested during the experimental season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season. The experimental season evaluation must adhere to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (Tundra) Swans.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Conecuh, Covington, Dale,

Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Mississippi

South Zone—The Counties of Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, and Walthall.

North Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Annes, St. Marys, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk

County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

South Carolina

Early-season Hunt Unit—Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and west of the Santee Dam.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the state within the following described boundaries: beginning at the intersection of U. S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U. S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U. S. Highway 63; thence along U. S. Highway 63 to the south boundary of the state; thence along the south and east boundaries of the state to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington , and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Kansas

September Canada Goose Kansas City / Topeka Unit—That part of Kansas bounded by a line from the Kansas-Missouri state line west on K–68 to its junction with K–33, then north on K–33 to its junction with US–56, then west on US–56 to its junction with K–31, then west-northwest on K–31 to its junction with K–99, then north on K–99 to its junction with US–24, then east on US–24 its junction with K–63, then north on K–63 to its junction with K–16, then east on K–16 to its junction with K–116, then east on K–116 to its junction with US–59, then northeast on US–59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with K–68.

September Canada Goose Wichita Unit—That part of Kansas bounded by a line from I–135 west on US 50 to its junction with Burmac Road, then south on Burmac Road to its junction with 279 Street West (Sedgwick/Harvey County line), then south on 279 Street West to its junction with K–96, then east on K–96 to its junction with K–296, then south on K–296 to it junction with 247 Street West, then south on 247 Street West to its junction with US–54, then west on US–54 to its junction with 263 Street West, then south on 263 Street West to its junction with K–49, then south on K–49 to its junction with 90 Avenue North, then east on 90 Avenue North to its junction with KS–55, then east on KS–55 to its junction with KS–15, then east on KS–15 to its junction with US–77, then north on US–77 to its junction with Ohio Street, then north on Ohio to its junction with KS–254, then east on KS–254 to its junction with KS–196, then northwest on KS–196 to its junction with I–135, then north on I–135 to its junction with US–50.

South Dakota

September Canada Goose North Unit—Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts County.

September Canada Goose South Unit—Beadle, Brookings, Hanson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, and Turner Counties.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Southwest Zone—Clark, Cowlitz, Pacific, and Wahkiakum Counties.

East Zone—Asotin, Benton, Columbia, Garfield, Klickitat, and Whitman Counties.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Edon Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along

the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of a line extending east from the Wyoming border, south along U.S. 85 to I–76, south along I–76 to I–25, south along I–25 to the New Mexico border.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway 92; east along Nebraska Highway 92 to Nebraska Highway 61; south along Nebraska Highway 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone—Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area—That portion of the State west of I–35.

Texas

Regular-Season Open Area—That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I–35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

Montana

Regular-Season Open Area—The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich and Cache Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only.

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10—except Unimak Island.

Kodiak Zone—State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

[FR Doc. 00–21481 Filed 8–22–00; 8:45 am]

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Federal Register

Wednesday,
August 23, 2000

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135
Air Tour Operators in the State of Hawaii; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 27919; Special Federal Aviation Regulation (SFAR 71)

RIN 2120–AG44

Air Tour Operators in the State of Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On October 23, 1997, the FAA extended Special Federal Aviation Regulation (SFAR) 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii, for 3 years. The purpose of this extension was to provide additional time for the agency to complete and issue a notice of proposed rulemaking that would apply to all air tour operators. The FAA anticipates that this national rule, when finalized, would replace SFAR 71, which would then be rescinded. The FAA proposes to extend SFAR 71 for another 3 years, which would provide the additional time necessary to issue the proposal addressing commercial air tour safety standards and maintain the current regulatory requirements for the safe operation of air tours in the airspace over the State of Hawaii.

DATES: Send your comments on or before September 22, 2000.

ADDRESSES: Address your comments, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27919, 800 Independence Ave., SW, Washington, DC 20591.

Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9-NPRM-CMTS@mail.faa.gov. Comments must be marked as Docket No. 27919. Comments may be examined in Room 915G on weekdays between 9:00 a.m. and 5:00 p.m. except on federal holidays.

FOR FURTHER INFORMATION CONTACT: For a copy of this rule, contact the Office of Rulemaking at (202) 267–9677. For technical questions, contact Gary Davis, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comments closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. 27919.'' The postcard will be date stamped and mailed to the commenter.

Availability of the Proposed Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339).

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* to access recently published documents.

Any person may obtain a copy of this interim rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9677. Requests should be identified by the docket number of this proposal.

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, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small 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.

Background

Since 1980, the air tour industry in the State of Hawaii has grown rapidly, particularly on the islands of Oahu, Kauai, Mauai, and Hawaii. The growth of the tourist industry, the beauty of the islands, and the inaccessibility of some areas on the islands generated significant growth in the number of air tour flights. In 1982, there were approximately 63,000 helicopter and 11,000 airplane tour flights. By 1991, these numbers had increased to approximately 101,000 for helicopters and 18,000 for airplanes.

The growth of the air tour sightseeing industry in Hawaii has been associated with an escalation of accidents. During the 9 years between 1982 and 1991, there were 11 air tour accidents with 24 fatalities. The accident data shows an escalation of accidents in the 3-year period between 1991 and 1994, during which time there were 20 air tour accidents with 24 fatalities. The apparent causes of the accidents ranged from engine power loss to encounters with adverse weather. Contributing factors to the causes and seriousness of accidents were: operation beyond the demonstrated performance envelope of the aircraft, inadequate preflight planning for weather and routes, lack of survival equipment, and flying at low altitudes (which does not allow time for recovery or forced landing preparation in the event of a power failure). Despite voluntary measures taken by some Hawaii air tour operators and an increase in FAA's inspections, a rise in the number of accidents occurred, indicating a need for additional measures to ensure safe air tour operations in Hawaii.

On September 26, 1994, the FAA published the emergency final rule, SFAR No. 71 (59 FR 49138). This action was taken because of the increase in the number of fatal accidents involving air tour aircraft during the period 1991–1994 and the causes of those accidents. The emergency regulatory action established additional operating

procedures, including minimum safe altitudes (and associated increases in visual flight rules (VFR) weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the state of Hawaii. On October 30, 1997, SFAR 71 was extended until October 26, 2000.

Since the FAA believes that SFAR 71 has been successful in preventing further accidents, the FAA is developing a national air tour safety rule that would address similar issues identified in SFAR 71. Once that rulemaking is complete, this national rule would replace SFAR 71, which would then be rescinded.

This proposal would extend SFAR 71 for an additional 3 years. As stated in the extension of SFAR 71, the FAA intends to issue a notice of proposed rulemaking applicable to all air tour operators concerning air tour safety. This national rule will be responsive to NTSB comments and will consider issues raised by commenters who responded to SFAR 71 in 1994.

Environmental Review

Because this proposal would maintain the current conditions, no further environmental review is required.

Regulatory Evaluation Summary

SFAR 71 established certain procedural, operational, and equipment requirements for air tour operators operating in the State of Hawaii. Compliance with SFAR 71 was estimated to increase total costs approximately $2.1 million, in 1994 dollars, over the three year period, 1994 to 1997. Most of the increase in costs was associated with lost revenue that resulted from tour cancellations when the new minimum flight altitudes could not be achieved. Based on data identified during the promulgation of SFAR 71, the FAA estimated that the cost associated with revenue loss totaled approximately $1.9 million. Additional costs associated with SFAR 71 included $201,000 to provide life vests on subject helicopters and $10,000 for the development of a helicopter performance plan. The estimated potential safety benefits associated with SFAR 71 totaled approximately $33.7 million over three years. A copy of the Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment completed for the original SFAR was placed in the docket.

Because this notice proposes to extend SFAR 71, there is no additional cost associated with it. The FAA believes that the extension of SFAR 71 would continue to prevent accidents and provide additional benefits.

This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it was issued originally as an emergency final rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as 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 action. 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 would 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.

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.

The FAA's original regulatory flexibility analysis indicated that SFAR 71 would impose a ''significant economic impact on a substantial number of small entities.'' (See the copy of the original Regulatory Flexibility Determination included in the docket.)

Although the FAA has issued a number of ''deviations'' since the issuance of the SFAR, the overall impact on small entities remains significant. Although this proposal only would extend the current rule, the effect of the extension of SFAR 71 is still significant for small entities. Accordingly, the FAA certifies that this extension has a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or to diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no effect on any trade-sensitivity activity.

Paperwork Reduction Act

SFAR 71 contains information collection requirements, specifically in Section 6, Minimum flight altitudes, and Section 7, Passenger briefing. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted these requirements to OMB. As a result, an emergency clearance of the information collection requirement (No. 2120–0620) has been approved.

The original accounting for the paperwork burden was as follows. SFAR 71, effective on October 26, 1994, applies to air tour operators in the state of Hawaii. Under the SFAR, both Part 91 and Part 135 operators are required to provide a passenger safety briefing on water ditching procedures, use of required flotation equipment, and emergency egress from the aircraft in event of a water landing. The FAA estimates that 100,000 air tour operations are conducted annually by 35 operators, that each safety briefing takes 3–4 minutes, and that the cost of the briefing is $10.00 an hour. Using these numbers, 400,000 minutes = 6,667 hours × $10.00 equals $66,667.00, or approximately $.70 per flight.

To account for the deviation information collection requirement, two calculations must be performed. First, operators requested deviations to 1,000 feet, and second to 500 feet. The FAA granted 1,000 ft. deviations to approximately 35 operators. It is estimated that the preparation of a deviation request took each operator 2 hours at $15.00 an hour for a total of approximately $1,050.00. The cost for the government to review the deviations is estimated to be 1 hour of review and

operations preparation using 35 hours of inspector time or approximately $1,750.00 in costs. The 500 feet deviation requests cost the operators 35 × 1 hour at $15.00 per hour or $525.00. Cost of an inspector's review is estimated at 35 × ½ hour or $875.00. In addition, it is necessary to include the costs for FAA inspectors checking pilots on specific sites for the 500 feet deviation, and the cost for operators' check pilots to check line pilots. The former is estimated to be 35 × 3 hours at an operator/aircraft cost of $250.00 or $26,250.00. The cost to check line pilots is estimated to be 100 × 1 hour × $250.00 or $25,000.00. The cost to the government (inspectors' time) for all deviations is estimated to be 35 × 3 hours × $50.00 or $5,250.00.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 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 that may result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely 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 that, among other things, provides 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.

The FAA has determined that this rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations herein will not have substantial direct effects on the State, 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, the FAA certifies that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxi, Aircraft, Airmen, Aviation safety.

The Proposed Amendment

The Federal Aviation Administration proposes to amend 14 CFR parts 91 and 135 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44713, 44715–44717, 44722.

3. SFAR NO.—71–Special Operating Rules for Air Tour Operators in the State of Hawaii, section 8, is revised to read as follows:

SFAR NO. 71—Special Operating Rules for Air Tour Operators in The State of Hawaii

* * * * *

Section 8. Termination date. This Special Federal Aviation Regulation expires on October 26, 2003.

Issued in Washington, DC, on August 21, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

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Federal Register

Vol. 65, No. 164

Wednesday, August 23, 2000

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Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

Public Laws Update Service (numbers, dates, etc.) **523–6641**

TTY for the deaf-and-hard-of-hearing **523–5229**

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FEDERAL REGISTER PAGES AND DATE, AUGUST

46859–47242 1
47243–47652 2
47653–47824 3
47825–48134 4
48135–48346 7
48347–48600 8
48601–48884 9
48885–49188 10
49189–49468 11
49469–49718 14
49719–49894 15
49895–50126 16
50127–50400 17
50401–50594 18
50595–50906 21
50907–51212 22
51213–51514 23

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7332 47825
Executive Orders:
12722 (See Notice of July 28, 2000) 47241
12724 (See Notice of July 28, 2000) 47241
12924 (See Notice of August 3, 2000) 48347
13165 49469
13166 50121
Administrative Orders:
Notices:
July 28, 2000 47241
August 3, 2000 48347
Presidential Determinations:
No. 00-27 of July 21, 2000 47827

5 CFR

330 47829
532 50127
550 48135
595 48135
610 48135
1201 48885
1203 48885
1204 48885
1205 48886
1206 48886
1207 48886
1208 49895
2640 47830
Proposed Rules:
531 49948
532 ..... 48641, 50165
1800 49949

7 CFR

2 49471
97 47243
225 50127
246 51213
253 47831
272 49719
274 49719
301 50595
353 50128
371 49471
457 47834
905 50907
920 49472
927 48136
929 48349
930 48139
945 48142
982 47245
1240 48318
1479 47840
1951 ..... 50401, 50598
3015 49474
3016 49474
3019 49474
Proposed Rules:
46 48185
47 48185
205 48642
300 50655
305 47908
319 ..... 47908, 50655, 50938
905 46879
1216 50666
1240 48324
1940 47695

8 CFR

Proposed Rules:
103 50166
212 46882
214 50166
236 46882
241 46882
248 50166
264 50166

9 CFR

78 47653
93 46859
94 50603
Proposed Rules:
1 ..... 47908, 50607
2 ..... 47908, 50607
79 49770

10 CFR

Ch.1 47654
72 50606
Proposed Rules:
2 50937
30 49207
61 49207
431 ..... 48828, 48838, 48852

12 CFR

360 49189
1805 49642
Proposed Rules:
14 50882
208 50882
225 47696
343 50882
536 50882

13 CFR

120 49481
121 ..... 48601, 49726, 50744
Proposed Rules:
107 49511

14 CFR

11 ..... 47247, 50850
21 47247
25 ..... 47247, 47841

33.....48887
39 .....46862, 47248, 47252, 47255, 47660, 48144, 48351, 48353, 48355, 48358, 48360, 48362, 48364, 48368, 48371, 48373, 48605, 48607, 49481, 49727, 49728, 49730, 49732, 49734, 49735, 49897, 49899, 49901, 49903, 49905, 50131, 50617, 50619, 50621, 50623, 50627, 50628, 50630, 50632, 50909, 51229
71 .....47258, 47259, 47260, 47261, 47843, 48146, 48147, 48608, 48609, 48888, 49192, 50281, 50405, 50635, 50636, 51229
73.....49483, 50133
91.....50744
97 .....48889, 48891, 48893
121.....50744
125.....50744
1204.....47663

Proposed Rules:
23.....49513
39 .....47356, 47701, 48399, 48401, 48402, 48404, 48643, 48645, 48646, 48648, 48931, 48933, 48936, 48937, 48941, 48943, 48945, 48947, 48950, 49523, 49775, 49952, 50166, 50466, 50468, 50667, 51254, 51256, 51259, 51260
71 .....48651, 50470, 50744, 51263
91.....51512
121.....50945
135.....51512
139.....50669, 50945
217.....50946
241.....50946
298.....50946

15 CFR

287.....48894

Proposed Rules:
922.....41264

16 CFR

2.....50632
423.....47261, 48148

17 CFR

1.....47843
4.....47848
30.....47275,
230.....47281
231.....47281
271.....47281

Proposed Rules:
1.....49208
3.....49208
4.....49208
5.....49208
15.....49208
20.....49208
35.....49208
36.....49208
37.....49208
38.....49208
39.....49208
100.....49208
140.....49208
155.....49208
166.....49208
170.....49208
180.....49208
210.....49954
240.....49954
240.....47900, 48406

18 CFR

101.....47664
125.....48148, 50638
154.....47284
161.....47284
225.....48148, 50638
250.....47284
284.....47284
330.....47294
356.....48148
385.....47294

Proposed Rules:
342.....47355
352.....50376
357.....50376
385.....50376

20 CFR

404.....50746
416.....50746
652.....49294
655.....51138
660.....49294
661.....49294
662.....49294
663.....49294
664.....49294
665.....49294
666.....49294
667.....49294
668.....49294
669.....49294
670.....49294
671.....49294

Proposed Rules:
416.....49208
440.....49208
655.....50170

21 CFR

73.....48375
172.....48377
201.....46864, 48902
310.....48902
341.....46864
344.....48902
514.....47668
524.....50912
556.....50913
558 .....50133, 50913, 50914
868.....47669
876.....48609
884.....47305
1240.....49906
1304.....49483
1308.....47306
1310.....47309, 48546

Proposed Rules:
890.....50949

23 CFR

1335.....48905

Proposed Rules:
658.....50471

24 CFR

30.....50592
903.....49484
2003.....50904

Proposed Rules:
5.....50842
92.....50842
200.....50842
236.....50842
574.....50842
582.....50842
583.....50842
891.....50842
982.....50842

25 CFR

Proposed Rules:
0.....47859
142.....47704

26 CFR

1 .....48379, 49909, 50281, 50405, 50638
31.....50405
301.....49909, 50405

Proposed Rules:
1 .....48185, 48198, 49955
301.....49955

27 CFR

Proposed Rules:
9.....48953

28 CFR

1.....48379
91.....48392

29 CFR

4022.....49737
4044.....49737

30 CFR

250.....49485
948.....50409

Proposed Rules:
70.....49215
72.....49215
75.....49215
90.....49215
206.....49957
920.....49524

32 CFR

199.....48911, 49491
310.....48169
701.....48170
1615.....47670
1698.....47670

Proposed Rules:
317.....48202

33 CFR

100 .....47316, 48612, 48613, 49493, 49914
117 .....46868, 46870, 50135
165 .....47318, 47321, 48381, 48383, 48614, 48616, 49495, 49497, 49915, 50917

Proposed Rules:
26.....50479
84.....47936
117.....50480
151.....48548
155.....48548
157.....48548
158.....48548
160.....50481
161.....50479
165.....50479
183.....47936
323.....50108

34 CFR

600.....49134
668.....47590, 49134
674.....47634
675.....49134
682 .....47590, 47634, 49124, 49134
685 .....47590, 47634, 49124, 49134
690.....47590, 49134

36 CFR

Proposed Rules:
293.....48205
1250.....51270
1254.....51270

37 CFR

1.....49193, 50092
201.....46873, 48913
202.....48913
204.....48913

38 CFR

Proposed Rules:
4.....48205
36.....46882

39 CFR

20.....47322, 48171
111 .....48385, 50054, 49917

Proposed Rules:
111.....47362

40 CFR

Ch. I.....47323
Ch. IV.....48108
9.....48286, 50136
35.....48286
49.....51412
52 .....46873, 47326, 47336, 47339, 47862, 49499, 49501, 50651
60.....48914
62.....49868
63.....47342
70.....48391, 49919
81.....50651
132.....47864
180 .....47874, 47877, 48617, 48620, 48626, 48634, 48637, 49922, 49924, 49927, 49936, 50431, 50438
271.....48392
300 .....48172, 48930, 49503, 49739, 50137
302.....47342
442.....49666

Proposed Rules:
9.....49062
51.....48825
52 .....47363, 47705, 48652, 49527, 50669
61.....50672
69.....47706
70.....49957
80.....47706, 48058
86.....47706, 48058
122.....49062
123.....49062
124.....49062
125.....49062
141.....49638
142.....49638
232.....50108

260.....51080
261.....48434, 50284
264.....51080
266.....50284
271.....51080
300 .....47363, 48210, 49527, 49528, 49776, 50170

41 CFR

Ch. 102.....48392
101.....48392

Proposed Rules:

101–11.....48655
102–193.....48655
102–194.....48655
102–195.....48655

42 CFR

59.....49057
70.....49906
130.....47348
410.....47026, 47054
412.....47026, 47054
413 .....47026, 47054, 47670
419.....47670
482.....47026
485.....47026, 47054

Proposed Rules:

405.....50171
413.....47706

43 CFR

1880.....51229
3500.....50446

45 CFR

160.....50312
162.....50312
310.....50786
1351.....50139

Proposed Rules:

309.....50800

46 CFR

307.....47678
506.....49741

Proposed Rules:

25.....47936
67.....49529
172.....48548

47 CFR

Ch. I.....50653
0.....47678, 51234
1 .....47348, 47678, 49742
2.....48174,
22.....49199, 49202
54.....47882, 49941
64.....47678, 48393
73 .....48183, 48639, 50141, 50142, 50449, 50653, 51235, 51236
74.....48174
78.....48174
101.....48174

Proposed Rules:

Ch. I.....49530
1.....47366, 48658
36.....50172
54 .....47940, 49216, 50172
73 .....47370, 48210, 50951, 51277, 51278, 51279
76.....48211
78.....48211
80.....50173

48 CFR

Ch. 15.....47323
212.....50143
217.....50148
219.....50148, 50149
222.....50150
236.....50148, 50151
242.....50143
247.....50143
252.....50150, 50152
1804.....50152
1807.....46875
1812.....50152
1819.....46875
1830.....49205
1852.....50152

Proposed Rules:

2.....50872
4.....50872
5.....50872
6.....50872
7.....50872
9.....50872
12.....50872
13.....50872
14.....50872
19.....50872
22.....50872
34.....50872
35.....50872
36.....50872

49 CFR

1.....49763
10.....48184
71.....50154
107.....50450
171.....50450
172.....50450
173.....50450
174.....50450
175.....50450
177.....50450
178.....50450
179.....50450
180.....50450
385.....50919
544.....49505
553.....51236

Proposed Rules:

37.....48444
172.....49777
175.....49777
222.....46884
229.....46884
243.....50952
350.....49780
390.....49780
393.....48660
394.....49780
395.....49780
398.....49780
571.....47945
575.....46884

50 CFR

17.....50672
20.....51496
21.....49508
230.....49509
622.....50158, 51248
635 .....47214, 49941, 50162
648 .....46877, 47648, 49942, 50164, 40563
679 .....47693, 47906, 47907, 49766, 49946, 50935

Proposed Rules:

17 .....49530, 49531, 49781, 49958
20.....50483, 51174
216.....48669
224.....49782
635.....46885, 48671
648.....49959
697.....50952

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 23, 2000

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; published 8-22-00
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans:
Preparation, adoption, and submittal—
Motor vehicle inspection/ maintenance program requirements; additional flexibility; published 7-24-00
Hazardous waste program authorizations:
Minnesota; published 5-25-00
Toxic substances:
Preliminary assessment information reporting—
3-amino-5-mercapto-1,2,4-triazole, etc.; published 7-24-00
INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc.; published 8-23-00
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 7-19-00
McCauley Propeller; published 8-8-00
McDonnell Douglas; published 7-19-00
Rolls-Royce plc.; correction; published 8-23-00
Short Brothers; published 7-19-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Fruits and vegetables, processed:
Inspection and certification; comments due by 8-28-00; published 6-28-00
Kiwifruit grown in California and imported; comments due by 8-30-00; published 7-31-00
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; comments due by 8-31-00; published 8-1-00
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Bovine parts importation from Argentina; prohibition; comments due by 8-28-00; published 6-28-00
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications; comments due by 8-28-00; published 6-28-00
Plant-related quarantine, domestic:
Melon fruit fly; comments due by 8-28-00; published 6-28-00
AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Bioenergy Program; comments due by 8-28-00; published 7-27-00
AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Other consumer protection activities; comments due by 8-29-00; published 6-30-00
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Western Alaska Community Development Quota Program; comments due by 8-31-00; published 7-17-00
Northeastern United States fisheries—
Summer flounder, scup and black sea bass; comments due by 9-1-00; published 8-2-00
West Coast States and Western Pacific fisheries—
Pacfic Coast salmon; comments due by 8-28-00; published 6-27-00
COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisors:
Commodity pools; profile documents; disclosure; comments due by 8-28-00; published 7-27-00
CONSUMER PRODUCT SAFETY COMMISSION
Automatic residential garage door operators; safety standard; comments due by 8-28-00; published 6-14-00
DEFENSE DEPARTMENT
Acquisition regulations:
JWOD subcontract preference under service contracts; comments due by 9-1-00; published 7-3-00
Material management and accounting system; comments due by 9-1-00; published 7-3-00
Polyacrylonitrile carbon fiber; comments due by 9-1-00; published 7-3-00
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Automatic enrollment of families of E-4 and below in TRICARE Prime; comments due by 8-28-00; published 6-28-00
Automatic enrollment of families of E-4 and below in TRICARE Prime; correction; comments due by 8-28-00; published 7-21-00
Medically underserved areas; bonus payments; comments due by 9-1-00; published 7-3-00
Federal Acquisition Regulation (FAR):
Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 8-29-00; published 6-30-00
Truth in Negotiations Act threshold; comments due by 9-1-00; published 7-3-00
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Oil pipelines:
Producer Price Index for Finished Goods; five-year review; comments due by 9-1-00; published 8-2-00
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Boilers and industrial furnaces; data availability; comments due by 8-28-00; published 6-27-00
Air programs:
Ambient air quality standards, national—
Ground level ozone; 1-hour standard; attainment demonstrations for States; motor vehicle emissions budgets; comments due by 8-28-00; published 7-28-00
Northern Ada County/ Boise, ID; PM-10 standards nonapplicability finding rescinded; comments due by 8-31-00; published 7-26-00
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-28-00; published 7-27-00
Indiana; comments due by 9-1-00; published 8-2-00
West Virginia; comments due by 9-1-00; published 8-2-00
Hazardous waste program authorizations:
Virginia; comments due by 8-30-00; published 7-31-00
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 9-1-00; published 8-2-00
Water pollution control:
State water quality standards—
Kansas; comments due by 9-1-00; published 7-3-00
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Federal-State Joint Board on Universal Service—
Telecommunications deployment and subscribership in unserved or

underserved areas, including tribal and insular areas; comments due by 9-1-00; published 8-11-00

High-cost universal service support for non-rural carriers; CY 2001 line count update; comments due by 8-30-00; published 8-17-00

Wireless telecommunications services—

Extension to Tribal lands; comments due by 9-1-00; published 8-2-00

Practice and procedure:

Communication between applicants in spectrum auctions

Correction; comments due by 8-30-00; published 8-9-00

Radio and television broadcasting:

Experimental broadcast stations; ownership prohibition; comments due by 9-1-00; published 7-5-00

Major television networks; ownership prohibition; comments due by 9-1-00; published 7-5-00

Radio stations; table of assignments:

Missouri; comments due by 8-28-00; published 7-25-00

Puerto Rico; comments due by 8-28-00; published 7-18-00

FEDERAL RESERVE SYSTEM

Electronic fund transfers (Regulation E):

Financial institutions compliance requirements; official staff interpretation; comments due by 8-31-00; published 6-29-00

Truth in lending (Regulation Z):

Home-equity lending market; predatory lending practices; hearings; comments due by 9-1-00; published 7-12-00

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:

JWOD subcontract preference under service contracts; comments due by 9-1-00; published 7-3-00

Federal Acquisition Regulation (FAR):

Truth in Negotiations Act; threshold; comments due by 9-1-00; published 7-3-00

Federal Acquisiton Regulation:

Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 8-29-00; published 6-30-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human bone allograft; manipulation and homologous use in spine and other orthopedic reconstruction and repair; public meeting; comments due by 9-1-00; published 7-18-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Hospital inpatient payments and graduate medical education rates and costs; Balanced Budget Refinement Act provisions; comments due by 8-31-00; published 8-1-00

Medicare+Choice program—

Establishment; changes; comments due by 8-28-00; published 6-29-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Spectacled eider and Steller's eider; comments due by 8-31-00; published 7-5-00

Spectacled eider and Steller's eider; comments due by 8-31-00; published 7-31-00

Environmental statements; availability, etc.:

Critical habitat designations—

Arkansas River Basin; Arkansas River shiner; withdrawal; comments due by 8-29-00; published 6-30-00

Fishery conservation and management:

Critical habitat designations—

Peninsular bighorn sheep; comments due by 8-31-00; published 7-5-00

Migratory bird hunting:

Federal Indian reservations, off-reservation trust lands, and ceded lands; comments due by 8-28-00; published 8-18-00

JUSTICE DEPARTMENT

Prisons Bureau

Administrative remedy program:

Administrative Remedy Program; excluded matters; comments due by 8-28-00; published 6-27-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

JWOD subcontract preference under service contracts; comments due by 9-1-00; published 7-3-00

Federal Acquisition Regulation (FAR):

Truth in Negotiations Act; threshold; comments due by 9-1-00; published 7-3-00

Federal Acquisiton Regulation (FAR):

Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 8-29-00; published 6-30-00

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Interim storage for greater than class C waste; comments due by 8-30-00; published 6-16-00

POSTAL SERVICE

Domestic Mail Manual:

Invalid ancillary service endorsements; transitional provisions eliminated; comments due by 9-1-00; published 8-2-00

SECURITIES AND EXCHANGE COMMISSION

Investment companies:

Electronic Signatures in Global and National Commerce Act; consumer consent requirements; exemption; comments due by 9-1-00; published 8-2-00

SMALL BUSINESS ADMINISTRATION

Federal claims collection:

Administrative wage garnishment; debt collection through offset; comments due by 8-28-00; published 6-27-00

TRANSPORTATION DEPARTMENT

Coast Guard

Electrical engineering:

Marine shipboard electrical cable standards; comments due by 8-28-00; published 7-27-00

Ports and waterways safety:

Los Angeles-Long Beach, CA; traffic separation scheme; comments due by 8-28-00; published 7-28-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 9-1-00; published 8-2-00

Boeing; comments due by 8-28-00; published 6-28-00

British Aerospace; comments due by 8-28-00; published 7-27-00

Empresa Brasileira de Aeronautica S.A.; comments due by 8-30-00; published 7-31-00

McDonnell Douglas; comments due by 8-28-00; published 7-13-00

Rolls-Royce plc.; comments due by 9-1-00; published 7-3-00

Saab; comments due by 8-30-00; published 7-31-00

Sikorsky; comments due by 9-1-00; published 7-3-00

Class E airspace; comments due by 8-28-00; published 7-3-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Consumer information:

Passenger cars and light multipurpose passenger vehicles and trucks; rollover prevention; comments due by 8-30-00; published 8-1-00

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Rail carriers:

Class I reporting regulations; modification; comments due by 9-1-00; published 7-18-00

TREASURY DEPARTMENT

Customs Service

Articles conditionally free, subject to reduced rates, etc.:

Civil aircraft merchandise; duty-free entry; comments due by 8-28-00; published 6-29-00

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Proof of service; evidence certification; comments due by 8-28-00; published 6-27-00
Adult day health care of veterans in State homes; per diem payment mechanism; comments due by 8-28-00; published 6-28-00
Privacy Act:
Computer matching programs; comments due by 8-28-00; published 7-28-00

LIST OF PUBLIC LAWS

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H.R. 3519/P.L. 106–264
Global AIDS and Tuberculosis Relief Act of 2000 (Aug. 19, 2000; 114 Stat. 748)

Last List August 22, 2000

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